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Utah County Recorder
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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
THE MAPLES AT BROOKSIDE**

A Planned Unit Development in
Utah County

TABLE OF CONTENTS

RECITALS	1
ARTICLE I. DEFINITIONS.....	2
ARTICLE II. PROJECT DESCRIPTION	4
ARTICLE III. MEMBERSHIP AND VOTING RIGHTS	5
ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS.....	6
ARTICLE V. BUDGET AND ASSESSMENTS.....	7
ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION.....	12
ARTICLE VII. MAINTENANCE	15
ARTICLE VIII. INSURANCE.....	16
ARTICLE IX. USE RESTRICTIONS	20
ARTICLE X. ARCHITECTURAL CONTROLS.....	26
ARTICLE XI. ENFORCEMENT	28
ARTICLE XII. RIGHTS OF FIRST MORTGAGEE	28
ARTICLE XIII. RIGHT OF ENTRY	29
ARTICLE XIV. AMENDMENTS.....	29
ARTICLE XV. MISCELLANEOUS	29
EXHIBIT A - LEGAL DESCRIPTION	
EXHIBIT B - WITHDRAWN PROPERTY	
EXHIBIT C - BYLAWS	

This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE MAPLES AT BROOKSIDE ("Declaration") is adopted by The Maples at Brookside, Inc. ("Association") on behalf of its Members and is effective as of the date it is recorded in the office of the Utah County Recorder.

RECITALS

A. This Declaration affects the real property situated in Utah County described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof.

B. The *Declaration of Covenants, Conditions and Restrictions and By-Laws for The Maples at Brookside* was recorded in the Utah County Recorder's Office on April 7, 1999 as Entry No. 40500, in Book 5040, and beginning on Page 251 ("Enabling Declaration").

C. The *Declaration of Amended Covenants, Conditions and Restrictions and By-Laws for The Maples at Brookside* was recorded in the Utah County Recorder's Office on September 28, 2000 as Entry No. 76331:2000 ("First Amended Declaration").

D. The *First Amendment to Declaration of Covenants, Conditions and Restrictions and Bylaws for The Maples at Brookside* was recorded in the Utah County Recorder's Office on February 18, 2004 as Entry No. 17803:2004.

E. This *Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Maples at Brookside* is adopted to: (1) withdraw the Lots with detached single-family homes from the conditions and restrictions of the Declaration, (2) clarify and define the rights of the Association and the Owners, in and to the Project, and (3) provide for a general plan for managing the Project.

F. The Members of the Association desire to divide the Lots within The Maples at Brookside Plats A through G into two separate and independent owners associations, governed by two separate declarations, to better fit the needs and desires of the owners of the two different lot and building types located therein. The owners of the townhome Lots shall remain members of The Maples at Brookside, Inc., and the owners of the Lots with detached single-family homes shall be members of The Maples at Brookside Homeowners Association ("Single-Family Association").

G. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Enabling Declaration, the First Amended Declaration, and all prior declarations and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.

H. The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previous bylaws of the Association and any amendments thereto.

I. Pursuant the amendment requirements contained in Article VIII, Section 3 of the First Amended Declaration and Article XII, Section 1 of its bylaws, the undersigned hereby certifies that this Declaration and Bylaws were approved by Owners holding at least sixty percent (60%) of the total votes of the Initial Association and all Lots subject to the First Amended Declaration. Such votes were submitted in the form of a signed ballot instrument including a

signature, including electronic signatures as authorized by Utah's Uniform Electronic Transactions Act.

J. The Members of the Association and the members of the Single-Family Association acknowledge that they have reviewed and consent to the recording of this Declaration and the simultaneous recording of the *Declaration of Covenants, Conditions and Restrictions for The Maples at Brookside Single-Family Homes*, and each party agrees that the single-family Lots described in Exhibit B shall be withdrawn from, and shall not be subject to The Maples at Brookside, Inc. or this Declaration.

K. It is the intent and agreement of the Association, the Single-Family Association, and their respective members, that all rights, title, and interests of the Association in the single-family Lots existing under the First Amended Declaration shall transfer to the newly created Single-Family Association, including all rights of assessment and covenant enforcement.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the covenants set forth below, the Association hereby adopts this Declaration. This Declaration, together with the Plat, Bylaws, and Rules adopted by the Association, shall define and govern the rights of the Owners and the Association related to the Project.

ARTICLE I. DEFINITIONS

1.1. **Act** shall mean the Utah Community Association Act, codified beginning at Utah Code § 57-8a-101 *et seq.*, as the same may be amended from time to time.

1.2. **Architectural Control Committee** or **ACC** shall mean the Board or, if so, appointed by the Board, a committee having architectural control powers as further described herein.

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

1.4. **Assessments** shall mean any monetary charge imposed or levied by the Association against Owners as provided in this Declaration or other Governing Documents.

1.5. **Association** shall mean The Maples at Brookside, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association. The Association may renew or reinstate its corporate status without Owner approval.

1.6. **Board** or **Board of Directors** shall mean the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws. The Board is the governing body of the Association.

1.7. **Board Member** shall mean a duly qualified and elected or appointed individual member of the Board of Directors of the Association.

1.8. **Bylaws** shall mean the Bylaws of the Association that are attached hereto as Exhibit C, as the same may be amended from time to time.

1.9. **Common Areas** shall mean all areas of the Project located immediately outside of the exterior wall and roof surfaces of the Residences; all land that is designated as open space or Common Areas on the Plat and the improvements located thereon; all roadways and

related improvements within the Project that are not accepted for dedication by a municipal authority; and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee. Common Areas may include without obligation or limitation: maintenance buildings, Association signs or monuments, walkways, landscaped areas, street signage, sidewalks, bike trails, creek area, parking areas, lighting detached from Residences, park facilities, and other similar improvements; and any real property or improvements within the Project that the Association has the obligation to maintain, repair, or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including utility and service lines and similar improvements, whether public or privately owned, intended to serve more than one Lot, whether located on a Lot or within the Common Area.

1.10. **Common Expenses** shall mean all sums lawfully assessed against Owners including expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; expenses agreed upon as common expenses by the Association or its Board of Directors; expenses authorized by the Governing Documents or the Act as common expenses; payments for common utilities including water, sewer and electricity; and any other expenses incurred by the Association or Board that are for the common benefit of the Owners.

1.11. **Declaration** shall mean this *Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Maples at Brookside*, as may be amended from time to time.

1.12. **Design Guidelines** shall mean the requirements governing the location, color, materials, and architectural design of Residences, structures, landscaping and improvements within the Project.

1.13. **Governing Documents** shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.

1.14. **Limited Common Area** shall mean a portion of the Common Area designated in this Declaration or the Plat for the exclusive use of Owners of one or more Lots to the exclusion of other Owners. Conveyance of a Lot includes the use of the Limited Common Area designated for the use of the Owner of the Lot. If the Plat or other Governing Document is found ambiguous, the Board shall have the sole discretion to determine the boundaries of each Lot's Limited Common Area. Whether or not located on a Lot, or indicated on the Plat, the Limited Common Areas shall include facilities appurtenant to the Residences including patios. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot where so identified and may not be severed from the ownership of the Lot.

1.15. **Lot** shall mean each of the individual Lots within the Project, as shown on the Plat, with the exception of the Common Areas. A Lot shall include any Residence or other improvement constructed thereon.

1.16. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.

1.17. **Member** shall mean each Lot Owner.

1.18. **Mortgage** shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.19. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.20. **Occupant** shall mean any Person living, dwelling, visiting, or staying in a Residence. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, or staying in a Residence. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents.

1.21. **Owner** or shall mean the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.22. **Party Wall** shall mean a wall (including without limitation, a foundation wall) that forms part of a Residence and is located on or adjacent to a boundary line between two or more adjoining Lots that are owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Residences as a structural partition or fire wall. A Party Wall may be separated by a sound board between two or more Residences.

1.23. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.24. **Plat** shall mean collectively, The Maples at Brookside Plat "A" and The Maples at Brookside Plat "B" (including amendments if any), filed and recorded in the official records of the Utah County Recorder's Office. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.25. **Project** shall include the real property described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to all of the Common Area and townhome Lots within The Maples at Brookside subdivision made subject to this Declaration.

1.26. **Residence** shall mean an attached townhome structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements in connection with such Residence. The Residence shall include, without limitation, the exterior walls, roof, attached garage, foundation, windows, garage doors, exterior doors, sheetrock, flooring, interior finishes, any mechanical equipment located outside said Residence but designed to serve only that Residence, and all utility lines or installations serving only the Residence

1.27. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.28. **Rules** shall mean the Rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board.

ARTICLE II. PROJECT DESCRIPTION

2.1. **Submission.** The real property described with particularly on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act and this

Declaration. The Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, successors, and assigns.

2.2. **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as The Maples at Brookside Townhomes. The Project is not a cooperative.

2.3. **Description of Improvements.** The improvements contained in the Project include eighty-eight (88) Lots with single family townhome Residences and appurtenant structures, playgrounds, sidewalks, and open lawn areas on the Common Area. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the Plat.

2.4. **Lots.** Subject to further specification herein, each Lot consists generally of all structures on or within the boundary of the Lot, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Lot, the Lot shall extend to the center of the wall, which shall form the boundary of the Lots sharing that wall. Subject to dividing lines between Lots, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Lot is part of the Lot if it: (i) is part of and an integral part of the Lot's structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Lot structure); or (ii) was constructed as part of the original construction of the Lot. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot, shall be part of the Lot. All exterior and interior doors, door jams, windows, window sills, window frames and all components therein, skylights, garages, and garage doors, in or on the boundary of any Lot are part of the Lot.

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

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to one (1) vote per Lot owned.

3.3. **Multiple Ownership Interests.** If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. If such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose, except towards establishing a quorum.

3.4. **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, signed by the Owner, and is presented to those Association officers conducting such vote or as may be further provided in the Bylaws.

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

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. With respect to the Limited Common Areas within the Project, this right of easement shall only extend to the Limited Common Area appurtenant to the Member's Lot and not to other Limited Common Areas.

4.2. **Title to Common Areas.** The Association shall hold the title to the various Common Areas within the Project.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

1) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

2) The right of the Association to charge fees for the use of the Common Area facilities, including the parking stalls;

3) The right of Utah County and any other governmental or quasi-governmental body having jurisdiction over the Project to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Project for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

4) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rules;

5) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by at least sixty-seven percent (67%) of all of the Lot Owners.

4.4. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside in the Project. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in the preceding Section.

4.5. **Association Easement.** The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

4.6. **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of roads and utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

4.7. **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.8. **Party Wall and Shared Roof Easement.** Each Owner hereby acknowledges and agrees that a Party Wall or shared roof may presently encroach upon or overlap the Owner's Lot. Each Owner hereby grants to the adjoining Owner of the other Lot that shares the Party Wall, or shared roof, an easement over and upon its Lot for the purpose of maintaining the Party Wall and shared roof. By accepting a deed to a Lot, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall and shared roof and the performance of each Owner's obligation to maintain and repair the townhome structure.

4.9 **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions and shall be jointly and severally liable for any fines for violations thereof.

ARTICLE V. BUDGET AND ASSESSMENTS

5.1. **Annual Budget.** The Board shall prepare, or cause to be prepared, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. Capital improvements outside of normal maintenance, repair, and replacement that total more than \$10,000 per year shall require consent of a majority of the Owners in attendance at a special meeting called for such purpose. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget

shall be made available at the request of an Owner within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.

5.2. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; payment of common utility services such as garbage collection and sewer; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.5. **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by 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 as provided in this Declaration. Special Assessments over one-thousand dollars (\$1,000.00) in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

5.6. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her 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 Lot and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; (e) costs of providing services to the Lot upon request of the Owner; and (f) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any made at the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments

shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his/her Occupants' negligence.

5.7. **Allocation of Assessments.** Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents. Individual Assessments shall be allocated separately to each Lot based on the costs incurred by the Association.

5.8. **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 in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board 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.

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

5.10. **Certificate Regarding Payment.** Upon the request of a prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

5.11. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made pursuant to Utah Code § 57-8a-301; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorney fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.12. **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to

send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.13. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.14. **Collection Charge.** The Board is authorized to set the amount of late fees and interest by Rule or resolution. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and late fees shall constitute part of the Assessment lien provided above until paid.

5.15. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

1) The Association may suspend such Owner's voting rights. Each Member shall be entitled to request a hearing prior to the suspension of such rights.

2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Utah County against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

4) If a delinquent Owner is leasing his Lot or any portion thereof, the Board may, at

its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense (if any) and the right to use the Common Areas.

6) Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

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

5.17. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance and replacement of Common Areas. The Board 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 unless willful or intentional misconduct is proven in a court of law.

5.18. **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration that the Association will own the Common Areas, which may obligate it to pay property taxes or other fees to Utah County. Each Owner shall be required to reimburse the Association for its pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Utah County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.19. **Reinvestment Fee.** The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. Notwithstanding the foregoing, no Reinvestment Fee shall be established except as approved and assented to by a majority of the Members present in person or by proxy at an annual meeting or other special meeting duly called for such purpose. If established, the following terms and conditions shall govern Reinvestment Fees:

1) Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the County recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

2) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code § 57-1-46.

3) 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.

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

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

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

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

6.2. **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3. **General Powers and Obligations.** The Association shall have, exercise, and perform the following powers, duties, and obligations:

- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;

- 3) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- 4) The powers, duties, and obligations not reserved specifically to Lot Owners; and
- 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

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

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- 1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- 2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration, the Act, or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.
- 3) **Rulemaking.** The Association, through its Board, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(15), the requirements of Utah Code section 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association. The Board may adopt reasonable hearing procedures for Owners who may dispute fines assessed for violations of the Rules or other Governing Documents.
- 4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.
- 5) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association, including the assessments of fines to owners for violations of the Governing Documents. The Board may adopt reasonable hearing procedures for Owners who may dispute fines assessed for violations of the Rules or other Governing Documents.
- 6) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- 7) **Employment of Agents, Advisers, and Contractors.** The Association may 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. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term and shall be terminable by the Association upon no more than sixty (60) days' advanced notice. The Board has no authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.

8) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. Other than litigation required for the collection of past due Assessments, the Association shall not commence any litigation without prior approval of a majority of the Members, if the litigation is expected to exceed the cost of thirty thousand dollars (\$30,000) either in attorney fee expenses or in costs (including any expert reports).

9) **Loans.** The Board may obtain lender financing for Association improvements or obligations. Any debt incurred by the Association must be authorized by a vote of at least fifty percent (50%) of the votes of those present at a meeting of the Members, duly noticed, whether in person or by proxy.

10) **Bulk Service Agreements.** The Association shall have the right to enter agreements if approved and assented to by a majority of the Members present in person or by proxy at an annual meeting or special meeting duly called for such purpose, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

11) **Financial Records.** The Association shall maintain corporate and financial records as required by the Act. The Association shall have an independent licensed CPA perform a review of its financial records biannually. The Association may perform an audit of its financial records upon a majority vote of the Owners.

12) **Joint Use/Maintenance Agreements.** The Association may enter joint use and maintenance agreements for usage of the Association's Common Areas and parks.

6.5. **Liability.** Board Members and officers of the Association shall not be liable to the Association or to any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. If a Board Member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board Member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws which may set forth requirements for serving on the Board.

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

6.8. **Management.** The Project shall be managed by a professional manager selected by the Board to assist in the management and operation of the Project. The Board may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause. A decision to hire a manager may be rejected by the Owners by a vote of at least sixty-seven percent (67%) of the total votes of the Association.

ARTICLE VII. MAINTENANCE

7.1. **Association Maintenance.** The Association shall maintain, repair, and replace all Common Areas together with all improvements thereon and all easements appurtenant to the Common Area including, but not limited to: (i) the common landscaped areas surrounding the townhome buildings including the sprinkler systems, (ii) private utility lines owned or controlled by the Association that serve more than one Residence, (iii) landscape and drainage easements owned or controlled by the Association, (iv) personal property owned by the Association, (v) all roadway and parking areas within the Project that are not owned or maintained by a municipality, including snow removal, and (vi) the exteriors of buildings including stucco, brick, roofing, soffits, fascia, and gutters. The maintenance allocations provided in this Article shall clarify, expand upon, and supersede any maintenance provisions contained in the Plat or other Governing Documents. The Board, in its sole discretion, shall determine the maintenance standard of the Common Areas and the exterior of the twin home buildings.

7.2. **Services.** The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be of benefit to the Project, including, without limitation, landscaping, snow removal, water system maintenance.

7.3. **Owner Maintenance.** Each Owner shall have the obligation to provide interior maintenance of their Lot and Residence, including but not limited to painting, repair, replacement, and care of all Residence components including foundation walls and interior structural elements. Owner's shall be responsible for the maintenance and repair of windows, exterior and interior doors, garage doors, exterior electrical and lighting fixtures including doorbells, exterior plumbing fixtures and faucets, exterior A/C units and pads, satellite dishes, and all utility lines that solely service the Lot or Residence. If it becomes necessary to replace an exterior door, window, or fixture, or any other exterior component the Owner shall be required to obtain approval from the Board and to replace such facility per the standards and specifications set forth by the Board in the Rules or Design Guidelines. Owners are responsible for snow removal on their patios.

7.4 **Party Wall Maintenance.** By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Walls and shared roofs be maintained in good condition and repair to preserve the integrity of the Living Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall and shared roof appurtenant to their Living Unit. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the

making of replacements as needed, all surface components which face into such Owner's respective Living Unit. With respect to structural components of the Party Walls and shared roofs, the Owners benefitted by a Party Wall or shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If the need for maintenance or repair of a Party Wall or shared roof is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. If there is a dispute over the responsibility for maintenance or repair of a Party Wall or shared roof, the Association may, but shall not be required to, intervene and determine each Owner's responsibility. The Association shall have the powers set forth in Section 7.5 below to remedy any neglect in performing Party Wall or shared roof maintenance responsibilities.

7.5. **Owner Maintenance Neglect.** The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Residence); but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all the provisions of this Declaration and such Rules.

7.6. **Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas or Limited Common Areas is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment to which such Lot is subject.

7.7. **Utilities.** The charges from utilities that are metered separately to each Unit shall be the responsibility of the respective Owners. Utility costs and charges that are metered collectively to the Association shall be a Common Expense. If utility expenses incurred by the Association can be identified to benefitting only a Lot, or a group of Lots, then the Association may allocate these costs to the benefitted Lots as an Individual Assessment.

ARTICLE VIII. INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

8.1. **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be

obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance.**

1) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Residences, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

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

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

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

d) The blanket policy shall include either of the following endorsements to provide for full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

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

- a) The Association's policy provides primary insurance coverage, and:
 - i) the Owner is responsible for the Association's policy deductible; and
 - ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

b) An Owner that has suffered damage to any combination of a Residence or a Limited Common Area appurtenant to a Residence ("Residence Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Residence Damage ("Residence Damage Percentage") for that Residence to the amount of the deductible under the Association's property insurance policy; and

c) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Residence or the Limited Common Area appurtenant to the Residence, the Association may levy an assessment against the Owner for that amount.

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

4) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

5) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

8.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.4. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association

against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

8.5. **Theft and Embezzlement Insurance.** The Association may obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board Members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, (d) officers, directors, and employees of any manager of the Association, and (e) coverage for acts.

8.6. **Worker's Compensation Insurance.** The Board shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

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

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

8.9. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and general liability insurance policies.

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

8.11. **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.

8.12. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner’s authority on behalf of the Association and under direct authorization of the Association, an Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.

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

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

ARTICLE IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots.

9.2. **Use of Lots.** All Lots are intended to be improved with a single-family Residence and are restricted to such use unless approved by the Board to the contrary. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot without the prior written consent of the Board and applicable governmental entities. Notwithstanding the foregoing, activities otherwise prohibited by this Section are permitted without Board approval if only normal residential activities would be observable outside of the Residence; the business activity is a type which is consistent with the residential character of the Property; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association’s insurance; and that the activities would not be in violation of applicable local ordinances.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association’s insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** Boats, trailers, ATVs, motorhomes, large trucks, commercial vehicles, or the like may not be kept within the Project. Such recreational vehicles may only be parked in the project for a period not to exceed twenty-four (24) hours to accommodate temporary loading and unloading. The Board is authorized to adopt Rules that

vary or expand upon the restrictions set forth in this Section. Owners may rent recreational vehicle parking spaces from the Association, if available.

9.5. **Pets.** Owners may keep pets in conformance with local government requirements. Pets are limited to generally recognized household animals. Livestock, poultry, and other farm animals, and any animals determined to be dangerous by the Board are prohibited. Pets shall be kept on a leash or other restraint while on Common Areas. Owners shall prevent their pets from leaving fecal waste on any portions of the Common Areas or the Lots of other Owners. Pets may not be staked where they can reach Common Area. The Board may adopt Rules and restrictions related to pets that vary or expand upon the restrictions set forth in this Section, including but not limited to, requirements for registration, limitations on the number of pets allowed, requirements for the use of leashes, waste clean-up, and noise and barking limitations. All pets must abide by all pet Rules adopted by the Board and at no time shall a pet create a nuisance as determined in the sole discretion of the Board. Owners are fully responsible for any property damage or personal injury to others caused by their animals and shall be responsible for the immediate clean-up and removal of their pets' waste from any other Lot and the Common Area. A fine may be assessed against an Owner for each violation of the pet waste clean-up requirement.

9.6. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Residence or appurtenant structures.

9.7. **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes, but is not limited to, the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
- 6) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;

- 7) Too much noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers unless approved in writing by Board;
- 8) Operating a motor vehicle in excess of 10 mph within the Project;
- 9) Allowing a pet to be unleashed while outside an Owner's Residence or continuous barking, meowing, or other animal noises;
- 10) Allowing a pet to urinate or defecate in the Common Areas or another Lot; or failing to clean up immediately any feces deposited by a pet in the Common Area or another Owner's Lot or Limited Common Area.

9.8. **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law in the Rules. Unless otherwise designated in the Rules the following shall apply: (i) signs advertising business are prohibited; (ii) "For Sale" and "For Rent" signs may not be placed in front of townhomes and may only be placed near the main sidewalk next to the street, or as directed by the Board, but such signs may not exceed two (2) feet by three (3) feet; (iii) political signs may only be placed on patios and are restricted to sixty (60) days prior to an election and must be removed within five (5) days following the election and may not exceed two (2) feet by three (3) feet; and (iv) Occupants may display an American flag consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219.

9.9. **Trash Collection.** The Association may adopt additional Rules for the storage and concealment of trash containers.

9.10. **Parking.** At no time shall any vehicle be parked in a manner that would block an entrance to a Residence or driveway, or at any other location within the Project, which would impair vehicular or pedestrian access, or snow removal. Common Area parking shall be subject to and governed by Association Rules and may be assigned by the Board. Common Area parking may be designated as visitor only parking areas and the Association may charge a fee for the use of any Common Area parking. Occupants may park behind their garage for up to an hour to load and unload or for car washes. Cars must be parked as close to the buildings as possible. The parking of moving trucks or vans is limited to areas behind garages and for loading and unloading only and shall not unreasonably obstruct access to any other dwelling. Moving trucks or vans may be parked on the street, but in no event for a period of longer than twenty-four (24) hours. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, driveway, or other Common Areas, except for emergency repairs to vehicles unless such repair is conducted within an Owner's enclosed garage. Inoperable vehicles are prohibited from being parked in the Project. Vehicles which become inoperable should be immediately relocated from the project or to a private garage. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the right to remove or cause to be removed any vehicles that are improperly parked; the assessment of towing charges for the removal of vehicles improperly parked; and the assessment of fines to Owners and Occupants who violate, or whose invitees violate, such Rules.

9.11. **Unsightly Items and Storage.** The Board or ACC shall be entitled to adopt reasonable rules and regulations pertaining to observable outdoor storage including junk, unlicensed cars, or other unsightly items.

9.12. **Leasing.** Notwithstanding anything to the contrary in the Declaration or Bylaws, any leasing and Non-Owner Occupancy of a Residence shall be governed by this Section and any rules and procedures adopted as allowed in this Section.

(a) Definitions. For the purpose of this Section:

a. "Non-Owner Occupied" means:

- (i) For a Residence owned in whole or in part by a natural individual or individuals, the Residence is occupied by someone, but no individual Owner occupies the Residence as the individual Owner's primary residence; or
- (ii) For a Residence owned entirely by one or more entities or trusts, the Residence is occupied by anyone.

b. "Family Member" means:

- (1) The spouse, parent, sibling, or child of an Owner; or
- (2) In the case of a Residence owned by a trust or other entity created for estate planning purposes, a Person occupying the Residence if the trust or other estate planning entity that owns the Residence was created for the estate of (i) the current Occupant of the Residence, or (ii) the spouse, parent, child, or sibling of the current Occupant of the Residence.

(b) Maximum Number of Non-Owner-Occupied Residences. The number of Residences permitted to be Non-Owner Occupied shall not exceed thirty percent (30%) of the total Residences within the Association. The thirty percent (30%) Residence maximum shall be calculated by including any grandfathered Residences and those exempted Residences under subsection (d) below. The Board may adopt reasonable rules and reporting procedures to track the number of Non-Owner-Occupied Residences to ensure consistent administration and enforcement of the leasing restrictions.

(c) Requirements for Leasing and Non-Owner Occupancy. The Owners of all Leased or Non-Owner-Occupied Residences must comply with the following provisions:

(a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least six (6) months, and shall provide as a term of the agreement that the Occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease agreement. If a lease agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease agreement and binding on the Owner and the Occupant.

(b) A Non-Owner Occupant may not occupy any Residence for transient, short-term (less than six months), hotel, resort, vacation, Airbnb, or seasonal use (whether for pay or not). Except as a guest of an Owner, daily and weekly occupancy by Non-Owner Occupants is prohibited (whether for pay or not).

(c) No Owner may lease less than the entire Residence unless the Owner resides in the Residence.

(d) The Board is authorized to adopt further rules related to Non-Owner-Occupied Residences and the Occupants of those Residences. Such rules may include but are not limited to: requiring copies of lease or other agreements for Non-Owner

Occupancy to be delivered to the Association, requiring informational forms to be filled out by Owners and/or Occupants' identifying Non-Owner Occupants, vehicles, phone numbers, etc., or any other reasonable administrative provisions it deems appropriate to enforce the requirements of this Section and the Governing Documents.

(d) Exemptions. The following Residences may be Non-Owner Occupied and are not subject to the cap on Non-Owner-Occupied Residences set forth in subsection (b) above:

(a) A Residence being rented at the time this First Amendment is recorded in the Utah County Recorder's office shall be grandfathered and permitted to lease or allow a Non-Owner Occupant to reside in the Residence until: (i) the Residence Owner occupies the Residence, or (ii) the ownership of the Residence, as evidenced by the records at the County recorder, changes in any way. Upon a change of ownership or occupation by an Owner, the Residence's qualification for this exception irrevocably terminates.

(b) A Residence owned by a Person in the military for the period of the Owner's deployment.

(c) A Residence occupied by a Residence Owner's spouse, parent, child, or sibling.

(d) A Residence whose Owner is relocated by the Owner's employer for a period of less than two (2) years in accordance with Utah Code § 57-8a-209(2)(a)(iii) as amended.

(e) A Residence owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of a current Occupant of the Residence; or (2) the parent, child, or sibling of the current Occupant of the Residence.

(e) Joint and Several Liability of Owner and Non-Owner Occupants. The Owner of a Residence shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Governing Documents and shall be jointly and severally liable for any violations thereof.

(f) Violations.

(a) If a Residence is leased in violation of this Section, the Board may assess fines against the Owner pursuant to a schedule of fines adopted by the Board.

(b) If a Residence is leased in violation of any provision of this Section, (regardless of whether any fines have been imposed) the Board may proceed with any available legal remedies, including, without limitation, an action to require the Owner to terminate the lease agreement and remove the tenant.

(c) If the Board determines that a Non-Owner Occupant has violated a provision of the Governing Documents, the Board may require an Owner to terminate a lease agreement with such Occupant.

(d) In addition to any other remedy for non-compliance, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subsection and the Owner shall

indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subsection.

(e) Fines, charges, and expenses incurred in enforcing the Association's Governing Documents with respect to a Non-Owner Occupant, and for any costs incurred by the Association in connection with any action under this Section, including reasonable attorney fees (regardless of whether any lawsuit or other action is commenced), shall be an individual assessment against the Owner and Residence which may be collected and foreclosed on by the Association.

9.13. **Solar Energy Systems Prohibited.** Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot or Residence. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the ACC as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The Association may also require an Owner installing a solar energy system to assume the full maintenance, repair and replacement responsibility of a roof or other area that the equipment may be located. The ACC or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

9.14. **Smoking.** Smoking shall be prohibited everywhere in the Project, including Lots and all Common Areas. It shall be a nuisance and prohibited under Section 9.7 to permit or cause any tobacco or other smoke to drift or otherwise enter any Common Area, Lot, or Residence. The Board is expressly authorized to adopt additional Rules to address Smoking within the Project.

9.15. **Driving and Vehicles.** Driving motor-powered vehicles on sidewalks or landscaped areas is prohibited. Reckless driving or speeds in excess of 10 mph within driveway or parking areas is prohibited.

9.16. **Holiday Decorations.** The Association may adopt Rules to regulate holiday decorations in the Project to the extent permitted by law. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol, idea, identification, or for any other purpose that holiday decorations are typically understood and which are placed in, on, or outside of a Residence with the apparent purpose, in whole or in part, of making it visible to people outside of the Residence. If not otherwise designated in the Rules, holiday decorations are to be removed within 30 days of the respective holiday. No holiday decorations are allowed on the Common Areas.

9.17. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by

unanimous vote): (i) that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce, (iii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the other Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project, or (iv) in the event of an emergency. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act. The Board may not be arbitrary and capricious in granting variances, however, the granting of a variance to one Owner shall not be binding on the Board to grant variances to other Owners who apply with similar but distinguishable circumstances.

ARTICLE X. ARCHITECTURAL CONTROLS

10.1. **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures (herein the "ACC"). The ACC need not be composed of Owners. If such a committee is not appointed, the Board shall perform the duties required of the ACC. The ACC's responsibilities include but are not limited to reviewing and approving all exterior improvements within the Project and to ensure that Lot Owners maintain their Lot appearance and conditions in accordance with the terms of the Governing Documents.

10.2. **Architectural Controls.** Exterior alterations of structures, fences, or landscaping shall be limited to those approved by the ACC. In the event of any reconstruction of an improvement or Residence due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the ACC. No landscaping, grading, excavation, building, fence, wall, Residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the plans and specifications, have been approved in writing by the ACC. 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 within the Project, shall be subject to the prior written approval of the ACC. Once approved by the ACC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from the city when required. Plans and specifications submitted to the ACC shall give complete descriptions and color samples of materials to be used. The ACC will base its approval of plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, and any other guidelines adopted by the Association.

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

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

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

10.4. **Remodeling.** Owners may make nonstructural alterations within the Owner's Residence that do not impact the uniform appearance of the Residences, but an Owner shall not make any alterations on the exterior of a building (such as windows, light fixtures, and exterior doors) or the Limited Common Area without the prior written approval of the Board. An Owner shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to another Residence, or any Common Area, or Limited Common Area. Without prior written permission of the Board, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) any blocking of the Common Area by vehicles, materials, or persons; or (3) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

10.5. **Enforcement.**

(1) The ACC shall have the right to refuse to approve any plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations.

(2) Construction of alterations in accordance with plans and specifications approved by the ACC pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the alterations, or within such other period as the ACC shall specify in its approval.

(3) If any structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefor and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish a lien therefor upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

(4) Any member of the ACC, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the ACC gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any structure thereon to ascertain whether the maintenance, construction or alteration of such structure or Alteration are in accordance with the provisions hereof.

(5) The ACC shall have the right to charge a reasonable processing fee for the review of alteration requests. Unless otherwise stated in the Rules or Design Guidelines, the fee shall be fifty dollars (\$50) for such requests.

10.6. **Variances.** The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the ACC (or Board if acting as the ACC). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.7. **Liability for Damages.** The ACC shall not be held liable for damages because of any action, inaction, approval, or disapproval by it made pursuant to this Article.

ARTICLE XI. ENFORCEMENT

11.1 **Enforcement of Governing Documents.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Occupants, guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XII. RIGHTS OF FIRST MORTGAGEE

12.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

12.2. **Notice of Default by Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

12.3. **Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

12.4. **VA and HUD Loans.** Notwithstanding anything herein to the contrary, to the extent that any provision set forth in the Declaration, Bylaws, and/or Rules and Regulations is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States

Department of Veterans Affairs or the Department of Housing and Urban Development as set forth in the United States Code, or the Code of Federal Regulations, such provision shall not apply to any Lot that is (i) encumbered by VA or HUD Financing, or (ii) owned by the Department of Veterans Affairs or the Department of Housing and Urban Development.

ARTICLE XIII. RIGHT OF ENTRY

13.1 **Right to Enter Lots.** The Association acting through the Board or its duly authorized agent shall have the right at all times and upon reasonable notice of at least 48 hours to enter upon any Lot on the areas located outside the exterior boundaries of a Residence, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs, and to correct any violation of any of the Governing Documents. The notice set forth in this Section shall not be necessary in case of an emergency threatening other Residences, Occupants, or other parts of the Project. Nothing in this Section shall be construed to authorize the entry of the Association into the interior of a Residence without the consent of the Lot Owner unless there is an emergency threatening another Residence, the Occupants of another Residence, or the structural integrity of a twin home building. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have for notice purposes. Owners shall be responsible for any costs incurred by the Association as a result of entering a Lot or Residence under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

ARTICLE XIV. AMENDMENTS

14.1 **Amendments.** This Declaration and Plat may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. No acknowledgment of any signature used for voting shall be required.

ARTICLE XV. MISCELLANEOUS

15.1. **Notices.** Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email, phone number, or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.

Unless an Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Board, or the Association's Manager, an email address that the Association may use to provide notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to

be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

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

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

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

15.4. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15.5. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.6. **Fair Housing 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 the Fair Housing Act, as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, Common Area facilities and buildings, or deviations from provisions of the Governing Documents. Any modification or accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

15.7. **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.8. **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

15.9. **Attorney Fees.** If the Association utilizes legal counsel to enforce any Restriction, or after an Owner communicates or demonstrates an intent not to comply with a Restriction, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner as an Individual Assessment, regardless of whether a lawsuit is initiated or not. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Section 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.

15.10. **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner(s) agree by purchasing a Lot in the Project that the Association and Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

15.11. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Utah County Recorder.

[Signature page on following Page]

IN WITNESS WHEREOF, the Board of Directors has executed this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Maples at Brookside after accepting written instruments signed by not less than 60% of the Lot and Townhome Owners as of the day and year written below.

DATED as of the 9 day of January, 2019 ~~20~~ ²¹

The Maples at Brookside, Inc.
A Utah Nonprofit Corporation

By: Amy V Young

Its: Amy V. Young

State of Utah)
) ss.
County of Utah)

On the 9 day of JAN 2019 ~~20~~ ²¹ personally appeared before me Steven Holdaway who by me being duly sworn, did say that she/he is an authorized representative of The Maples at Brookside, Inc., and that the foregoing instrument is signed and executed with all necessary authority.

Notary Public Steven Holdaway

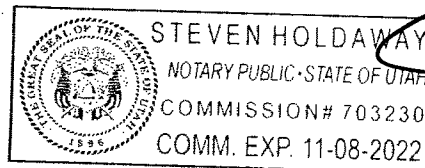


EXHIBIT A

LEGAL DESCRIPTION

Lots 50 through 65 of **The Maples at Brookside Plat A**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 40498:1999.

Parcel Numbers: **46:516:0050** through **46:516:0065**

Lots 93 through 164 of **The Maples at Brookside Plat B**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 32020:2000.

Parcel Numbers: **46:551:0093** through **46:551:0164**

EXHIBIT B**LEGAL DESCRIPTION OF WITHDRAWN PROPERTY**

Lots 1 through 49 of **The Maples at Brookside Plat A**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 40498:1999.

Parcel Numbers: **46:516:0001** through **46:516:0049**
46:516:0067 through **46:516:0069**
46:516:0072, 46:516:0075, 46:516:0077

Lots 66 through 92 of **The Maples at Brookside Plat B**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 32020:2000.

Parcel Numbers: **46:551:0066** through **46:551:0092**

All of **The Maples at Brookside Plat C Amended**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 82541:2002.

Parcel Numbers: **46:601:0165** through **46:601:0264, 46:601:0267**

All of **The Maples at Brookside Plat D Amended**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 12118:2004.

Parcel Numbers: **46:626:0265** through **46:626:0328, 46:626:0333**

All of **The Maples at Brookside Plat E**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 124059:2004.

Parcel Numbers: **46:643:0331** through **46:643:0366**

All of **The Maples at Brookside Plat F**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 66488:2009.

Parcel Numbers: **46:781:0367** through **46:781:0369**

All of **The Maples at Brookside Plat G**, according to the official plat on file in the office of the Utah County Recorder as Entry No. 34094:2013.

Parcel Numbers: **46:839:0001** through **46:839:0002**

EXHIBIT C
BYLAWS
OF
THE MAPLES AT BROOKSIDE, INC.

These BYLAWS OF THE MAPLES AT BROOKSIDE, INC. are effective upon recording in the Utah County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

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

B. These Bylaws are adopted 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 known as The Maples at Brookside Townhomes, and to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I
DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Maples at Brookside.

ARTICLE II
APPLICATION

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

ARTICLE III
OWNERS

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

the Annual Meeting.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request.

3.3 **Place of Meetings.** The Board may designate any place within 10 miles of the Project that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than thirty (30) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

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

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

3.7 **Quorum.** At any duly called meeting of the Association, the number of Owners present, either in-person or by proxy, shall constitute a quorum for the transaction of business. The vote of the Owners representing a majority of the voting interest of the Owners in attendance in person or by proxy, shall decide any vote or question brought before the meeting.

Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration (as amended), or these Bylaws require a fixed percentage of Owner interests to approve any specific action (*e.g.*, amending Governing Documents), that percentage shall be required to approve such action.

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

3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. The election of Board Members shall be by secret ballot. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 **Waiver of Irregularities.** 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 by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

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 §16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary, or another officer or agent appointed by the Board, shall take minutes of all meetings of the Owners. The minutes shall include, at a

minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

ARTICLE IV BOARD OF DIRECTORS

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

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of no fewer than three (3) and no more than five (5) individuals. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. The following persons shall be considered a "Qualified Individual" entitled and eligible to serve as a member of the Board of Directors:

- (a) **Natural Person Ownership.** A natural person, or living human being, as distinguished from a legal person (as a corporation) created by operation of law.
- (b) **Entity-Ownership.** If the record Owner is a corporation, partnership, or limited liability company: an officer, partner, member, manager, or agent who: 1) has voting rights under the entity's organizing documents; and 2) has a 25% or greater share of ownership, control, and right to profits and losses of the entity.
- (c) **Trust-Ownership.** If the record Owner is a trust or other entity created for estate planning purposes, the director shall be qualified. A resident shall likewise be qualified to serve if the trust or estate planning entity was created for: 1) the estate of a current resident of the lot; or 2) the parent, child, or sibling of the current resident of the lot.

For the purposes of these Bylaws "Ownership Interest" shall mean an interest in any Lot or Lots within the Project whether held by one or more Persons. Only one Qualified Individual per Ownership Interest may be eligible to serve on the Board at a given time. In the event that the number of Qualified Individuals willing or able to serve is less than three (3), the same shall constitute a valid Board of Directors.

4.3 **Election.** The election of Board Members shall be made by a vote of the Owners through secret ballot. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. Nominations may be made in advance of a meeting through a written request to a Board Member and nominations may also be made from the floor at the annual meeting.

4.4 **Term of Office.** At each Annual Meeting, the Owners shall elect Board Members to replace those Board Members whose terms are to expire. Board Members shall serve for three (3) year terms. The terms shall be staggered so that an election for one Board Member position is held each year. Board Members may serve consecutive terms if re-elected.

4.5 **Regular Meetings.** The Board shall hold meetings monthly or more often at the discretion of the Board.

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

4.7 **Meeting Notice.** Notice may be given to Board Members, and Owners who have requested notice, by posting such notice in advance consistent with a meeting schedule, by email, personal delivery, or by telephone, including text message at least two (2) business days' in advance of the meeting. Notice shall be provided to Owners in the same manner as provided to Board Members. By unanimous consent of the Board, meetings may be held without call or notice to Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

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

4.9 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

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

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

4.11 **Board Meetings Generally.** The Board may designate any place in Utah County as the place of meeting for any regular or special Board meeting. The Board may allow

attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members or Owners to communicate orally in real time. If a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

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

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

4.14 **Resignation and Removal.** Board Members may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the majority vote of the other active Board Members upon the occurrence of any of the following: failure to attend two consecutive regular Board meetings, without prior approval of the board, non-performance of responsibilities, failure to remain current on Assessments, or a material violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

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

4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 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 Board.

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

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

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

ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board.

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

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

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

5.5 **Vacancies.** If a vacancy occurs in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. Nothing herein shall be construed to provide a basis of authority for any officer to act without prior approval of the Board.

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

5.8 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the

Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **Treasurer**. The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board. Any expenditure or transfer of funds must be approved by the Board.

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

ARTICLE VI COMMITTEES

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

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

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

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

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

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification**. In addition to the indemnification provisions and requirements

set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

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

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

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

ARTICLE VIII RULES AND REGULATIONS

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

**ARTICLE IX
AMENDMENTS**

9.1 **Amendments.** The Bylaws may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument, a Board Member shall execute the amendment and certify that the vote required by this Section has occurred. No acknowledgment of any Owner or Board Member signature shall be required.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

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

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

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

IN WITNESS WHEREOF, the Board of Directors has executed these Bylaws of The Maples at Brookside Townhomes, Inc. after accepting written instruments signed by not less than 60% of the Lot and Townhome Owners as of the day and year written below.

DATED as of the 9 day of January, 2019, to My

The Maples at Brookside, Inc.
A Utah Nonprofit Corporation

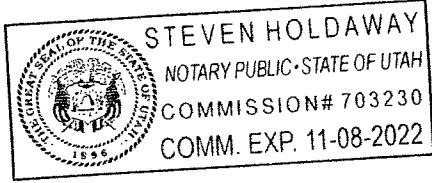
By: Amy V. Young

Its: Amy V. Young

State of Utah)
) ss.
County of Utah)

On the 9 day of Jan, 2019, to My personally appeared before me

Steven Holdaway who by me being duly sworn, did say that she/he is an authorized representative of The Maples at Brookside, Inc., and that the foregoing instrument is signed and executed with all necessary authority and consent of its members.



Notary Public *[Signature]*