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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
10/17/2024 3:14 PM  
FEE 116.00 Pgs: 60  
DEP AAM REC'D FOR WOODS  
CROSS CITY CORP

**WHEN RECORDED, RETURN TO:**

Enclave theAUDREY, LLC  
Attn: Legal Department  
610 N 800 W  
Centerville, UT 84014

Affecting Parcel Number(s): 06-048-0050 NKA  
06-464-0001-0048

**DECLARATION OF  
COVENANTS, CONDITIONS,  
AND RESTRICTIONS,  
AND RESERVATION OF  
EASEMENTS FOR  
THE AUDREY**

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE AUDREY (the “**Declaration**”), is made and executed as of the date first written below on the signature page and is effective when recorded in the office of the Davis County Recorder by Enclave theAUDREY, LLC, a Utah limited liability corporation (the “**Declarant**”), pursuant to the Utah Community Association Act.

**RECITALS**

A. The Declarant is the fee title owner of certain real property located in Woods Cross City, Davis County, Utah, as more particularly described on Exhibit A attached hereto (the “**Property**”). The Property has been or will be developed as a single-family development.

B. The Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon each Unit within the Project.

C. The Declarant hereby establishes and adopts this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for theAUDREY to establish a governance structure and standards and procedures for the development, administration, maintenance, and preservation of theAUDREY. By signing this Declaration, the Declarant subjects the Property to this Declaration, the attached Bylaws, and all terms, covenants, and restrictions contained herein.

D. This Declaration is intended to and shall run with the land and shall be binding upon the Declarant and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Unit, an Owner joins in and accepts the intent, purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant’s development of the Project and accepts the burdens and responsibilities that accompany these benefits. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein, is intended to create a contractual relationship between the Declarant and the Association or the Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between the Declarant and the Association.

E. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

## DECLARATION

**NOW, THEREFORE**, for the reasons recited above and subject to the Restrictions set forth below, the Declarant hereby adopts this Declaration. The Recitals above are incorporated into and made a part of this Declaration.

### 1. DEFINITIONS

1.1 “**Act**” shall mean and refer to the Utah Community Association Act codified beginning at § 57- 8a-101, Utah Code Annotated (“**Utah Code Ann.**”), as amended.

1.2 “**Allocated Interest**” shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Units subject to provisions herein. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents.

1.3 “**Articles**” shall mean and refer to the Articles of Incorporation for the Association, as amended from time to time.

1.4 “**Assessment**” shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration and shall include, without limitation, regular Assessments, special Assessments, and Individual Assessments.

1.5 “**Association**” shall mean and refer to The Audrey Owners Association, Inc., a Utah non-profit corporation, the membership of which shall include and be comprised of each Owner in the Project, and its successors or assigns. The Association shall be incorporated as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.

1.6 “**Board of Directors**” or “**Board**” shall mean and refer to the body with primary authority to manage the affairs of the Association.

1.7 “**Bylaws**” shall mean and refer to the Bylaws of the Association and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded. The Bylaws are attached hereto as Exhibit B.

1.8 “**City**” shall mean and refer to Woods Cross City, a political subdivision of the State of Utah, located in Davis County, Utah.

1.9 “**Claim**” (or collectively, “**Claims**”) means any and all claims, demands, suits, actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and expenses, including, but not limited to, attorney fees and costs.

1.10 “**Common Area and Facilities**” shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City and,

specifically, shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plat including Parcels A and B; (b) the entry monument; (c) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area; (d) any fence or wall on common property; (e) any private roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City; and (f) and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees. In accordance with the Plat, the Common Area and Facilities shall be owned by the Association.

1.11 **“Common Expenses”** shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area and Facilities that are maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.12 **“Declarant”** shall mean and refer to Enclave theAUDREY, LLC, a Utah limited liability company, and its respective affiliates, successors, and assigns.

1.13 **“Declarant Control Period”** shall mean the period of time during which the Declarant may appoint and remove Board Members as set forth in § 57-8-16.5 of the Act. The Declarant Control Period shall commence on the recording date of this Declaration and shall terminate on the occurrence of the earliest of: (i) Ninety (90) days following the last transfer of property owned by the Declarant in the Project, or (ii) the Declarant executes and records a written waiver of its right to control the Association. The expiration of the Declarant Control Period has no effect on the termination of all other Special Declarant Rights set forth in this Declaration.

1.14 **“Declarant Related Parties”** shall mean any entity controlling, controlled by, or under common control with the Declarant or any entity in which a principal of the Declarant has an interest and their respective members, managers, shareholders, officers, directors, partners, co-venturers, committee members, servants, agents, representatives, and employees regarding all acts or omissions related to any of the foregoing representative capacities.

1.15 **“Design Guidelines”** shall mean and refer to theAUDREY Design Guidelines established for the Project herein and/or as a supplemental document hereto, as the same may be amended from time to time.

1.16 **“Design Review Committee”** shall mean and refer to the body responsible for review and approval of home and landscaping plans, construction, and installation of the improvements identified therein in conformance with the requirements of the Design Guidelines.



1.17 “**Development Agreement**” shall mean and refer to any Development Agreement that is recorded against the Property by Woods Cross City.

1.18 “**Director**” shall mean and refer to an individual member of the Board of Directors.

1.19 “**Governing Documents**” shall mean and refer to this Declaration, including the Design Guidelines, the Plat, the Articles, the Bylaws, the Rules, and any other written instrument by which the Declarant or the Association may exercise power or manage, maintain, or otherwise affect the Project.

1.20 “**Lender**” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.

1.21 “**Lot**” shall mean and refer to an individual lot created on the Plat on which a single-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as “Lots.”

1.22 “**Manager**” shall mean a person, persons, or entity, if any, selected by the Board of Directors, or by the Declarant during the Declarant Control Period, to manage the affairs of the Association.

1.23 “**Occupant**” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.24 “**Owner**” shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Davis County Recorder. The term “Owner” shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term “Owner” also shall not include the Declarant. More than one Owner is referred to herein as “Owners.”

1.25 “**Person**” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as “Persons.”

1.26 “**Plat**” shall mean and refer to the record of survey map or maps for the Project and any portions thereof, recorded with the Davis County Recorder, and all recorded amendments and supplements thereto.

1.27 “**Private Road**” shall mean and refer to the private throughway that runs through the Project and includes Audrey Lane, Olive Street, and Linden Lane.

1.28 “**Proceeding**” shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.29 **“Project”** shall mean and refer to the AUDREY and all structures and improvements thereon including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Declaration at such time the Supplemental Declaration and plat map for the additional land is recorded.

1.30 **“Project Improvements”** shall mean and refer to all improvements that have or will be constructed or installed within the Project not part of any Unit that are necessary to provide public road access and/or utility service to the Units, and includes such other and further construction or installations required to comply with any requirement of the Development Agreement.

1.31 **“Property”** as previously defined herein and as more particularly described on Exhibit A, shall include the real property made subject to this Declaration and all easements and rights appurtenant thereto.

1.32 **“Released Persons”** shall mean the following Persons: (i) every director and officer of the Association; (ii) every member of the Design Review Committee, or other committees of the Association; (iii) the Declarant and the Declarant Related Parties; and (iv) all employees of the Association.

1.33 **“Restrictions”** shall mean and refer to any one or all of the terms, covenants, conditions, restrictions, easements, rights, privileges, and obligations set forth in the Governing Documents.

1.34 **“Rules”** shall mean and refer to the rules and regulations and policies adopted by the Association.

1.35 **“Supplemental Declaration”** shall mean and refer to any amendment or supplement to this Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in the Declaration. A Supplemental Declaration may also include Additional Covenants applicable only to the annexed land.

1.36 **“Transfer”** shall mean any of the following: (a) a conveyance, sale, or other transfer of a Lot or Unit as reflected by the recordation of a deed or other instrument in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not, excluding the grant of an interest in a Unit through a mortgage or deed of trust; (b) the granting of a life estate in a Unit; or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five percent (75%) of the business entity’s share, stock, membership interests, or partnership interests in a twelve (12) month period.

1.37 **“Unit”** shall mean and refer to a subdivided Unit, within the Project depicted as a separately identified parcel on the Plat or a survey, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residential unit. The term “Unit” refers to land, if any, which is part of a Unit, including the Lot, as well as to any structures or other improvements on the Unit. In the case of a building or other structure

containing multiple residential dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land shall be considered a single Unit until a plat or survey is recorded subdividing it into more than one Unit. The term "Unit" does not include Common Area and Facilities, or property dedicated to the City or the public.

## 2. THE PROJECT

2.1. **Binding Effect of Governing Documents.** The Declarant hereby declares and the Association hereby confirms that the Property is part of the Project and Association and that the Project and all of the Units shall be subject to the Restrictions, which Restrictions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Restriction in the Governing Documents.

2.2. **Nature of Project.** The Project shall be consistent with the terms and provisions of the Development Agreement recorded against the Property. It is contemplated that the Project will consist of forty-five (45) total Units and Common Areas when complete; however, the total number of Units in the Project may vary based on government approvals, building conditions, or other factors outside the control of the Declarant after the recording of this Declaration. The Project is not a condominium or a cooperative.

2.3. **Project Name.** The Project is named "theAUDREY." Notwithstanding, the name commonly used by the Association or others for the Project may be different than the name identified in this Declaration and on the Plat. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.

## 3. UNITS, COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS

3.1. **The Unit.** The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit. Each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.

3.1.1. **Variations between the Plat and As-Built Construction.** The original construction shall be the initial installation of boundaries, foundations, framing, wallboard, and the like (the "**Original Construction**") and shall be the controlling dimensions for any Unit, Common Area, or Project Improvement. If the Board of Directors determines that the present construction varies from the Original Construction, then the Association, at the expense of the Association or the Owner, may require that the present construction be made to comply with the

Original Construction. Nothing herein will excuse an Owner from the need to obtain any variances from any municipality or governmental authority.

3.1.2. **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

3.2. **Allocated Interest of Each Unit in the Votes of the Association.** The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant during the Declarant Control Period as set forth herein. Each Unit shall have an equal Allocated Interest.

3.3. **Plat.** Subject to Section 3.1.1., or as otherwise provided by the application or controlling law, the Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association.

#### 4. **ASSOCIATION GOVERNANCE AND ORGANIZATION**

4.1. **Association Organization.** The Association shall be organized as a Utah non-profit corporation and shall serve as the organizational body for all Owners. The Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

4.2. **Membership.** Membership in the Association shall at all times be comprised exclusively of the Owners, which membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the Transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. Membership in the Association is mandatory.

4.3. **Availability of Documents.** Consistent with the requirements of both the Act and the Utah Revised Nonprofit Corporation Act, the Association shall make available to Owners, Lenders, and insurers of Lenders, copies of Association documents, which may be redacted to avoid disclosure of sensitive personal or financial information of any Owner or Association agent.

4.4. **Board of Directors.** The governing body of the Association shall be the Board of Directors selected pursuant to the Bylaws, subject to the provisions herein. Except as otherwise provided in this Declaration, Bylaws, or the Articles, the Board, in all instances except those explicitly reserved to the Owners, shall act on behalf of the Association. Except as provided in



the Governing Documents, neither any individual Director nor any individual Owner shall have authority to or is authorized to act on behalf of the Association except as may be provided by the Act or other applicable law. During the Declarant Control Period, the Declarant shall have the exclusive right and authority to control, appoint, and/or remove Directors or act as the Board of Directors.

4.5. **Director Qualifications.** Except as otherwise provided herein, to serve on the Board of Directors, a Person must be an Owner current on the payment of Assessments, and, if a natural person, over the age of eighteen (18) years old. No two Directors may reside in the same Unit, be the spouse or significant other of one another, or be business partners if the business is related to their ownership of a Unit(s). Additional Director qualifications may be contained within the Bylaws, as well as the election, number, and term limits of Directors. The requirements of this Section shall not be applicable during the Declarant Control Period.

## 5. **ASSOCIATION GENERAL RIGHTS AND RESPONSIBILITIES**

5.1. **Rights and Responsibilities of the Association.** The Association shall have the rights and responsibilities as set forth in this Section and as reasonably necessary to carry out the terms of the Governing Documents in addition to any others set forth in the Governing Documents or provided by law.

5.2. **Maintenance.** The Association and Owners respective responsibilities pertaining to the Common Areas and Facilities and Units are established on the Maintenance Allocation Table attached hereto as Exhibit C. Nothing in the foregoing provisions of this Section, however, shall be construed to prevent the Association from taking on obligations of the City pursuant to a written agreement between the City and the Association.

5.3. **Private Road and Sidewalks.** The Private Road and the adjoining sidewalks have been constructed for the benefit of Owners. Access to Units is only available through the Private Road and thus the Association, and the Owners through the Association, have a vested interest in maintaining the Private Road and the adjoining sidewalks. The Association will be responsible for consistent and regular maintenance and repair of the Private Road and the adjoining sidewalks, including snow removal, adequate lighting, and drainage, as provided on the Maintenance Allocation Table.

5.4. **Culinary Water and Storm Water Systems.** In accordance with the Development Agreement with Woods Cross City and for the benefit of all Owners, the Association shall own and maintain the Culinary Water and Storm Water Systems. To the extent necessary, Owners shall grant a non-exclusive easement to the Association to maintain any portion of the Culinary Water and Storm Water Systems that affects the working function of the respective system.

5.5. **Setting and Collecting Assessments; Paying Expenses.** The Association shall establish, collect, and account for Assessments as necessary to operate and maintain the Project consistent with the requirements of the Governing Documents. Additionally, the Association may establish, collect, and account for costs associated with any agreement with an adjacent property



owner for which the Association provides any services. The Association shall provide for the payment of Association expenses and any expenses related to the Project.

5.6. **Adopting and Enforcing Rules.** The Association may adopt reasonable Rules for the regulation and operation of the Project. If adopted, the Rules shall be consistently and uniformly enforced.

5.7. **Enforcement Rights.** The Association shall have the right to enforce, by proceedings at law or in equity, all Restrictions, including the right to prevent the violation of any such Restrictions and the right to recover damages and other sums for such violation, including, but not limited to attorney fees and costs incurred in conjunction with such enforcement. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (i) impose fines; (ii) collect rents directly from tenants if Owners fail to pay Assessments; (iii) suspend voting rights; (iv) suspend rights to utilize the Common Area and Facilities; and (v) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. The Board of Directors shall uniformly and consistently enforce the Restrictions in the Governing Documents. Additionally, the Board of Directors shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act.

5.5.1. Each Owner, by taking title to a Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its other members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorney fees.

5.5.2. **Discretion.** The Association may not be required to take enforcement action if, after a fair review and acting in good faith and without conflict of interest, the Board of Directors determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interest to pursue and enforcement action, based upon reasonable criteria.

5.5.3. **Variances.** The Board of Directors, at its option and in extenuating circumstances, may grant variances from the Restrictions set forth in Declaration if the Board of Directors determines, in its discretion: (a) either that the Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial effect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Governing Documents. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of

Directors. No variance may be granted that is inconsistent with the Development Agreement, City ordinance, or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

5.8. **Contracts and Agreements.** The Association may enter into contract(s) to employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of utilities or other services that benefit the Association, including any applicable joint use and easement agreement with neighboring associations or landowners.

5.9. **Hiring Managers and Delegating Responsibilities.** Subject to the terms and conditions this Declaration, the Association, or the Declarant during the Declarant Control Period, shall hire a Manager to assist the Board of Directors in the management and operation of the Association and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Such Manager may charge fees to the Association and/or to Owners individually for its services. Any powers delegated may be revoked by the Board of Directors at any time, with or without cause. Following the Declarant Control Period, the Board shall have the option to either renew the contract with the Declarant selected Manager or hire a different Manager.

5.10. **Reserve Fund.** The Association shall maintain an adequate reserve fund for the maintenance, repair, and replacement of the Common Areas, as determined by the Board. Reserve funds may be collected as part of the Annual Assessments. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments. The Association shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a reserve account. The Board shall not be personally liable for failure to fund the reserve account unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Declarant Control Period.

5.11. **Establishing Hearing Procedures.** The Board of Directors shall have the authority to create a reasonable hearing process on an as-needed basis for particular matters in case a hearing process is required by law. Any such hearing process shall provide, at a minimum for: (a) at least ten days' notice of the hearing to the affected Owners; and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

5.12. **Annual Meeting.** The Association shall arrange for and conduct an annual meeting of the Owners (except as otherwise allowed by law) as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.

5.13. **Payoff Information Fees.** An Owner may request payoff information from the Association needed in connection with the financing, refinancing, or Transfer of an Owner's Unit by: (a) providing written notice to the designated manager for the Association requesting the payoff information, which notice must contain (i) the name, telephone number, and address of the person making the request, and (ii) the facsimile number or email address for delivery of the payoff information; and (b) a written consent for the release of the payoff information, which identifies the person requesting the information as a person to whom the payoff information may be released, and signed and dated by the Owner of the Unit for which the payoff information is requested. The Association is specifically authorized to establish a fee to provide payoff information related to the Transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Board of Directors may increase or decrease the fee amount so long as it is consistent with the Act.

5.14. **Reinvestment Fee Covenant upon Sale or Transfer of Unit.** The Board of Directors, or the Declarant during the Declarant Control Period, may require the transferor/seller or transferee/buyer to pay a fee related to the Transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. § 57-1-46 in an amount to be determined by the Board of Directors, or the Declarant during the Declarant Control Period, and to the extent allowed by law. For purposes of this Section:

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

5.12.2. Subject to the exclusions in Utah Code Ann. § 57-1-46, as may later be amended, a transfer shall mean and refer to any change in the ownership of a Unit as reflected in the Office of Recorder for Davis County, Utah, regardless of whether it is pursuant to the sale of the Unit or not. Any transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant, shall not be considered a transfer for purposes of this Section and is exempt from any Reinvestment Fee.

5.12.3. The amount shall be set forth by the Board in the Rules consistent with Utah Code Ann. § 57-1-46 or in the Notice of Reinvestment Fee Covenant. The value of the Unit shall include the building constructed thereon, if any, and all other improvements, and shall be the purchase price of the Unit. If the purchase price is challenged as the value of the Unit, the value shall be the higher of: (a) the purchase price paid for the Unit; (b) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; or (c) the value of the Unit on the date of the transfer of title, as determined in an appraisal that may be obtained (in the discretion of the Board of Directors) using an appraiser selected by the transferee of the property from a list of three (3) appraisers selected by the Association.

5.12.4. The Reinvestment Fee shall be due and payable by the transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes. The Reinvestment Fee is an Assessment, and the Association shall have all collection rights permitted in this Declaration, the Bylaws, and any Governing Documents with respect to a delinquent Reinvestment Fee.

5.12.5. The Association shall have the authority to enact Rules that may include: (i) requirements for Owners to provide sales and transfer documents; (ii) requirements for the timing of responses to requests such as the selection of the appraiser; (iii) default provisions if no selection is made such as allowing the Association to select the appraiser; and (iv) other procedural requirements and rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

5.13. **No Liability of Officers.**

5.13.1. To the fullest extent permitted by applicable law, the Released Person shall not be liable to any Owner, Occupant, the Association, or any other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence as set forth in this Section.

Each Owner, Occupant, and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant, or other Person entering upon or making use of any portion of the Project, including the transmission of any infectious disease or illness. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence of malfunction of any utility line, equipment, or substation adjacent to, near, over or on the Project.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

5.13.2. To the maximum extent permitted by the Utah Revised Nonprofit Corporation Act (Utah Code Ann. § 16-6a-101, *et seq.*), the Association shall indemnify the Released Persons against all expenses and liabilities actually incurred by such Persons in connection with a proceeding (as defined in Utah Code Ann. § 16-6a-102(37)), including but not limited to, attorney fees, witness fees (including expert witness fees), costs, and litigation related



expenses, reasonably incurred or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement of any such proceeding. The Board further may elect to indemnify any agent of the Association. Any Released Person shall be entitled to indemnification whether or not such Person is serving in the specified capacity at the time the expenses are incurred, and the Association shall pay or reimburse reasonable expenses incurred by any such Person who was, is, or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by § 16-6a-904 of the Utah Revised Nonprofit Corporation Act (as amended from time to time); provided, however, that payment or reimbursement of expenses pursuant to the procedures set forth in the Utah Revised Nonprofit Corporation Act may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the Released Person in question to make the repayment referred to in such Section. This right of indemnification shall be in addition to, and not exclusive of, all other rights to which the Released Person to be indemnified may be entitled at law or otherwise.

## 6. BUDGET AND ASSESSMENTS

6.1. **Covenant to Pay Assessments.** The Owner of any Unit, excluding the Declarant whose obligations regarding Assessments are set forth below, by accepting a deed for said Unit, whether or not it shall be expressed in the deed, agrees and is deemed to have agreed to pay to the Association all fees (including reinvestment fees), annual assessments, supplemental assessments, and special assessments as set forth in this Declaration.

6.2. **Budget and Regular Assessment.** The Board of Directors is authorized and required to adopt a budget for the fiscal year prior to the beginning of each fiscal year. The Board of Directors shall use its reasonable discretion to revise the budget from time to time as appropriate. The budget shall include a line item for the amount to be placed into the reserve fund. The Board of Directors shall divide the total budget amount for Common Expenses by the Allocated Interest for each Unit to determine the amount of the regular Assessments to be paid by each Owner. The Board of Directors shall present the adopted budget to the Owners at an annual or special Association meeting. In the event no new budget is prepared and adopted by the Board of Directors, the last adopted budget shall continue until a new budget is adopted.

6.3. **Payment of Assessments.** Unless otherwise established and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment, annually or on such other quarterly or monthly installment as determined by the Board of Directors or the Manager. Assessments shall be allocated to Owners based on the Allocated Interest of each Unit unless otherwise communicated to the Owners.

6.4. **Adjustment to the Regular Assessment.** In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment,



and unless modified by the Board of Directors, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.

6.5. **Personal Obligation for Assessment.** Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association the Assessments as provided for in the Governing Documents. Any and all Assessments, together with such interest, collection charges, and attorney fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit at the time the Assessment or related charge becomes due and is secured by the interest of the Owner in the Unit. Any and all Assessments or related charges shall also be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association upon a default in such payments.

6.5.1. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorney fees against the latter for any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

6.5.2. A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

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

6.7. **Certificate of Payment.** Consistent with the Act, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board of Directors is authorized to charge a fee as provided in the Act for issuance of a certificate.

6.8. **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments, the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas, or for any other expense incurred or to be incurred by the Association. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

6.9. **Individual Assessments.** The Board may levy special assessments against an individual Unit and/or its Owner ("**Individual Assessments**") for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against an Owner or its Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or its Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorney fees (regardless of whether or not a lawsuit is filed), court or collection costs, fines, and other charges permitted in the Governing Documents or relating to any of the above, regardless of whether a lawsuit is filed.

6.10. **Use of Funds Collected by the Association.** All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.

6.11. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors, in its discretion, may determine how to apply such excess reserves. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

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

6.13. **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right

to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

6.14. **Declarant's Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay any Assessments on any Units owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments.

## 7. RESERVES

7.1. **Requirement for Reserves.** Subject to the provisions of this Declaration, the Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:

7.1.1. **Collection.** Reserve funds may be collected as part of regular or special Assessments.

7.1.2. **Amount.** In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. For purposes of this Section, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.

7.1.3. **Surplus Monies Applied to Reserves.** The Association may, in its sole discretion, retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

7.1.4. **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.

7.1.5. **Reserve Analysis.** The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future. As further provided below, the Association is not required to obtain a reserve analysis during the Declarant Control Period.

7.1.6. **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person or Persons with (i) experience in current building

technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.

7.1.7. **Summary and Copies of Reserve Analysis.** The Association shall annually post and/or provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

## 8. EFFECT OF NONPAYMENT AND REMEDIES

8.1. **Late Fees and Interest.** Any Assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board of Directors. In addition, all fees and Assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors.

8.2. **Lien for Assessments.** The Association has a lien on a Unit for Assessments and, except as otherwise provided in this Declaration, for fines, fees, charges, and costs associated with collecting an unpaid Assessment, including court costs and reasonable attorney fees, late charges, interest, fines, and any other amount that the Association is entitled to recover under this Declaration, at law, or an administrative or judicial decision. The obligation to pay Assessments hereunder is part of the purchase price of each Unit when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, the Declarant (and each Owner by acceptance of a deed to a Unit) hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-302 to the Association's attorney, as trustee, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of this Declaration to secure the payment of Assessments and other amounts owed hereunder. The recording of this Declaration constitutes record notice and perfection of the above-described lien. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form. If an Assessment is payable in installments, the lien will be for the full amount of the Assessment from the time the first installment is due, unless the Association otherwise provides in a notice of Assessment. An unpaid Assessment or fine accrues interest at the rate provided in this Declaration. The lien provided in this Section has priority over each other lien and encumbrance on a Unit except: (a) a lien or encumbrance recorded before the Declaration is recorded; (b) a first or second security interest on the Unit secured by a Mortgage that is recorded before a recorded notice of lien by or on behalf of the Association; or (c) a lien for real estate taxes or other governmental Assessments or charges against the Unit. To evidence any lien hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the Assessments and other amounts due and owing, the name of the Owner of the Unit subject to such Assessments and other



amounts due and owing and a description of such Unit, which shall be signed by an officer of the Association and may be Recorded.

8.3. **Legal Remedies.** The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Unit in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. In addition, to enforce the lien, the Association may cause a Unit to be sold through non-judicial foreclosure as though the lien were a deed of trust, in the manner provided by Utah Code Ann. §§ 57-1-24, 57-1-25, 57-1-26, and 57-1-27 (as amended from time to time) and the Act, or foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a Mortgage and the Act. Foreclosure or attempted foreclosure or the sale or attempted sale of a Unit by the Association of its lien as addressed in this Section shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent Assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at Foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Unit, and to convey or otherwise deal with such Unit. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code §§ 57-8a-302 and -303, as the same may be amended.

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

## 9. DESIGN REVIEW COMMITTEE

9.1. **Purpose.** In order to create, maintain, and improve the Project as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, to establish procedures for the enforcement of the terms and conditions of this Declaration to protect and promote the value of the Project, the exterior design of all improvements constructed within the Project, landscaping, and changes or alterations to existing use, landscaping, and exterior design and development shall be subject to the prior review and approval of the Design Review Committee.

9.2. **Creation of Design Review Committee.** Except as provided for herein during the Declarant Control Period, the Design Review Committee shall be composed of at least three (3), but not more than five (5) natural persons appointed by the Board of Directors. The Board of Directors may remove a member of the Design Review Committee and appoint a new Design Review Committee member at any time, provided that at all times there shall be a least three (3) persons serving. If no such appointments are made, the Board shall serve as the Design Review Committee. The Design Review Committee shall enforce the Design Guidelines and shall have and may exercise all the powers, duties and responsibilities set out in this Declaration. The Design



Review Committee may hire a secretary or other personnel to perform administrative, clerical, and other functions. The Design Review Committee has exclusive jurisdiction on behalf of the Association regarding: (a) implementation of all provisions of this Section; and (b) promulgation of all Design Guidelines pertaining to the development and construction of Improvements within the Project.

9.3. **Submission of Plans Required.** No improvements may be commenced, constructed, erected, placed, maintained, or made upon any Unit or within or upon any part of the Project unless and until complete plans and specifications have been submitted to and approved in writing by the Design Review Committee, as applicable, as to compliance with applicable Design Review Guidelines as set forth in this Declaration. Two complete sets of plans and specifications must be submitted with each request for approval. In addition to any other applicable requirements per applicable Design Guidelines, any plans and specifications to be submitted must specify, in such detail and form as the Design Review Committee may reasonably require:

- (a) the location upon the Unit or within the Project where the improvement will occur or be placed;
- (b) the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the improvement;
- (c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking, and landscaping details;
- (d) intended uses; and
- (e) such other information, plans or specifications as may be requested or required by the Design Review Committee that in the sole opinion of the Design Review Committee is reasonably necessary to fairly and fully evaluate all aspects of the proposed improvements.

9.4. **Scope of Authority.** Except as otherwise provided in this Declaration, no improvements of any kind or changes in the natural condition of any land within the Project shall be erected, altered, or permitted to remain on any Unit or elsewhere in the Project unless complete architectural plans, specifications, and a site plan showing the location and orientation for such construction, alteration, or landscaping are approved by the Design Review Committee prior to the commencement of any work. Work subject to Design Review Committee approval may include, but is not limited to, the construction of a structure, installation of utility line, fence, grading, planting, flag poles, any renovation, expansion or refinishing of the exterior of an existing Unit or other structure, excavating, clearing, landscaping, and antennas not covered under FCC regulation and satellite dishes greater than one meter in diameter, or other modifications. Notwithstanding the foregoing, any work performed by or on behalf of the Declarant to any of the property within the Project including, but not limited to, the construction of Project Improvements and infrastructure, or the initial construction of the Units by the Declarant that have been pre-approved by the Declarant, shall not require approval of the Design Review Committee.

9.5. **Design Guidelines.** The Board or the Design Review Committee, subject to Board approval, may, from time to time, effective immediately, adopt, modify, amend, and repeal the Design Guidelines applicable to the Project. Such authority includes, but is not limited to, the right to specify:

- (a) specific procedural guidelines for submission of requests for, and plans, specifications and other information and documentation necessary to obtain, Design Review Committee approval, and procedural requirements for the conducting of all activities necessary to accomplish same;
- (b) specific types of improvements which may be commenced, constructed, erected or maintained upon any Unit or anywhere within the Project;
- (c) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of an improvement;
- (d) minimum setbacks;
- (e) the location, height, and extent of fences, walls, or other screening devices, walks, decks, patios, or courtyards;
- (f) the orientation of structures,
- (g) landscaping consistent with the landscaping installed when the Project Improvements were installed; and
- (h) in general, all requirements reasonably deemed necessary to maximize compliance with the Design Guidelines.

WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE DESIGN REVIEW GUIDELINES MAY PROVIDE FOR A FINE OF UP TO \$10,000.00 AGAINST ANY OWNER AND UNIT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE DESIGN REVIEW COMMITTEE, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS.

9.6. **Design Review Criteria.** The Design Review Committee will evaluate all properly and timely submitted applications for approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed improvement with Project-Wide Standards as of the date of submission of an application and compliance with applicable Governing Documents, including this Declaration and applicable Design Guidelines and other Rules and Regulations. The Design Review Committee must use reasonable efforts to achieve consistency in the approval or disapproval of specific types of improvements. To this end, consideration will be given to (but the Design Review Committee is not bound by) similar applications for architectural approval and the decisions and actions of the Design Review Committee with regard thereto.

9.7. **Disapproval by Design Review Committee.** It is understood and agreed by each Person having or acquiring an interest in the Project that the Design Review Committee will include aesthetic judgment in its decision-making process, and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements. The Design Review Committee may disapprove any request for approval for any reasons, including the following: (i) failure to comply with any applicable Design Guidelines; (ii) lack of sufficient information, plans or specifications as reasonably determined by the Design Review Committee to enable the Design Review Committee to fairly and fully evaluate the proposed improvement or the uses thereof; or (iii) failure to include any information, plans, or specifications required by applicable Governing Documents, or as may be reasonably requested by the Design Review Committee. In the event of disapproval, the Design Review Committee shall so notify the applicant in writing; and if disapproval is based on lack of sufficient information, plans or specifications, then the Design Review Committee shall also notify applicant of the additional information, plans, or specifications required.

9.8. **Submission and Response; Failure of Design Review Committee to Act.**

9.8.1. **Submission and Response.** Applications for Design Review Committee approval are deemed submitted to the Design Review Committee only upon actual receipt of the complete application. All responses by the Design Review Committee shall be in writing, and are deemed given when delivered to, or when deposited in the United States mail, postage prepaid and addressed to, the applicant at the address specified in the application or the last known address of the applicant according to the records of the Association. The Design Review Committee has no duty to respond to, and the provisions of this Section do not apply regarding, any application if the Person(s) identified in the application do not appear as members or Owners according to the books and records of the Association unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the Design Review Committee. Lessees/Occupants shall file applications or requests for variance in the name of the Owner, and such Owner shall either appoint the Lessee/Occupant as their agent in a letter to the Design Review Committee or join the application. Where more than one Owner applies for approval, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners.

9.8.2. **Failure to Respond.** In the event the Design Review Committee fails to approve, conditionally approve or disapprove an application or fails to request additional information and/or documentation reasonably required within sixty (60) days after receipt of the application, then the application shall be deemed denied.

9.9. **Conditions of Approval.**

9.9.1. **Applicability.** Unless expressly waived or modified by the Design Review Committee (or the Board as to variances) in writing, each and every approval or conditional approval of an improvement is subject to all provisions of this Section whether or not stated in the approval or conditional approval.

9.9.2. **Commencement and Completion of Work.** Approval of an application for an improvement is effective for one (1) year from the date of approval or grant of a variance. If work on an improvement is not commenced within one (1) year after approval or conditional



approval or grant of a variance, such approval or grant will become null and void and the Owner must submit a new application and obtain a new approval for the improvement. Prior approval of an improvement shall not bind the Design Review Committee or the Board or require the Design Review Committee or the Board to approve a re-submitted application for the same improvement. Upon commencement, the Owner must diligently prosecute and complete all work as soon thereafter as reasonably possible. The Design Review Committee (or the Board as to variances) is authorized to set specific schedules for completion of a Regulation Modification on a case-by-case basis and/or pursuant to applicable Design Guidelines.

9.9.3. **Compliance With Plans.** All work on an improvement must proceed in strict compliance with: (i) the application and plans and specifications approved by the Design Review Committee (or variance granted by the Board); (ii) any and all conditions stated by the Design Review Committee (or the Board as to variances) in the approval; (iii) any and all applicable governmental laws, rules, regulations, ordinances, and building codes; and (iv) all applicable Governing Documents.

9.9.4. **Permit Requirements.** Each Owner is solely responsible for full compliance with all permitting requirements of all governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after approval or conditional approval is received. Without limitation of the foregoing, the Design Review Committee may deny approval pending, or conditional approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the Design Review Committee that no such permitting requirements exist.

9.9.5. **Compliance With Laws and Governing Documents.** Each applicant is solely responsible for ensuring that (and nothing in the Governing Documents or any written decision of the Design Review Committee (or the Board as to variances) shall be construed as a covenant, representation, guaranty, or warranty that) any proposed improvement will be in compliance with applicable governmental laws, ordinances, or regulations (including building codes or permit or licensing requirements), or with applicable requirements of the Governing Documents.

9.10. **Inspection Rights.** Upon reasonable notice (oral or written), any member of the Design Review Committee or the Board, or their designated representatives, may enter a Unit without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any improvements in compliance with the approved plans, specifications, information, and documentation for same, and as to compliance with any applicable provisions of the Governing Documents.

9.11. **Records.** The Design Review Committee is not required to maintain records of any of its meetings. The Design Review Committee and the Board, however, will keep and maintain records evidencing their respective final decision(s) regarding all requests for approval and requests for variance for not less than four years. The Design Review Committee will provide copies to Owners upon request.

9.12. **Limitation of Liability.** The Released Parties shall not be liable to any Owner, Occupant, or any other Person for any actions or failure to act or in connection with any approval,

conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Design Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty, or guaranty that, if followed, the improvement will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality, or suitability for any purpose of the improvement. The provisions hereof are cumulative of other release, waivers, or limitations contained herein.

## 10. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

10.2. **Use of Units.** All Units within the Project shall be used only for the construction and occupancy of one single-family dwelling. All Units shall be used, improved, and devoted exclusively for such single-family residential use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any such Unit and no persons shall enter into any Unit for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval by the Design Review Committee and the appropriate City department. Notwithstanding the foregoing, an individual Unit Owner, whose principal place of business is not said Owner's Unit or residence, may maintain a home office to conduct work related activities (which do not involve receiving or providing products and or services at such Owner's Unit or residence) outside of regular work hours, on weekends, during holidays, or as local, State, or Federal circumstances necessitate.

10.3. **Rental Restrictions.** No Unit shall be made available for lease or rent for any lease or rental period that would violate local zoning ordinances applicable to the Project.

10.4. **Architectural Control.** No grading, excavation, building, fence, wall, resident, or other structure, or alteration of any kind shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications thereof showing the location of all improvements has been approved in writing by the Design Review Committee. The Design Review Committee, in its sole option, may also require the Owner to submit a topographical plan and/or a detailed landscaping plan for review and approval. All subsequent additions to or changes



or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade of any Unit shall be subject to the prior written approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Subsequent to receiving approval of the Design Review Committee and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from Woods Cross City or any other permit required by applicable law.

10.5. **Landscaping.** Declarant will install initial landscaping in the front of each Unit (to the fence on either side of the Unit). Owners are responsible for any replacement or repair of landscaping in the front of each Unit after installation, and for installing landscaping for the sides and rear of the Unit (behind the fence of either side of the Unit) within twelve (12) months of the closing of a Unit.

10.6. **Maintenance Allocation Table.** A maintenance allocation table is attached hereto as Exhibit C and clarifies the maintenance allocation for the Association and Owners. Unless expressly assumed by the Association, all maintenance obligations shall be the responsibility of the Owners. In the event of a conflict between this Declaration and Exhibit C, then Exhibit C shall control.

10.7. **Yard Drains on Lots 13-23.** In accordance with Exhibit C and to ensure proper drainage for the Project, Owners of Lots 13-23 are responsible for clearing, maintaining, and repairing the drains in the back of their yards.

10.8. **Parking.** Due to safety and fire concerns, Owners and Occupants, including invitees, may only park in the spaces indicated on Exhibit D.

10.8.1. No trailer or recreational vehicle may be parked in the front of a Unit, in the driveway of a Unit, or on the Private Street.

10.9. **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Unit or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other Unit in the vicinity thereof or to the occupants of such other Unit. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other Unit in the vicinity thereof or to its occupants. Normal construction activities and parking in connection therewith shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be stored only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Unit during construction of improvements may be kept only in areas approved by the Design Review Committee, which may also require screening of the storage areas.

10.10. **Garbage and Refuse Disposal.** All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves, or trash within the Project is prohibited. Each Unit and its abutting street are to be kept free of trash, weeds, and other refuse by the Unit Owner. No unsightly material or objects are to be stored on any Unit in view of the general public.

10.11. **Signs.** No signs, posters, displays, or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Unit without the express written consent of the Design Review Committee; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven (7) square feet or smaller in size which states that the premises are for rent or sale. The Association and/or the Design Review Committee may cause all unauthorized signs to be removed. This Section shall not apply to any signs used by the Declarant or its agents in connection with the original development, construction, and sale of the Units.

10.12. **Repair of Improvements.** No improvements on any Unit shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required in this Section, such building or structure shall be immediately repaired, rebuilt, or shall be demolished.

10.13. **Owner Liability and Indemnification.** Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

10.14. **Security.** Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association nor the Board of Directors are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

10.15. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by the Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs necessary or convenient to the development, marketing, or sale of property within the Project.

10.16. **No Representations and Warranties and Disclaimers.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT. OWNERS HEREBY ACKNOWLEDGE THAT THEY UNDERSTAND THAT THE PROJECT MAY ADJOIN FUTURE UDOT EXPANSION, FUTURE DEVELOPMENT, AND FARMLAND THAT MAY CAUSE ODORS IN AND AROUND THE PROJECT.

## 11. **RIGHT TO USE COMMON AREA AND FACILITIES**

### 11.1. **Rights and Nonexclusive License to Use Common Area and Facilities.**

11.1.1. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Board of Directors, from time to time. Additionally, the Association may enter into an agreement with an adjacent property owner authorizing the same to use identified Common Areas.

11.1.2. The Association shall have nonexclusive easements with the right of access over and across each Unit to make inspections, to prevent or mitigate damage to Common Area and Facilities, to maintain, repair, replace, or effectuate the restoration of the Common Area and Facilities and any other property or improvements for which the Association is responsible for maintaining, which are accessible from such Unit. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities for purposes necessary for the proper operation of the Project or for the use of the Common Areas by an adjacent property owner and its guests, tenants, invitees, or other similarly situated individual.

11.1.3. The right to hook-up, tie-in, connect to, and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters, and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Area and Facilities or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or

management of common property by the Association is reserved to the Declarant and the Association; provided, however, that the Association shall pay the actual cost of the water, power, gas, or other utility service utilized by the Association to the Owner of any such Unit.

11.2. **Limitation on Easement.** Notwithstanding anything to the contrary in foregoing Section 10.1, an Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:

11.2.1. The right of the Association to impose reasonable limitations on the number of Occupants per Owner or guests who at any given time are permitted to use the Common Area and Facilities;

11.2.2. The right of the Association to suspend an Owner's right to the Common Area and Facilities: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; and

11.2.3. The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.

11.3. **Utilities.** Easements and rights-of-way over, under, and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Area and Facilities and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, irrigation systems, water heating, and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, 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. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no easement or right of way can be granted pursuant to this Section if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.



11.4. **Easements for Encroachments.** If any portion of the Common Area and Facilities or any Project Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities as a result of the manner in which the Project Improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

11.5. **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

## 12. INSURANCE

**NOTICE: The Association's insurance policy does not cover the real or personal property owned by the Owners or Occupants, or personal liability of the Owners or Occupants.**

12.1. **Insurance Held by Owner.** Each Owner shall be responsible to obtain and maintain any insurance on a Unit, any improvements on such Owner's Unit, the fixtures, furniture, furnishings, equipment, and contents within the residence or Unit, and any other personal property of such Owner.

12.2. **Insurance Held by Association.** The Association shall obtain and maintain all insurance policies required by the Act consistent with the terms and conditions of the Act. All premiums for insurance policies held by the Association shall be part of the Common Expense. Without limiting the foregoing, the Association shall obtain and maintain: (i) property and liability insurance for all Common Area and Facilities; (ii) Fidelity Insurance (e.g., directors and officers coverage); (iii) other insurance authorized and/or required by the Act that is not the obligation of individual Owners; and (iv) such other insurance policies for casualty or liability as the Board of Directors deems necessary or desirable and with coverages and coverage limits comparable to similarly situated homeowner associations in Davis County.

12.3. **Deductible.** If permitted by the Act, the deductible on any claim made under a policy maintained by the Association shall be allocated among all Owners if the loss affects the Common Area and Facilities or all the Units in the Project or, if the loss affects or impacts less than all the Units in the Project, the deductible shall be allocated among the Owners of the affected Units.

## 13. DURATION AND AMENDMENT

13.1. **Duration.** This Declaration shall be effective, and the Declaration shall encumber the Property, from the date the Declaration is recorded in the office of the Davis County Recorder and, as amended from time to time, this Declaration, and as later may amended, shall continue in full force and effect against the Project and the Restrictions shall run with the land in perpetuity, for as long as the law allows unless terminated in accordance with the provisions herein.

13.2. **Amendment.** During the Declarant Control Period, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. After the Declarant Control Period, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the members of the Association and must also be approved by the Declarant in writing before it can be effective, and such amendment must contain a statement from the Board of Directors certifying that the required vote has taken place. No amendment to this Declaration shall be effective until it is recorded in the office of the Davis County Recorder.

13.3. **Termination.** An agreement to terminate this Declaration and the Restrictions, as set forth herein, shall require same approval required for an amendment as set forth in Section 12.2 above.

#### 14. **DECLARANT RIGHTS AND CONTROL**

14.1. **Special Declarant Rights.** Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have all the rights and powers provided for in this Section. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the article shall all nonetheless be subject to the terms in this Section.

14.2. **Right to Appoint the Board of Directors During Declarant Control Period.** The Declarant shall have the right to appoint and remove all Directors during the Declarant Control Period. In the appointment of Directors, the Declarant shall not be bound by any qualifications for Directors in the Governing Documents. The Declarant may elect to have a Board of Directors of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless the Declarant notifies the Association otherwise) the powers of the Board of Directors without appointing Directors pursuant to the rights granted in the Articles to the Declarant.

14.3. **Right to Appoint the Design Review Committee During Declarant Control Period.** The Declarant shall have the right to appoint and remove the member(s) of the Design Review Committee during the Declarant Control Period. In the appointment of the Design Review Committee, the Declarant shall not be bound by any qualifications in the Governing Documents, if any. The Declarant may elect to have a Design Review Committee of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless the Declarant notifies the Association otherwise) the powers of the Design Review Committee without appointing members during the Declarant Control Period.

14.4. **Declarant Retains All Rights and Authority During Declarant Control Period.** During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Association and/or the Project. Notwithstanding anything in this Declaration to the contrary, during the Declarant Control Period, the Declarant shall have the discretion, without obligation, to hire a professional manager to manage the Project during the Declarant Control Period.

14.5. **Easement Rights.** The Declarant shall have and hereby retains an easement for access over, under, across, and through the entire Project for the purpose of development of the Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.

14.6. **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, supplement, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.

14.7. **Reinvestment Fee and Assessment Exemption.** The Declarant shall be exempt from any Reinvestment Fee and Assessments including any regular Assessment, Special Assessment, or Individual Assessment.

14.8. **Right to Amend Governing Documents.** Until the expiration of the Declarant Control Period, the Declarant and/or the Declarant-appointed Board shall have the right to unilaterally amend, revise, and modify this Declaration, any Supplement to the Declaration establishing Additional Covenants, the Bylaws, the Articles, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to § 57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule-making process. Any amendment to the Bylaws or this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

14.9. **Right to Modify Prior Designations.** During the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to modify any previously designated Common Area and Facilities and to adjust or modify the assignments of Units respectively thereto.

14.10. **Assignment of Special Declarant Rights.** The Declarant, at any time, may assign, transfer, or share all or some of its control, power, rights, exemptions, authority, or decision-making ability to the Association, the Manager, or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the Project or to be expanded into the Project.

14.11. **No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents and, specifically, in this Section, may not be substantively or procedurally altered during or after the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void *ab initio*.

14.12. **Use of Units and Common Area and Facilities for Sales Activities.** During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Area and Facilities in furtherance of any activities designed to accomplish or facilitate construction, improvement, and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Area and Facilities as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners, or similar structures or devices.

14.13. **Facilities Open to the Public.** The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks, and other neighborhood areas conducive to public gatherings. The Declarant may designate such facilities and areas as open to the public at the time the same is made the responsibility of the Association or the Board of Directors may so designate at any time thereafter.

14.14. **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Section shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Association and each Owner, by taking title to a Unit, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

14.15. **Declarant Exemption from Statutory Obligations.** Pursuant to § 57-8a-217(6) of the Act, the Declarant is hereby exempt from the provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act and elsewhere herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

14.16. **Authority to Grant Exemptions.** In its sole discretion, the Declarant may grant exemptions from any provisions of this Declaration or other Governing Documents to a Person engaged in the construction, development, marketing, or selling of Lots or Units within the Property. This includes, without any limitation, exemption from Assessments, reinvestment fees, Design Guidelines, and so forth.



## 15. EMINENT DOMAIN

15.1. **Taking of a Unit.** If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the condemnation award or sale proceeds shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Area and Facilities are taken.

15.2. **Taking of Common Area.** If the Common Area and Facilities or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Board of Directors shall, as soon as practicable, cause the condemnation award or sale proceeds to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award or sale proceeds not used for restoration shall be added to the general funds of the Association.

15.3. **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated, and the Board of Directors shall wind down the Association in accordance with applicable law.

15.4. **Priority and Power of Attorney.** Nothing contained in this Section 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award or sale proceeds allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area and Facilities, or any part thereof.

## 16. ATTORNEY FEES AND COSTS

### 16.1. **Legal Costs Associated with Disputes with Owners.**

16.1.1. **Owners Liable for Fees Incurred in Dispute.** If the Association utilizes legal counsel to enforce any Restriction after notice to the Owner that the Association intends to enforce the Restriction or after the Owner communicates or demonstrates an intent not to comply with the Restriction, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

16.1.2. **Costs.** The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

16.1.3. **Exception to Owner's Liability for Fees and Costs.** If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Restriction, or (iii) a request of an Owner for direction on the application of a Restriction, the Association incurs legal fees or costs related to the interpretation and application of a Restriction that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then

those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## 17. CONFLICT AND LITIGATION AVOIDANCE

**NOTICE: Notwithstanding anything in this Declaration to the contrary, this Section shall not limit, supersede or override the Association's legal remedies or cure period(s) set forth in this Declaration related to an Owner's nonpayment of Assessment(s) or other monetary obligations set forth in the Declaration. The Association may immediately exercise any rights under this Declaration and exercise its remedies related to non-payment of Assessments or to enforce the terms and conditions of this Declaration.**

17.1. **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. The intent of this Section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Project Improvements, the Common Area and Facilities, and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

17.2. **Association Warranties.** The Declarant may, but is not obligated to, provide for certain warranties from contractors or subcontractors to the Association related to the construction of the Project ("**Association Warranties**" or an "**Association Warranty**"). The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the contractors or subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

17.3. **Owner Warranties.** The Declarant, builder, or contractor may have provided certain warranties to the Owners related to the Unit purchased ("**Owner Warranties**" or an "**Owner Warranty**"). The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the entity providing such warranty of any terms of the warranty and only

consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties granted to any Owner and the Owner shall have no right to assign any rights of any kind arising under a warranty to the Association.

17.4. **Limitation on Claims.** Any Claims by the Association, the Board, or any Owner against the Declarant or any building, contractor and/or subcontractor for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach arising out of or related the design or construction of the Common Area and Facilities, the sale of or conveyance of any portion of the Project, or this Declaration or any other agreement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law shall be commenced within two (2) years of substantial completion of the Common Area and Facilities. The Association, the Board, and the Owners waive all Claims not asserted within this time. This Section is expressly intended to set forth a period of repose enforceable under § 78B-2-225(9) of the Utah Code and to reduce the periods of limitation and repose prescribed by § 78B-2-225 of the Utah Code. Also, the Association, the Board, and the Owners waive all Claims for consequential damages, including but not limited to lost rents, rental expenses, loss of use, financing, stigma, and loss of reputation. To the extent the Association, the Board, and the Owners damages are covered by insurance or a third-party warranty, including but not limited to the Association Warranties or the Owner Warranties, the Association, the Board, and the Owners waive all rights against the Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees for damages. The Association, the Board, and the Owners agree that that they shall not participate in any class action proceeding and that any Claims shall not be joined or consolidated with the Claims made by any other party, including any other Owner. In the event the Association, the Board, or an Owner does participate in any class action or joins or consolidates the Claims with the Claims of any other party, the Association, the Board, and the Owner understand that such action is a material default under this Declaration and the Association, the Board, or the Owner, as the case may be, shall thereby waive and generally and completely release any and all Claims whatsoever, known or unknown against the Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees.

17.5. **Waiver of Subrogation and Release.** The Association and each Owner waives, and shall cause its insurance carrier to waive, any right to subrogation against the Declarant or any builder or contractor of any portion of the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, a builder, a contractor, or a subcontractor, and their officers, employees, owners, and representatives. To the fullest extent permitted by law, the Association and Owners hereby release the Declarant and builder and contractors and subcontractors, their officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of the Declarant, the builder, any contractor, or subcontractor, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover

thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, the contractor and any of their officers, employees, owners, or representatives from any Claims barred or released by this provision, including but not limited to any Claim brought under any right of subrogation.

17.6. **Waiver of Claims by Owner.** Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant, the builder, the contractor, and/or the subcontractors, or any of their officers, directors, members, employees, or agents for any reason, including but not limited to alleged construction defects, any related damages, or any damages arising therefrom.

17.7. **Waiver of Claims by Association.** Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association or the Board or any officer of the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant, a builder, and/or the contractor or any of their officers, directors, members, employees, or agents for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom other than arising from an Association Warranty.

17.8. **Indemnification and Waivers by Association and Owners.** The Association shall indemnify and defend the Declarant, the builder, and/or the contractor and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any Claims arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom, except to the extent covered by an Association Warranty. By purchasing a Unit, the Owner specifically disclaims and releases the Declarant, the builder, and/or the contractor from any Claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that the Association Warranties and the Owner Warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association and Owners related to any alleged or actual construction defects. In case of any Claims, litigation or legal proceedings asserted or related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant, builder, and/or contractor (which shall permit the Declarant, builder, and/or contractor to select counsel and require the Owner to advance all costs and fees related to any such Claim) from any such Claim and to indemnify the Declarant, the builder, the contractor, and/or the subcontractors from any liability arising therefrom.

17.9. **Acceptance of Condition.** Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Area and Facilities, "AS IS" and "WITH ALL FAULTS" with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims, and the Association and any Owner hereby waive, any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.



17.10. **Dispute Resolution.** The Declarant, the Association, its officers and Directors, and all Owners (each a "**Bound Party**" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and Claims regarding the design, initial construction, allegations of latent or patent construction defects, condition, or sale of any part of the Project or any improvements thereon involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

17.10.1. If otherwise allowed by law, notwithstanding the terms of this Declaration or if allowed in this Declaration, prior to the Association or any Owner (a "**Claimant**") initiating a Claim or making any demand or commencing any mediation, arbitration, or litigation (any "**Action**") (other than Claims made solely upon an Association Warranty or an Owner Warranty against a contractor or subcontractor) against the Association (if applicable), the Declarant, or any builder, contractor, or subcontractor involved in the original construction of the Project ("**Respondent**") (the Claimant and Respondent referred to herein being individually referred to as a "**Party**" or collectively referred to as the "**Parties**") shall notify each Respondent in writing ("**Notice**"), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) A specific breakdown and calculation of any alleged damages;
- (d) A specific description of the Claims along with any supporting opinions, information, or other factual evidence upon which the Claims are based;
- (e) Photographs of any alleged condition, if applicable;
- (f) Samples of any alleged defective conditions or materials;
- (g) All efforts taken to avoid, mitigate, or minimize the Claims or any alleged damages arising therefrom;
- (h) The names, phone numbers, and address of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the Claims;
- (i) The proposed remedy;
- (j) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
- (k) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

17.10.2. Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

17.10.3. In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties, or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice, except as may be limited in this Declaration.

17.10.4. Before initiating any Proceeding for any Claim against the Declarant or an affiliate of the Declarant, in addition to the requirements and limitations set forth in this Declaration, the Association shall:

17.10.4.1. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded, and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable. The notice will also contain the following information:

(a) a disclosure/statement in bold and upper-case type and not less than 14-point font:

The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your unit and your ability to sell your unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue.

(b) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five (5) years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;

(c) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five (5) years;

(d) a written statement of each Board member indicating that Person's position on the litigation;

(e) a copy of a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney (not compensated on a contingency fee basis) not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;

(f) all terms of the agreement between the Association and the attorney or law firm proposed to prosecute the action including a copy of any engagement letter, contract, or agreement related to that representation; and

(g) a detailed description of the alleged Claims against the Declarant and of all efforts by the Association to resolve those Claims prior to commencing any action, and a statement describing any demands, notices, offers to settle, or responses to offers to settle made either by the Association or the Declarant or the builder, contractor, or subcontractor, if applicable.

17.10.4.2. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least seventy-two (72) hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and

17.10.4.3. Receive approval from at least two-thirds (2/3) of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable.

17.10.5. Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential Claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to the Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

17.10.6. Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding; and (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section

to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of: (a) members representing not less than sixty-seven percent (67%) of the total voting power of the Association; (b) not less than seventy-five percent (75%) of the total voting power of the Board; and (c) the Declarant during the Declarant Control Period. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

17.10.7. The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, § 57-8a-228.

17.10.8. The Association, the Board, any officer of the Association, and the Owners agree that any Claims or Actions, the subject matter of any proceeding, and the results of any proceeding, including any settlement, shall be confidential and not disclosed to any other person or entity, including any other Owner, other than (a) in confidence with its own legal, financial, insurance, or tax professionals, (b) in necessary communication with appropriate federal, state, or local tax authorities, (c) to any person necessary to perform or satisfy the award, or (d) to any other person as may be required to comply with a subpoena, court order, or legal process; provided, however, that the Declarant shall be afforded a reasonable opportunity after written notice to object to the same. The Association, the Board, the officers of the Association, and the Owners, as the case may be, shall advise any legal, financial, insurance, or tax professional to whom such party discloses any confidential information or information about the Claims and/or Actions and any settlement or award that such information as permitted herein is to be held in confidence.

17.10.9. In addition to the requirements set forth in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Declarant (if during the Declarant Control Period) and a vote of seventy-five percent (75%) of the Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the exercise of the right of an Owner to request a hearing under § 57-8a-208 of the Act, (c) the exercise of the right of an Owner under § 57-8a-227 related to Association records, (d) the exercise of the right of an Owner under § 57-8a-211(8) regarding an Owner's right to compel production of a reserve analysis, (e) the imposition and collection of Assessments as provided herein, (f) proceedings involving challenges to ad valorem taxation, or (g) counterclaims brought by the Association in proceedings instituted against it.

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

17.11. **Landowners.** All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting



that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Section.

## 18. INTERPRETATION, CONSTRUCTION, AND APPLICATION

18.10. **Conflicting Provisions.** In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Declaration, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control, except where the Additional Covenants are allowed to differ by the Governing Documents.

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

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

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

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

18.15. **Applicable Law.** Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

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

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

18.18. **Notices.** Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to the Association or to the Association at the address of the Association. An Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands, or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. The Association may provide notice by electronic means, including email; provided, however, an Owner, upon written notice to the Association, may require the Association to provide secondary notice to the Owner by First Class United States mail.

The Association shall maintain a list of contact information for Owners of all Units within the Project. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Restrictions, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

In the event that any Owner desires to sell or otherwise Transfer title to the Owner's Unit, such Owner shall give the Association at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of Assessments, notwithstanding the Transfer.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of the 19<sup>th</sup> day of August, 2024.

**DECLARANT**

**Enclave theAUDREY, LLC**  
a Delaware limited liability company

By: CW The Audrey, LLC  
a Utah limited liability company  
Its: Administrative Member

By: CW Urban, LLC  
a Utah limited liability company  
Its: Manager

By: CW The Manager, LLC  
a Utah limited liability company  
Its: Manager

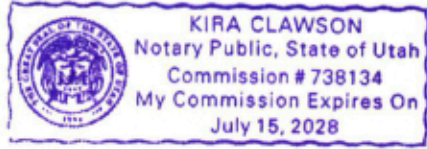
By: CW Development Group, LLC  
a Utah limited liability company  
Its: Manager

By: *Darlene Carter*  
Its: Authorized Representative

STATE OF UTAH            )  
                                      §  
COUNTY OF DAVIS        )

On the 19<sup>th</sup> day of August, 2024, personally appeared before me Darlene Carter who by me being duly sworn, did say that she/he is an authorized representative of Enclave theAUDREY, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

*Kira Clawson*  
(Notary Signature)



(Seal)

A PARCEL OF LAND BEING PART OF THE NORTHWEST QUARTER OF SECTION 25 AND THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF HOWARD LANE (1100 WEST), SAID POINT BEING S00°00'00"E 1515.24 FEET AND N90°00'00"E 26.42 FEET FROM A WITNESS CORNER TO THE NORTHWEST CORNER OF SAID SECTION 25, (SAID WITNESS CORNER BEING S89°38'22"E 5041.68 FEET FROM A FOUND MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 26); AND RUNNING THENCE S89°00'41"E 644.45 FEET TO THE WESTERLY RIGHT OF WAY LINE OF DENVER AND RIO GRANDE WESTERN RAILROAD RIGHT OF WAY LINE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S09°20'20"W 504.12 FEET; THENCE N87°40'34"W 353.94 FEET; THENCE N87°40'49"W 212.59 FEET TO SAID EASTERLY RIGHT OF WAY LINE; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE N00°24'55"E 485.61 FEET TO THE POINT OF BEGINNING.

CONTAINS 6.85 ACRES IN AREA, 45 LOTS AND 2 PARCELS, PRIVATE ROADS

ROTATE BEARINGS 00°00'15" CLOCKWISE TO ACHIEVE NAD 83 DATUM AND COORDINATES

UNLAWFUL PRACTICE: PART OF THE NORTHWEST QUARTER OF SECTION 25 AND THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF HOWARD LANE (1100 WEST), SAID POINT BEING S00°00'00"E 1515.24 FEET AND N90°00'00"E 26.42 FEET FROM A WITNESS CORNER TO THE NORTHWEST CORNER OF SAID SECTION 25, (SAID WITNESS CORNER BEING S89°38'22"E 5041.68 FEET FROM A FOUND MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 26); AND RUNNING THENCE S89°00'41"E 644.45 FEET TO THE WESTERLY RIGHT OF WAY LINE OF DENVER AND RIO GRANDE WESTERN RAILROAD RIGHT OF WAY LINE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S09°20'20"W 504.12 FEET; THENCE N87°40'34"W 353.94 FEET; THENCE N87°40'49"W 212.59 FEET TO SAID EASTERLY RIGHT OF WAY LINE; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE N00°24'55"E 485.61 FEET TO THE POINT OF BEGINNING.

CONTAINS 6.85 ACRES IN AREA, 45 LOTS AND 2 PARCELS, PRIVATE ROADS

ROTATE BEARINGS 00°00'15" CLOCKWISE TO ACHIEVE NAD 83 DATUM AND COORDINATES



**EXHIBIT B**

**BYLAWS OF  
THE AUDREY OWNERS ASSOCIATION, INC.**

**(Woods Cross City, Davis County, Utah)**

THESE BYLAWS OF THE AUDREY OWNERS ASSOCIATION, INC., are effective upon recording in the office of the Davis County Recorder pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred to collectively herein as the "Acts").

**RECITALS**

A. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for The Audrey (the "**Declaration**") and Articles of Incorporation for The Audrey Owners Association (the "**Articles**").

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

**ARTICLE I  
DEFINITIONS**

Capitalized terms used herein shall have the same meaning and effect given to such terms in the Declaration except as otherwise provided herein or as may be required by context.

**ARTICLE II  
APPLICATION**

All present and future Owners, Occupants, mortgagees, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and the Rules. The mere acquisition or rental of any of the Units, or the mere act of occupancy or use of any such Units or the Common Area and Facilities will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by such persons.

**ARTICLE III  
MEMBERSHIP IN ASSOCIATION; VOTING; MEETING OF OWNERS**

3.1 Membership in Association. The Declarant, so long as the Declarant owns property in the Project, and every Owner of a Unit shall be a member of the Association. Membership shall be appurtenant to ownership of any Unit. Each Unit in the Project shall be entitled to one (1) vote.

Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If a Unit is owned by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. Ownership of a Unit within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, conveyance, or other disposition of a Unit shall constitute a devise, conveyance, or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. The foregoing is not intended to include conveyances made solely for the purpose of securing performance of an obligation.

3.2 Voting. Unless otherwise provided for herein, or required by the Declaration, all matters submitted to a vote shall be by a majority vote of all votes cast. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant may act in all Association matters with or without a vote of the Owners. To the extent any matters are submitted to a vote of the Owners during the Declarant Control Period, the same shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Association shall be decided by the votes of the Owners. A change in the ownership of a Unit shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Unit must be cast as one vote, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Owner, the vote for the Unit shall be cast as such Owners decide among themselves. In the event such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Unit, unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Unit, the vote for that Unit shall be deemed void and shall not be counted.

3.3 Annual Meeting. During the Declarant Control Period, annual meetings are not required and will only be held in the sole discretion of the Declarant. Thereafter, the annual meeting of the Owners shall be held each year on a day and at a time established by the Board. The purpose of the annual meeting shall be electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.4 Special Meetings. During the Declarant Control Period, the Declarant shall have the sole right to call a special meeting. After the Declarant Control Period, special meetings of the Association may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty-three percent (33%) of all of the total votes of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the Board and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The Board

shall then call, provide notice of, and conduct a special meeting within forty-five (45) days of receipt of the request.

3.5 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the Secretary/Treasurer or person authorized by the Board to call the meeting, by mailing a copy of such notice, postage prepaid, or by email or other mode of electronic or digital communication, to the extent not prohibited by law, at least fifteen (15) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address, email address, or other mode of electronic or digital communication last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for the purposes of notice hereunder. Such registered email, phone number, and mailing addresses may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door. Such notice shall specify the place, day and hour of the meeting, and the purpose of the meeting. The President of the Association will chair meetings of the Owners. The presence of an Owner at a meeting shall be deemed to waive any objection such Owner has to the form and scope of the notice unless such Owner objects at the outset of the meeting.

3.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice for any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 Place of Meetings. The Board may designate any place in Davis County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association. In addition, the Association may hold and conduct Owner meetings through any type of electronic means that allows Owners to communicate orally in real time including telephone and video conferencing.

3.8 Quorum. Except for meetings addressing an amendment of these Bylaws, an amendment of the Declaration, or other matters for which the affirmative votes of a certain percentage of Owners is required for approval, the Owners present in person or by proxy at a meeting of the Association shall constitute a quorum. Where a certain percentage of affirmative votes of Owners is required to approve an action and such action is to be discussed at the meeting, a quorum shall consist of not less than the number of affirmative votes required to approve such action.

3.9 Proxies. At all meetings of the Association, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the applicable Owner(s) of the Unit(s), and filed

with the Secretary/Treasurer or any professional manager the Association chooses to retain. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner(s) of his or her Unit(s).

3.10 Waiver. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within thirty (30) days of notice of any decision by the Board. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver of any notice requirements.

3.11 Action Taken Without a Meeting. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code Ann. § 16-6a-707 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Owners.

#### ARTICLE IV BOARD; SELECTION; TERM OF OFFICE

4.1 General Powers. The Project and the affairs and business of the Association shall be managed by the Board. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, the Bylaws, the Articles of Incorporation, or the Acts except such powers that the Declaration, the Bylaws, the Articles of Incorporation and the Acts vest solely in the Owners.

4.2. Number, Selection and Tenure. The Association will be composed of three (3) Directors. During the Declarant Control Period, the Board will have three (3) Directors who will be selected by the Declarant. The Declarant may, in its sole discretion, increase the number of Directors. Notwithstanding the foregoing, the Declarant may, at the Declarant's discretion, allow one (1) or more seats on the Board to be filled by an Owner chosen by the Members of the Association at any time during the Declarant Control Period. Such action shall not be deemed as a termination of the Declarant Control Period or a waiver of any of the rights of the Declarant as provided herein. Within ninety (90) days after the end of the Declarant Control Period, the Association shall hold an election at which the Owners shall be entitled to elect all three (3) Directors. Upon such election, the terms of the Directors will be staggered as follows: the two (2) Directors receiving the highest number of votes in such election shall serve for an initial term of three (3) years, and the one (1) Director receiving the next highest number of votes shall serve for an initial term of two (2) years. After the expiration of the initial terms, all Directors shall serve terms of two (2) years. After the Declarant Control Period, the Board may change the number of Directors on the Board by the vote of a majority of Directors. In addition, after the Declarant Control Period the Owners may change the number of Directors by the vote of a majority of Owners. Notwithstanding the foregoing, there shall always be an odd number of Director slots and the terms of the Directors shall be staggered.



4.3 Removal and Replacement. After the Declarant Control Period, a Director may be removed with or without cause by a majority vote of the other Directors or by a majority vote of the Owners at a meeting of the Owners called for the purpose of voting on removal. Additionally, if a Director fails and refuses to timely comply with applicable federal and/or state law applicable to a director, such Director shall be deemed to be automatically and immediately removed by the Board without further action required by the Owners or by the Board. If a Director is removed, the remaining Directors (provided there are at least two (2) Directors serving) shall determine a replacement Director to fill the remainder of the term of the removed Director. If the Board cannot determine a replacement, or if there are not two (2) Directors then serving, the Owners shall fill vacancies on the Board at a meeting called for the purpose of filling vacancies.

4.4 Non-Liability of Officials. To the fullest extent permitted by law, none of the Released Persons shall be liable to any Owner, Occupant, the Association, or any other Person 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, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their representative duties. Each Owner, Occupant, and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant, or other Person entering upon or making use of any portion of the Project. Each Owner, Occupant, and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Project. Each Owner, Occupant, and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence of malfunction of any utility line, equipment, or substation adjacent to, near, over or on the Project.

(c) No provision of these Bylaws or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

4.5 Indemnification. In the event that any legal claim or action is asserted or commenced against a Director or Officer for actions undertaken in his role as a member of the Board or as an Officer of the Association, whether or not such Director or Officer is still acting in their official capacity, the Association shall indemnify such Director or Officer for losses or claims, and undertake all costs of defense, until and unless a court of competent jurisdiction determines that such Director or Officer acted with willful or wanton misfeasance or with gross negligence. After such determination, the Association is no longer liable for the cost of defense and may recover costs already expended from the Director or Officer who so acted.

ARTICLE V  
MEETINGS OF THE BOARD OF DIRECTORS

5.1 Regular Meetings. Meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a weekend or legal holiday, then that meeting shall be held at the same time on the next day which is not a weekend or legal holiday.

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than five (5) days written notice to each Director.

5.3 Open Meetings. After the Declarant Control Period, meetings of the Board shall be open to the Owners or Owners' agents except in cases where the Utah Revised Nonprofit Act permits private meetings. After the Declarant Control Period, any Owner may request notice of all meetings of the Board, in which case the Board shall provide notice of all meetings to such Owner not less than forty-eight (48) hours prior to such meeting.

5.4 Quorum and Voting. A majority of the number of Directors shall constitute a quorum for the transaction of business. During the Declarant Control Period, all matters requiring a vote of the Directors or otherwise submitted to a vote of the Directors shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Directors shall be decided by the votes of the Directors. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board and of the Association.

ARTICLE VI  
POWERS AND DUTIES OF THE BOARD; APPLICABILITY OF THE ACTS

6.1 Powers. The Board shall have power to:

6.1.1 Adopt and publish Rules and Regulations governing the use of the Common Area and Facilities within the Neighborhood or as shown on the Plat Map or identified in the Declaration, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

6.1.2 Adopt and publish other Rules and Regulations for the management of the Association as are not in conflict with the Acts, the Declaration, or these Bylaws;

6.1.3 As the Board deems necessary, employ a professional manager, or other independent contractors or employees, to carry out the functions of the Association and exercise the powers of the Board which are properly the subject of delegation; and

6.1.4 Exercise for the Association all powers, duties, and authority vested in or delegated to the Association by the Acts, the Declaration, or the Articles of Incorporation.

6.2 Duties. It shall be the duty of the Board to:

6.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by the Owners who are entitled to vote thirty-three percent (33%) of the total votes;

6.2.2 Supervise any professional manager and all Officers, agents, and employees of this Association, and to see that their duties are properly performed;

6.2.3 After the Declarant Control Period, do each of the following in the manner set forth in the Declaration:

6.2.3.1 Prepare the budget for the Association as provided in the Declaration and these Bylaws; and

6.2.3.2 Fix the amount of the annual assessment assessed against each Unit and fix the amount of any supplemental assessments or special assessments applicable to any Units;

6.2.4 Send written notice of each annual assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each supplemental assessment or special assessment;

6.2.5 Foreclose the lien (at the option of the Board) against any Unit for which assessments are not paid in the manner provided for in the Act and the Declaration, or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same;

6.2.6 Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid and to charge a reasonable fee for the issuance of these certificates;

6.2.7 Procure and maintain insurance as required by the Declaration and the provisions of the Act relating to insurance;

6.2.8 Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions of the Act relating to reserve funds;

6.2.9 Cause all Officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate; and

6.2.10 Cause the Common Area and Facilities to be properly maintained and managed.

6.3 Legal Action Involving Declarant. Neither the Board nor any other person or entity acting, or purporting to act, on behalf of the Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature against the Declarant, the individual managers, owners, members, or officers of the Declarant, the Declarant's contractors, or any other person or entity involved in the construction of the Units or Units thereon unless and until all of the "MANDATORY DISPUTE RESOLUTION REQUIREMENTS" set forth in the Declaration have been satisfied. Any Claims against the Declarant shall comply with all the terms and conditions of the Declaration.

6.4 Applicability of the Act. The provisions of the Act shall apply and govern the Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

6.5 Applicability of the Utah Revised Nonprofit Act. The provisions of the Utah Revised Nonprofit Act shall apply and govern the operations and dealings of the Association to the extent not otherwise provided in these Bylaws, the Declaration, or the Articles of Incorporation.

## ARTICLE VII OFFICERS AND THEIR DUTIES

7.1 Enumeration of Officers. The following positions shall constitute the officers of this Association ("**Officers**"): a President, a Vice-President, a Secretary/Treasurer, and such other Officers as the Board may from time to time by resolution create.

7.2 Selection of Officers. The Declarant shall select the three (3) Officers during the Declarant Control Period. After the Declarant Control Period, the Board shall annually, at the next meeting of the Board after the Association's annual meeting, select the Officers. Generally, the Directors of the Association will fulfill the roles of the Officers.

7.3 Term. After the Declarant Control Period, the Officers of the Association shall hold office for two (2) years unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

7.4 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.5 Resignation and Removal. After the Declarant Control Period, any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary/Treasurer. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.



7.6 Vacancies. After the Declarant Control Period, a vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

7.7 Multiple Offices. Members of the Board may be Officers in the Association. No person shall simultaneously hold more than one (1) of any of the offices identified above, except in the case of special Officers created pursuant to Section 7.4, above.

7.8 Duties of Officers. The duties of the Officers are as follows:

7.8.1 President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; and shall sign all written contracts or agreements of the Association. The President shall execute any amendments to the Declaration and deliver the same to the Secretary/Treasurer for certification and recordation, provided approval for such amendment has been obtained as provided in the Declaration.

7.8.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

7.8.3 Secretary/Treasurer. The Secretary/Treasurer shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners, serve notice of meetings of the Board and of the Owners, keep appropriate current records showing the Owners of the Association together with their addresses, certify that any amendments to the Declaration have received the required approval and have been executed by the President and shall record the same; and shall perform such other duties as required by the Board. The Secretary/Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board, shall sign all checks and promissory notes of the Association, keep the Associations book and accounts, and shall assist the Board with the preparation of the annual budget to be presented to the Owners as provided herein.

## ARTICLE VIII COMMITTEES

8.1 Committees Authorized. The Board may appoint Committees as it deems appropriate for carrying out the purposes of the Association.

## ARTICLE IX BOOKS AND RECORDS

9.1 Open Records. Notwithstanding Section 6.2.1, above, the books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation, the Bylaws, and any

Rules promulgated by the Board shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at a reasonable cost.

## ARTICLE X BUDGET AND ASSESSMENTS

10.1 Budget. The Board shall prepare an annual budget showing the estimated expenses of the Association and the anticipated annual assessment for the following year attributable to each Unit. The budget shall be completed and distributed to the Owners on or before December 1 of each year.

10.2 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation.

10.3 Payment of Assessments. As more fully set forth in the Declaration, and subject to the exemptions set forth in the Declaration, each Owner is obligated to pay to the Association all assessments, and the Owner's obligation to pay such assessments is secured by a continuing lien upon the Owner's Unit. Any assessment which is not paid when due is delinquent. If the assessment is not paid on time, then the Board has the authority to establish late fees and collect the same from the delinquent Owner. The Board, in the name of the Association, may bring an action at law against the Owner personally obligated to pay the assessments and late fees or foreclose the lien against the Unit in the manner provided by the Act, and interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments and late fees provided for herein or provided in the Declaration by nonuse of the Common Area and Facilities or abandonment of his or her Unit.

10.4 Set-up Fee. In addition to the assessments identified in the Declaration, the Association, or the Manager if the Association chooses to use one, may charge an administrative set-up fee whenever a new Owner takes title to a Unit. The amount of any set-up fee will be determined by the Board in accordance with these Bylaws and may be adjusted by the Board from time to time. The set-up fee will be used to offset the administrative, data entry, and recordkeeping costs associated with the change of ownership from one Owner to another.

## ARTICLE XI AMENDMENTS

11.1 Amendment. During the Declarant Control Period, the Declarant shall have the right to amend these Bylaws without the consent of the Association or any Owner. After the Declarant Control Period, these Bylaws may be amended, at a regular or special meeting of the Association, by an affirmative vote, in person or by proxy, of the Owners entitled to cast at least sixty-seven percent (67%) of the total votes of the Association; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction. No

amendment to these Bylaws shall be effective until they are recorded in the office of the Davis County Recorder.

11.2 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XII  
MISCELLANEOUS

12.1 Governing Law. These Bylaws shall be governed by, and interpreted in accordance with, the laws of the State of Utah, without regard to conflict of law provisions.

12.2 Severability. If any section, term, or provision of these Bylaws is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of these Bylaws which shall all remain in full force and effect.

12.3 No Waiver. The failure by the Declarant or the Association to enforce any term or provision of these Bylaws shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, on the 19<sup>th</sup> day of August, 2024, the Declarant, in its capacity as Board of Directors for The Audrey Owners Association, has executed and adopted these Bylaws.

**DECLARANT**

**Enclave theAUDREY, LLC**  
a Delaware limited liability company

By: CW The Audrey, LLC  
a Utah limited liability company  
Its: Administrative Member

By: CW Urban, LLC  
a Utah limited liability company  
Its: Manager

By: CW The Manager, LLC  
a Utah limited liability company  
Its: Manager

By: CW Development Group, LLC  
a Utah limited liability company  
Its: Manager

*Darlene Cartek*  
By: *Darlene Cartek*  
Its: Authorized Representative

STATE OF UTAH                    )  
  §  
COUNTY OF DAVIS            )

On the 19<sup>th</sup> day of August, 2024, personally appeared before me *Darlene Cartek* who by me being duly sworn, did say that he/she is the authorized representative of Enclave theAUDREY, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

*Kira Clawson*  
(Notary Public)





**EXHIBIT C**

**MAINTENANCE ALLOCATION TABLE**

<b>Improvement</b>	<b>Unit Owner</b>	<b>Association</b>	<b>Notes</b>
A/C Pad & Unit	X		
Address Numbers	X		Subject to Board/Design Review Committee approval upon replacement.
Cable/Satellite TV	X		Fixtures subject to Board/Design Review Committee approval.
Circuit Breakers for Unit	X		
Common Area Amenities (Repair and Maintenance)		X	
Door and Door Frames (Exterior)	X		Subject to Board/Design Review Committee approval upon replacement.
Door and Door Frames (Interior)	X		
Door Hardware/Doorbell	X		Subject to Board/Design Review Committee approval upon replacement.
Drains – Unit and Yard Drains	X		
Drains – Street and Common Areas		X	
Dryer Vent	X		
Electrical Wiring/Panels	X		
Exterior Wall Finishes	X		Changes subject to Board/Design Review Committee approval.
Fencing – Individual Lots	X		Subject to Board/Design Review Committee approval.
Fencing – Project Perimeter		X	
Insurance – Association Plan Maintenance		X	
Insurance – Association Plan Deductible	X		Assessed to Owners pro-rata according to losses.
Insurance – Association Plan Loss Assessment	X		Assessed to Owners pro-rata according to losses.
Insurance – Individual Units Plan Deductible and Maintenance	X		
Irrigation Lines/Heads – Common Area		X	
Irrigation Lines/Heads – Individual Units	X		
Landscaping – Common Areas and Front Yards of Units (Fence to Street)		X	
Landscaping – Back Yards of Units (Behind Fence of Unit)	X		

Lights – Exterior (Porch, Driveway, Garage, Wall Pack (Fixtures & Bulbs))	X		Fixtures are subject to Board/Design Board Committee approval on replacement.
Mailbox and Stand/Structure		X	
Mailbox Lock and Key	X		
Paint – Exterior Doors, Walls, and Trim	X		Subject to Board/Design Review Committee approval.
Paint – Interior	X		
Patio Slab	X		
Pest Control – Interior	X		
Plumbing Valves and Pressure Regulators	X	X	<u>Owner</u> : Point of connection/meter to Unit. <u>Association</u> : Before point of connection/meter.
Plumbing Main Line	X	X	<u>Owner</u> : Point of connection/meter to Unit. <u>Association</u> : Before point of connection/meter.
Plumbing Leak	X	X	<u>Owner</u> : Point of connection/meter to Unit. <u>Association</u> : Before point of connection/meter.
Plumbing Cloggage	X	X	<u>Owner</u> : Point of connection/meter to Unit. <u>Association</u> : Before point of connection/meter.
Plumbing Interior Pipes	X	X	<u>Owner</u> : Point of connection/meter to Unit. <u>Association</u> : Before point of connection/meter.
Private Road (Repair and Maintenance)		X	
Public Utilities – Common Areas		X	
Rain Gutters (Cleaning, Repair, and Replacement)	X		
Roof (Repair and Maintenance)	X		
Screen Doors	X		Subject to Board/Design Review Committee approval.
Sewer Pipes	X	X	<u>Owner</u> : Point of connection/meter to Unit. <u>Association</u> : Before point of connection/meter.
Sewer Service Cost	X		
Sidewalks and Paths on Common Areas (Repair and Maintenance)		X	
Signage – Entry Monument for Project		X	
Sliding Glass Doors	X		
Snow Removal – Private Road, Sidewalks, Front Porches, and Driveways		X	

Storm Drains		X	
Storm Water System, including Storm Water Basin		X	Storm Water System and Basin are owned by the Association which, according to the Development Agreement must be owned and maintained by the Association.
Streetlights		X	
Trash – Units	X		
Trash – Common Area		X	
Water Service – Culinary and Secondary Water Meters and Maintenance for Units	X		
Water Service – Common Areas (Cost and Maintenance)		X	
Windows – Glass, Screens, Frames	X		Subject to Board/Design Review Committee approval on replacement.

**EXHIBIT C**

**PARKING**

