

**RECORDING REQUESTED BY:**

Woodside Homes of Utah, LLC

**WHEN RECORDED RETURN TO:**

Woodside Homes of Utah, LLC

Attn: Garrett Seely

460 West 50 North, Suite 200

Salt Lake City, UT 84101

APN No.'s: 66-639-0001 through 66-639-0092



**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS, AND EASEMENTS  
OF  
STONECREEK,  
AMERICAN FORK  
  
A PLANNED UNIT COMMUNITY**

**ACCOMMODATION  
RECORDING ONLY  
U.S. TITLE**

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS, AND EASEMENTS  
OF  
STONECREEK, AMERICAN FORK**

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS OF EASEMENTS OF STONECREEK, AMERICAN FORK (the "Declaration") is made this 4th day of September 2018, by Woodside Homes of Utah, LLC, whose business address is 460 West 50 North, Suite 200, Salt Lake City, UT 84101, herein "Declarant."

**Recitals**

A. Declarant is the owner of the real property in the City of American Fork (the "City"), County of Utah (the "County"), State of Utah, described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property") upon which Declarant desires to develop a planned residential community (the "Community"). The Community is not a cooperative.

B. Declarant may, without obligation, annex additional property into the Community, which land is not presently included in the Community.

C. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, occupants or other holders of an interest in the Community, or any part thereof, certain easement, rights and mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the Community.

D. Declarant desires and intends that the Owners, lessees, occupants, and other persons hereafter acquiring any interest in, or otherwise utilizing property at, the Community shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the Community and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community.

E. Declarant therefore wishes to subject all of the Community to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth.

F. In order to cause the covenants set forth in this Declaration to run with the Community and to be binding upon the Community and the Owners thereof from and after the date this Declaration is Recorded, Declarant hereby makes all conveyances of the Community, whether or not so provided therein, subject to the covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Community, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth.

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

**ARTICLE 1  
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article 1.

1.1. "Act" shall mean the Community Association Act, Utah Code Ann. Title 57, Chapter 8a, as the same may be amended from time to time.

1.2. "Additional Land" means any parcel of property located adjacent to the exterior boundaries of the Property as may be depicted on the Plat, or any parcel or property located within one mile of the exterior boundaries of the Property. A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Community in accordance with the provisions of this Declaration.

1.3. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot pursuant to Article 6 hereof.

1.4. "Architectural Control Committee" or "ACC" shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article 9 below.

1.5. "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the office of the Utah Department of Commerce, Division of Corporations, as such Articles may be amended from time to time.

1.6. "Assessment" shall mean any charge levied by the Association pursuant to this Declaration, including, without limitation, Annual Assessments, Emergency Assessments, Individual Assessments, and Special Assessments.

1.7. "Association" shall mean the Stonecreek Estates Homeowners Association, Inc., a Utah nonprofit corporation, or such similarly named entity, organized or to be organized to administer and enforce the provisions of this Declaration and to exercise the rights, powers and duties set forth in this Declaration.

1.8. "Board" shall mean the Board of Directors of the Association.

1.9. "Builders" shall mean those Persons who purchase one or more unimproved or improved Lots within the Community for further subdivision or development and resale in the ordinary course of their business.

1.10. "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.



1.11. "Common Area" shall mean all land, and the improvements situated thereon, within the Property or adjacent thereto that Declarant designates as Common Area on the Plat or other recorded instrument and other real property which the Association now or hereafter owns in fee or holds an easement for the benefit of Owners, which may include, without obligation or limitation, Association signs or monuments, landscaped areas, street signage and lighting, streets not dedicated to a municipal authority, sidewalks, and other similar improvements; and any real property or improvements within the Property 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, without limitation, all utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Lot regardless if located within the boundaries of a Lot.

1.12. "Common Expenses" shall mean all expenses for maintenance, repairs, landscaping, utilities and taxes incurred on or in connection with the Common Area and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws. Without limiting the generality of the foregoing, Common Expenses shall include all insurance premiums for all insurance that the Association is required or permitted to maintain, all expenses incurred in connection with enforcement of this Declaration, expenses of management, legal and accounting fees, any deficit remaining from a previous period, creation of an adequate contingency reserve or major maintenance reserve, creation of an adequate reserve fund for maintenance repairs, and all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association.

1.13. "Community" shall mean the collective reference to all real, personal and mixed property shown on the Plat and governed by this Declaration.

1.14. "Declarant" shall mean Woodside Homes of Utah, LLC, a Utah limited liability company, and any Declarant Successor.

1.15. "Declarant Affiliate" means any Person that is owned or controlled by the Declarant or is otherwise affiliated with Declarant through direct or indirect common ownership or control.

1.16. "Declarant Control Period" means the period of time described in Section 3.1 of this Declaration.

1.17. "Declarant Successor" or "Successor" shall mean a Person and his or its successors and assigns, to which Declarant has assigned any or all of its rights and obligations by any express assignment incorporated in a deed, lease, option agreement, land sale contract, or assignment, as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment, except that any Owner who has acquired fee title to any of Declarant's Lots by reason of a foreclosure of the lien of a first mortgage or by acquisition of a first mortgage by a deed in lieu of foreclosure shall automatically succeed to the rights and obligations of the Declarant notwithstanding that such rights may not have been expressly assigned or accepted.

1.18. "Design Guidelines" shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements

within the Community, including applicable zoning ordinances and other design requirements adopted by the Board or ACC as further provided herein.

1.19. "Governing Documents" shall mean the Declaration, Plat, Articles, Bylaws, Rules, and Design Guidelines.

1.20. "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above, on, or below the land surface, placed in the Community.

1.21. "Lot" means any separately numbered or identified portion of a parcel of real property shown on any Recorded Plat of the Property. Each Lot shall be a separate freehold estate, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a detached residence for a single family and is sometimes referred to as a "Residential Lot." The term "Lot" refers to the land, if any, which is part of the Lot, as well as to any structures or other Improvements on the Lot. The term "Lot" does not include Common Area or real property dedicated to the public.

1.22. "Member" shall mean any Person that is a member of the Association pursuant to the provisions of Section 4.1.

1.23. "Owner" means the Person or Persons, including Declarant, who is record holder of legal, beneficial or equitable title to the fee simple interest of any Lot, but excluding others who hold an interest therein merely as security.

1.24. "Person" shall mean a natural person, a corporation, or any other entity with the legal right to hold title to real property.

1.25. "Plat" shall mean the Plat of Stonecreek Plat "A" Recorded in the office of the County Recorder of Utah County, Utah, and any other Plat(s) of additional parcel(s) subsequently Recorded, as said Plat(s) may from time to time be amended or supplemented of record by Declarant, together with any Plat(s) which may, in the future, be Recorded with respect to additional land annexed into the Community.

1.26. "Property" or "Properties" shall mean the real, personal, or mixed property described in Exhibit A which is subject to this Declaration, and all or any portion of the Additional Land as may be brought within this Declaration by annexation pursuant to Section 12.1 of this Declaration.

1.27. "Record," "Recorded," "Recorder," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder.

1.28. "Registered Address" shall mean the address of an Owner provided in accordance with Section 4.5 of this Declaration.

1.29. "Residence" means a building located on a Lot designed and intended for use and occupancy as a residence by a single family.

1.30. “Rules” shall mean any rules or regulations adopted by the Association pursuant to this Declaration.

1.31. “Special Assessment” shall mean any assessment that is levied and assessed pursuant to Section 6.5 of this Declaration.

1.32. “Supplement” or “Supplementary” shall mean any document recorded by Declarant or a Declarant Affiliate that is meant to supplement the provisions of this Declaration, including the Supplementary Declaration or Supplementary Plat described in Section 12.1 of this Declaration.

1.33. “Voting Interest” shall mean the voting right allocated to a Lot, which is one (1) vote per Lot as provided in Section 4.3 of this Declaration.

**ARTICLE 2  
SUBMITTAL TO DECLARATION**

2.1. Property Subject to this Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Community in order to protect and enhance the value and desirability of the Community. All of the property within the Community shall be held, sold and conveyed subject to this Declaration, including any of the Additional Land hereafter made subject to this Declaration by the recordation of a Supplementary Declaration and Supplementary Plat. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, Occupants, grantees, purchasers, assignees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2. Lots. The Community shall initially consist of up to 92 Lots, as such Lots are depicted on the Plat, subject to the Declarant’s right to expand the Community pursuant to the provisions of Article 12 below.

**ARTICLE 3  
COMMUNITY ADMINISTRATION**

3.1. Declarant Control Period. The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Declarant may exercise certain of these rights throughout the Declarant Control Period. The Declarant Control Period begins on the date of the Association’s incorporation and terminates upon the first of the following to occur:

3.1.1 When seventy-five percent (75%) of the total number of Lots permitted by applicable zoning for the Property described in the Declarant's or the Declarant Affiliate's master plan for the Community have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale;

3.1.2 Seven years after Declarant ceases to sell Lots within the Community in the ordinary course of business; or

3.1.3 When, in its discretion, the Declarant so determines and declares in a recorded instrument.

3.2. Declarant Approval Rights. The Declarant has certain approval rights for a limited period after the termination of the Declarant Control Period as provided in this Declaration and in the Bylaws concerning the Declarant Membership.

3.3. Assignment of Declarant Rights. The Declarant may assign its status and rights as the Declarant under the Governing Documents to any Declarant Affiliate or any Person who takes title to any portion of the Property for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties, and shall not prevent Declarant from assigning its status and rights for any other property subject to this Declaration.

3.4. The Association. The Declarant has established or will establish the Association as the primary entity responsible for administering the Community in accordance with the Governing Documents. The Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

3.5. The Board. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's Members. Unless the Governing Documents or Utah law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

3.5.1 The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Area, enforcement of the Governing Documents, or any other civil claim or action (collectively, a "Proceeding"). However, the Board has no legal duty to institute litigation or any other Proceeding on behalf of or in the name of the Association or its Members.

3.5.2 In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the Bylaws.

3.6. Vista Lots. The provisions of this section are intended to clarify the rights and obligations that shall apply to certain Lots with unique features that are or may be submitted to additional governing documents (the "Vista Lots") and made part of a separate association (the "Vista Association"). The Vista Lots shall be designated as such on the Supplementary Plat which is Recorded creating such Lots. While the Vista Lots are generally considered Lots for purposes of this Declaration, certain rights and obligations associated therewith shall be limited as further described herein. If the Vista Association is not formed, the Vista Lots, regardless of any designation on a Supplementary Plat, shall be considered Lots for all purposes herein and this Section 3.6, as well as any other sections herein designating separate rights and obligations for the Vista Lots, shall be of no force and effect.

3.6.1 Association Memberships. The Owners of Vista Lots shall be members of the Vista Association, but shall not be direct Members of the Association. Rather, the Vista Association shall be a Member of the Association on behalf of the Vista Lots collectively and shall appoint a delegate to exercise the rights associated with such membership.

3.6.2 Vista Lots Assessments. All Assessments of the Association applicable to a Vista Lot shall be in addition to any assessments and other charges levied by the Vista Association. The Association shall send a single invoice to the Vista Association for Assessments applicable to all Vista Lots and the Vista Association shall be responsible for the payment thereof. The Vista Association shall not withhold or decrease payment of such Assessments owing to the Association because of delinquent or insufficient payment collected from the Vista Lots Owners, other shortfall in the budget of the Vista Association, or any other reason. As the Assessments are charged to the Vista Association, the Association shall not have lien rights, as provided herein, against the Vista Lots, but the Association may exercise all other rights of collection directly against the Vista Association.

3.7. Builders. Much of the responsibility and credit for helping to create the Community rests with the Builders. The Builders have the same privileges and responsibilities as Owners during the time that they own Lots for construction and resale, including the privileges of membership in the Association. In addition, the Declarant may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

3.8. Priority of Governing Documents. If there exists any conflict or inconsistency between this Declaration and either the Articles or the Bylaws of the Association, then the terms and provisions of this Declaration shall prevail.

#### ARTICLE 4 MEMBERSHIP AND VOTING

4.1. Membership. Except as provided in Section 3.6.1 above, every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest. The ownership

interest in the Association appurtenant to each Lot is equal, except that the Vista Lots shall collectively have one membership held in the name of the Vista Association. The ownership interest of each Lot and membership in the Association shall have a permanent character and shall not be altered without the unanimous affirmative consent of the Owners, including the Owners of the Vista Lots. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and any such transfer shall automatically transfer the membership appurtenant to such Lot to the new Owner thereof.

4.2. Classes of Membership. The Association initially has three classes of membership: (1) the Owner membership, which is comprised of all Owners except the Owners of the Vista Lots, but including Builders; (2) the Vista Lots membership; and (3) the Declarant Membership, which consists solely of the Declarant:

4.2.1 Owner Membership. Except for the Owners of the Vista Lots, every Owner is automatically a Member of the Association. However, there shall be only one membership per Lot. Thus, if a Lot has more than one Owner, all co-Owners of the Lot shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the Bylaws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Association's secretary, except that only the individuals residing in the Lot shall be entitled to use any Common Area available for use by Owners.

4.2.2 Vista Lots Membership. As further described in Section 3.6.1 above, the Vista Association shall automatically be a Member of the Association in behalf of the Vista Lots. The rights of such membership may be exercised by the officer, director, partner, or delegate appointed by the Vista Association and designated from time to time in writing to the Association's secretary.

4.2.3 Declarant Membership. The Declarant holds the sole "Declarant Membership." The Declarant Membership shall terminate two (2) years after expiration of the Declarant Control Period, or on such earlier date as the Declarant determines and declares in a recorded document. Upon termination of the Declarant Membership, Declarant shall have an Owner membership for each Lot owned by Declarant.

4.2.4 Additional Classes of Membership. The Declarant may, by Supplement, create additional classes of membership comprised of the owners of Lots within any portion of the additional property submitted to this Declaration. The Declarant shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

4.3. Voting. Each Lot is assigned one (1) vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. The Vista Association shall exercise all voting rights appurtenant to the Vista Lots. No vote shall be exercised for any property exempt from assessment under Section 6.2. Further, during such time as there is a Declarant Membership, no vote shall be exercised for Lots that the Declarant or a Declarant Affiliate owns; rather, the

Declarant's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

4.4. Voting of Multiple Ownership Interests. If there is more than one Owner of a Lot, the vote for such Lot may be exercised as the co-Owners holding a majority of the ownership interest in the Lot determine among themselves. Any co-Owner may cast the vote for the Lot and majority agreement shall be conclusively presumed unless another co-Owner of the Lot protests promptly to the president of the Association or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, or if two (2) or more co-Owners seek to vote independently, the Lot's vote shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Notwithstanding the foregoing, the Vista Association may exercise the voting rights appurtenant to the Vista Lots in its sole discretion.

4.5. Records of Owners; Registered Address. Upon purchasing a Lot, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Lot has been vested in such Owner, which copy shall be maintained in the records of the Association. Each Owner shall register with the Association such Owner's current mailing address, which shall be the Owner's Registered Address. The Registered 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 Lot address shall be deemed to be the Owner's Registered Address. The Association shall maintain up-to-date records showing the name, Registered Address, and Lot of each Owner. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of Record. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership provided by the Owners.

## ARTICLE 5 ASSOCIATION

5.1. Formation of Association. The Association shall be a nonprofit Utah corporation or limited liability company charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2. Board and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) natural persons, who need not be Members of the Association; provided that Declarant may serve as the sole member of the Board prior to the purchase of Lots by Owners, or Declarant may appoint non-Owners to serve on the Board until Owners qualified and willing to serve are available. The Board may also appoint various committees and may appoint and hire at Association expense a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Until the end of the Declarant

Control Period, the Declarant shall have the right to appoint, remove, and substitute all members of the Board.

5.3. Board Composition. Except for the initial members of the Board (the "Directors") and substitute Directors appointed by Declarant during the Declarant Control Period, all Directors must be Owners, or a representative of a corporate Owner, at the time of their election. Should any Directors move his or her residence outside of the Community, such Directors shall automatically be deemed to have resigned and the Board shall declare a vacancy. Upon expiration of the Declarant Control Period, all Directors appointed by the Declarant then serving shall be released from responsibility. The reorganization of the Board shall be by a vote of the then current Owners within the Community present at a duly called meeting of the Owners.

5.4. Term of Office. The term of office of each Director elected following the termination of the Declarant Control Period shall be as follows: each such Director shall serve for a term of two (2) years beginning immediately upon such Director's election by the Owners; provided however that two (2) of the Director elected at the first annual meeting at which Directors are chosen by a vote of the Owners shall serve for an initial term of one (1) year, and thereafter, all Directors elected shall serve for two (2) years, commencing on the date of election and extending until a successor is elected pursuant to the Bylaws of the Association. Any Director may serve consecutive terms, and there shall be no limit to the number of terms a Director may serve.

5.5. No Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any Director, officer, manager or other employee or committee member of the Association shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter of any kind or nature related to his or her involvement in the affairs of the Association, except for acts of fraud or theft, or acts performed intentionally and with malice. The officers, managers and Directors of the Board shall not be liable for any mistake of judgment, negligent or otherwise, including any decision to not institute Proceedings, except for their own individual acts performed intentionally and with malice and any acts that are *ultra vires*. The officers, managers and Directors of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors of the Board may also be Owners).

5.6. Dissolution. At such time as there is no Common Area, the Association may be dissolved by the affirmative assent in writing of sixty-seven percent (67%) of the Lot Owners, and the consent of Declarant for so long as it owns a Lot within the Community. Such dissolution shall be accomplished in accordance with applicable Utah law.

## ARTICLE 6 ASSESSMENTS

6.1. Obligation for Assessments. By accepting a deed or other conveyance of a Lot (whether or not expressed therein), each Owner except Declarant and the Declarant Affiliates covenants and agrees to pay to the Association all Assessments authorized in the Governing



Documents. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the transferring Owner for any Assessments and other charges due at the time of conveyance.

6.1.1 The Board's failure to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Annual Assessments and Special Assessments at the rate established for the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfall.

6.1.2 No Owner may exempt himself or herself from liability for Assessments by non-use of Common Area, abandonment of his or her Lot, or non-use of services provided to all Lots or to all Lots within the service area to which the Lot is assigned. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action the Association or Board takes.

6.1.3 Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate signed by an Association officer setting forth whether such Assessment has been paid or any required payoff information for a transfer of a Lot. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate, which fee shall not exceed the maximum amount permitted by the Act.

6.1.4 Notwithstanding anything to the contrary herein, Declarant shall be exempt from the payment of Annual Assessments and Special Assessments.

6.2. Exempt Property. The following property shall be exempt from payment of Annual Assessments and Special Assessments:

6.2.1 All Common Area;

6.2.2 All Lots or portions of the Property owned by Declarant and the Declarant Affiliates;

6.2.3 Any property dedicated to and accepted by any governmental authority, public school, public utility, or service area; and

6.2.4 Any property owned by any religious organization or house of worship.

6.2.5 In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

6.3. Use and Consumption Fees. The Association may offer services or facilities for which it does not recover its costs through Assessments under this Article. The Board may charge use, consumption, and activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

6.4. Annual Assessments. Commencing on the first closing on the sale of a Lot by Declarant to an unaffiliated third party, an Annual Assessment shall be made against each Lot, excluding the Exempt Property, for the purpose of paying (or creating a reserve for) Common Expenses. Prior to commencement of Annual Assessments, Declarant shall be responsible for all necessary expenses related to the Common Area.

6.5. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Lots owned by Declarant or a Declarant Affiliate, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall have the assent of a majority of the total number of votes held by the Owners (voting in person or by proxy) at a meeting duly called for such purpose. Such Special Assessments shall be collected in monthly payments over a twelve-month period (or longer) unless the possibility of a more accelerated collection plan is duly noted in the notice for the Owners meeting held for the passage of the Special Assessment, and the more accelerated collection plan is separately approved by the assent of a majority of the total number of votes held by the Owners (voting in person or by proxy) at a meeting duly called for the passage of the Special Assessment.

6.6. Emergency Assessments. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's assessments on a current basis, the Board shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment. Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the Members other than the Declarant voting in person or by proxy, at a meeting duly called for such purpose and by the written consent of Declarant.

6.7. Allocation of Assessments. Each Owner shall be liable for a proportionate share of the Annual Assessments, Special Assessments, and Emergency Assessments, such share being the same as the voting rights appurtenant to the Owner's Lot, excluding the Exempt Property.

6.8. Individual Assessments. Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots benefited ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

6.8.1 Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or the Rules and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any of the Rules.

6.8.2 Expenses related to the costs of maintenance, repair, replacement and reserves of the Lots.

6.9. Initial Special Assessment. Upon the transfer of any Lot from Declarant or a Declarant Affiliate to a new Owner (including a Builder), the Association shall charge a one-time Special Assessment against the new Owner, and his or her Lot, in an amount equal to two (2) times the then-current Annual Assessment, to cover the costs of capitalizing the Association, to fund working capital needs of the Association, to perpetuate the Reserve Funds of the Association and to reduce the Common Expenses of the Community. Subject to the terms of this Declaration, the use of any funds generated by the Special Assessment described in this Section shall be at the sole discretion of the Association.

6.10. Reserves. The Board shall create a fund for capital reserves, identify components requiring reserves, and conduct an analysis of the need for such reserves, at such times, as may be required by, and in accordance with the Act. The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary and appropriate. Any amounts needed to fund reserves may be collected through an Assessment.

6.11. Board Member Liability. Members of the Board shall not be personally liable for failure to adequately fund reserves absent evidence of gross mismanagement or willful conduct.

6.12. Budget. At least annually the Board shall prepare and adopt a budget for the Association. The Board shall present the adopted budget to Owners at a meeting of the Owners. A budget shall be deemed approved unless Owners vote to disapprove in accordance with the procedures outlined in the Act. If a budget is disapproved in accordance with the Act, the budget that the Board last adopted that was not disapproved by the Owners continues as the budget for the Association until and unless the Board presents another budget to the Owners and that budget is not disapproved. During the Declarant Control Period, the Owners may not disapprove a budget.

6.13. Failure of Notification. Written notice of the Annual Assessment shall be sent to each Owner. Failure of the Association to send a bill to any Owner shall not relieve the Owner of liability for payment of any assessment or charge. The due dates shall be established by the Board.

6.14. Assessment Lien. All Assessments, together with interest thereon, late charges, fees, fines, Recording fees, and costs associated with collecting unpaid Assessments, including court costs and reasonable attorney fees, and any other amount the Association is entitled to recover under this Declaration, the Act, or an administrative or judicial decision, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessments are made (the "Assessment Lien"). The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien.

6.15. Effect of Nonpayment. Each Assessment shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due. Any Assessment or charge or

installment thereof not paid when due shall be deemed delinquent and shall bear interest from fifteen (15) days after the due date until paid at the legal rate of interest or other reasonable rate not to exceed the legal rate, and the Owner shall be liable for such Assessment, charge, or installment, together with interest thereon, late charges, fees, fines, Recording fees, and costs associated with collecting the same, including court costs and reasonable attorney fees, and any other amount the Association is entitled to recover under this Declaration, the Act, or an administrative or judicial decision, and all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also Record a notice of delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The notice shall be executed by an agent or officer of the Association or a Director, set forth the amount of the unpaid Assessment, the name of the delinquent Owner, and a description of the Lot. The Board may establish a fixed fee to reimburse the Association for the Association's cost in Recording such notice, processing the delinquency, and Recording a release of said notice, which fixed fee shall be treated as part of the Assessment of the Association secured by the Assessment Lien.

6.16. Enforcement of Assessment Lien.

6.16.1 Foreclosure Methods. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment or foreclose the Assessment Lien against such Owner's Lot in the same manner as mortgages or nonjudicial foreclosure of deeds of trust, as provided in the Act.

6.16.2 Nonjudicial Foreclosure.

6.16.2.1 At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice to the Owner of the Lot that is the intended subject of the nonjudicial foreclosure, notifying the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Lot to enforce the Association's lien for an unpaid Assessment or unpaid Assessments and notifying the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure. The notice shall be in substantially the following form:

NOTICE OF NONJUDICIAL FORECLOSURE AND  
RIGHT TO DEMAND JUDICIAL FORECLOSURE

The Stonecreek Estates Homeowners Association, Inc., the association for the project in which your lot is located, intends to foreclose upon your lot and allocated interest in the common areas using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your lot and to collect the amount of an unpaid assessment against your lot, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to

demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my lot," or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the Association's address for receipt of a demand).

6.16.2.2 The notice shall be sent to Owner by certified mail, return receipt requested and may be included with other Association correspondence to the Lot Owner.

6.16.2.3 The Association may not use a nonjudicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure by U.S. mail, certified with a return receipt requested, to the address stated in the Association's notice described in this subsection, and within fifteen (15) days after the date of the postmark on the envelope of the Association's notice.

6.16.2.4 In the event a nonjudicial lien foreclosure is initiated, the Owner, by acceptance of a deed to the Lot, irrevocably appoints the Association's attorney to act as trustee for any such foreclosure. In compliance with the Act, the Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to the Association's attorney, with power of sale, the Lot and Improvements to the Lot for the purpose of securing payment of assessments under the terms of this Declaration. The trustee as designated under the prior two sentences is hereby authorized with the power of substitution.

6.17. Priority of Lien. The Assessment Lien provided for herein shall be subordinate to a first or second security interest on the Lot secured by a mortgage or trust deed that is Recorded before a Recorded notice of lien by or on behalf of the Association and shall also be subject and subordinate to a lien for real estate taxes or other governmental assessments or charges against the Lot. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien.

6.18. Other Remedies. Nothing in this Article prohibits the Association from bringing an action against an Owner to recover an amount for which an Assessment Lien is created or from taking a deed in lieu of foreclosure, if the action is brought or the deed is taken before the sale or foreclosure of the Owner's Lot under this Article. By bringing such an action the Association does

not waive the Assessment Lien. Nothing in this Article limits the Association's rights to recover delinquent assessments under other provisions of the Act, including, without limitation, Utah Code Sections 57-8a-309 and -310 or amendments thereto or replacements thereof.

6.19. Budget Deficits During Declarant Control Period. During the Declarant Control Period, Declarant or a Declarant Affiliate may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the Annual Assessments and Special Assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant or an affiliate of Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Declarant or a Declarant Affiliate, in Declarant's sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no mortgage secured by the Common Area or any of the Improvements maintained by the Association shall be given in connection with such loan.

6.20. Reinvestment Fee. The Board shall have the right to establish from time to time (but shall not be required to establish) a reinvestment fee assessment in accordance with this Section and Utah Code §57-1-46 (the "Reinvestment Fee"). If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

6.20.1 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"), but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, 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 2% of the gross sale price of the Lot, or the maximum rate permitted by law.

6.20.2 Prior to enforcing the Reinvestment Fee, the Board shall Record a separate notice of Reinvestment Fee.

6.20.3 Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

6.20.3.1 Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

6.20.3.2 Any Transfer to the Association or its successors.

6.20.3.3 Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Lot transferred.

6.20.3.4 Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Lot by the estate of an Owner.

6.20.3.5 Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded, removing clouds on titles.

6.20.3.6 Any lease of any Lot or portion thereof for a period of less than thirty (30) years.

6.20.3.7 Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

6.20.3.8 Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

6.20.3.9 An involuntary transfer.

6.20.3.10 A bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity.

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

6.21. Leased Dwelling Units. If an Owner fails to pay Assessments for a period of more than sixty (60) days after such amounts are due and payable, the Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the Association is paid the Amount Owing (defined below), in accordance with the procedure set forth below.

6.21.1 Notice to Owner. Before requiring a Tenant to pay Lease payments to the Association, the Board shall give the Owner notice ("Notice to Landlord"), which notice shall state: (a) the amounts due, including any interest, late fee, collection cost, and attorney fees; (b) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (c) that the Association intends to demand payment of future Lease payments from the Owner's Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

6.21.2 Notice to Tenant. If an Owner fails to pay the Amount Owing within fifteen (15) days after the Board gives the Notice to Landlord, the Association may collect Lease payments by the Board delivering written notice to the Tenant of Owner ("Notice to Tenant"), which notice shall state that: (a) due to the Owner's failure to pay an Assessment within the required time, the Board has notified the Owner of the Association's intent to

collect all Lease payments until the Amount Owing is paid; (b) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Association, until the Amount Owing is paid; and (c) the Tenant's payment of Lease payments to the Association does not constitute a default under the terms of the Lease with the Owner. The Board shall mail a copy of the Notice to Tenant to the Owner.

6.21.3 Payments to Association and Credit under Lease. A Tenant to whom the Notice to Tenant has been given shall pay to the Association all future Lease payments as they become due and owing to the Owner: (a) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (b) until the Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Association under this section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Association as required under this section. Within five (5) business days after the Amount Owing is paid, the Board shall notify the Tenant in writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Association. The Board shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the Amount Owing is paid and any cost of administration, not to exceed the maximum amount set forth in the Act (if any) is paid. The Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance.

6.21.4 Terms. As used in this section "Amount Owing" means the total of any assessment or obligation under this Declaration that is due and owing together with any applicable interest, late fee, and cost of collection; "Lease" means an arrangement under which a Tenant occupies a Residence in exchange for the Owner receiving a consideration or benefit, including a fee, service, gratuity, or other compensation; and "Tenant" means a person, other than the Owner, who has regular, exclusive occupancy of an Owner's Residence.

## ARTICLE 7 RIGHTS AND POWERS OF ASSOCIATION

7.1. Association's Rights. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws.

7.2. Levy and Collection Assessments. The Association shall have the right to levy Assessments and collect such Assessments as provided herein.

7.3. Easement for Association. Subject to the right of the City to limit access in areas dedicated to the public, such as public streets, the Association is hereby granted an easement in, over, under and through the real property that is along the public streets and shown on the Plat as Common Area, shared landscaping, or otherwise designated as the responsibility of the



Association. Any damage to public or private improvements caused by the activities of the Association related to such areas shall be repaired by the Association.

## ARTICLE 8 PROPERTY USAGE

8.1. Use of Lots. No Lot shall be used for anything other than residential purposes. No building shall be erected, altered, placed or permitted to remain on a Lot other than one detached single-family dwelling not to exceed two (2) stories in height with a private garage, capable of housing not less than two (2), standard sized automobiles. Accessory structures may be located in the rear yard and must not exceed City standards for accessory buildings and must meet City requirements for side and rear yard setbacks.

8.2. Access. Each Owner, by accepting conveyance of a Lot, agrees to permit free access by Owners of adjacent or adjoining Lots to slopes or drainage paths located on that Owner's Lot, when such access is reasonably necessary for the maintenance or permanent stabilization of slopes or maintenance of the drainage facilities for the protection of any portion of the Property.

8.3. New Construction and Material. All buildings erected on any Lot shall be of new construction and must be consistent in appearance and materials with the existing home on the Lot. However, this subparagraph shall neither prevent the use of used brick or any other materials that may be attractive and preservative of property values. When the construction of a building is begun on a Lot, work shall be pursued diligently and continuously to completion, subject to weather, strikes, acts of God, and other matters beyond the control of the Owner.

8.4. Building Location. No building shall be located on any Lot nearer than the minimum standard established by the City for front, side, and rear setbacks unless shown otherwise on the recorded plat for the Property. On all Lots adjacent to block walls, setbacks shall be measured from the inside face of the block wall. On corner Lots that face toward arterial or collector street intersections, except as otherwise installed by Declarant, driveways shall be located away from the intersection.

8.5. Landscaping Requirements. Every Owner of a Lot within the Property shall be responsible for installing, within ninety (90) days of occupancy (weather permitting) or as soon thereafter as is reasonably practicable, and maintaining in good and attractive condition, landscaping on those portions of the Lot, which are visible from any street within the Property. All such landscaping must be completed no later than one (1) year from the date of occupancy. This landscaping requirement shall include the park strip in front of a Lot, whether or not within the public right of way.

8.6. Window Covers. Only curtains, drapes, shutters or blinds may be installed as window coverings, and shall be placed in those windows. No window shall be covered with aluminum foil, newspaper, sheets, or any similar material.

8.7. Fences. No fences composed of chain link or woven wire shall be allowed on a Lot if visible from the public streets or other Lots. Any such visible fencing shall be composed of wood, masonry, vinyl, and/or wrought iron. No fencing that exceeds three (3) feet in height shall

be allowed to extend into a front yard (i.e., beyond the front of a dwelling unit). Owner shall be responsible to maintain all fencing installed on Owner's Lot.

8.8. Garages and Vehicles. All driveways and garages shall be maintained in a neat and orderly condition. A trailer, boat or recreational vehicle (but only one (1) of each and only two (2) per Lot) may be parked on a Lot (rather than within a garage) provided that any such vehicle is parked in an enclosed area and is maintained in a neat and clean manner. No vehicle of any type (including motorcycles), shall be parked in or upon any Lot, excluding the garage, for the purpose of accomplishing repairs thereto or the reconstruction thereof, except for emergency repairs and then only to the extent necessary to enable movement of the vehicle. For any repairs conducted within a garage, the garage door(s) shall remain closed during any such repair work and any noise caused by such work shall not unreasonably disturb another Owner's quiet enjoyment of his Lot. Each Owner shall generally make use of his garage for parking any vehicle(s) which said Owner brings to the subdivision. To assure appropriate use of the garages within the subdivision, the following restrictions shall apply to each Lot:

8.8.1 To the extent that any space remains after Owner's vehicles are accommodated in the garage, Owner may use the garage for storage or any other permitted purpose.

8.8.2 Subject to any contrary municipal regulations, garages may also be used for storing or parking any recreational vehicle or commercial vehicle if such vehicle is completely enclosed by the garage and there is a space available after all of the Owner's passenger vehicles have been enclosed in the garage.

8.8.3 No Owner or resident shall permit overnight guests or frequent visitors to the subdivision to park in any manner, which violates the provisions of this Section.

8.9. Diligent Construction. The work of construction and erection of any building or structure on the Property by any Owner, which is a successor to Declarant shall be prosecuted diligently and continuously from the commencement thereof until the same is completed.

8.10. Drainage. For purposes of this Declaration, "established" drainage is defined as the drainage, which existed at the time the overall grading of the Property was completed by Declarant or its agents. Each Owner, by accepting conveyance of a Lot, agrees to accept the burden of, and not in any way interfere with, the established drainage pattern over such Lot from adjoining or other Lots in the Property.

8.11. Business or Commercial Activity. No part of the Property shall ever be used, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes, except that professional and administrative occupations without external evidence thereof may be conducted by Owners so long as such occupations are in conformance with local governmental ordinances, and such activities are merely incidental to the use of the Lot as a single-family residence. No Lot or Residence in the Property may be used for any use not permitted by local law.

8.12. No Mining or Drilling. No derrick or other structure designed for use in boring, mining, or quarrying for oil, natural gas or precious metals shall ever be erected, maintained, or

permitted upon the surface of any Lot in the Property, nor shall any boring, mining, quarrying or similar operations be performed within five hundred (500) feet of the surface of the Property.

8.13. Nuisance. No noxious or offensive activity shall be carried on upon any Lot nor anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

8.14. Animals. No animals or fowl, other than household pets, shall be kept or maintained on any Lot or any portions thereof, and none shall be kept, maintained, or raised on the premises for commercial purposes. Household pets shall not be kept in unreasonable numbers or in violation of any law, ordinance, or regulation. Each Owner shall be responsible for clean-up, waste, and removal of any unsanitary conditions created by Owner's animals on any portion of the Property.

8.15. Signs. No sign, poster, announcement, proclamation, personal statement, billboard, advertising device, or other display of any kind shall be displayed to the public view, provided, however, this prohibition shall not apply to signs on any Owner's Lot or on a lot owned by another with that person's consent, of reasonable dimensions and design typical of signs used in the general vicinity for the real estate resale business, advertising the Lot for sale, rent or exchange. Such sign may also provide directions to the Lot or give the Owner's or agent's name, address, or telephone number. Such restrictions shall not apply to signs used only in connection with the development and sale of any Lots owned by Declarant or a Successor (as defined below). Notwithstanding the foregoing, nothing herein contained shall be construed in such a manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the local government agency having jurisdiction thereof.

8.16. Garage Doors. No garage doors are to remain open except for a temporary purpose.

8.17. Electrical Interference. No electrical or electronic devices, which may unreasonably interfere with television or radio reception of any Owner shall be located, used, or placed on any portion of the Property.

8.18. Refuse. Trash, garbage, or other waste shall be disposed of only by depositing the same into a trash container, which shall be screened from view of other Lots and all streets. No portion of the Property shall be used for the deposit or storage of building materials, other than in connection with approved construction. No shrub or tree clippings, plant waste, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot.

8.19. Temporary Buildings. No tent, shack, outbuilding or other temporary building or improvement of any kind may be located or built on any portion of a Lot, whether intended to be used temporarily or permanently. No type of motor vehicle, whatsoever, operative or inoperative, which is otherwise permitted by the terms of this Declaration, may be used as a temporary or permanent residence anywhere within the boundaries of the Property.

8.20. Line of Sight Limitations. No fence, hedge, or shrub planting which obstructs line of sight at elevations between two (2) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines,

or in the case of a round property corner, from the intersection of the street property lines extended. The same line of sight limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such lines of sight.

8.21. Radio and Television Antennas. Subject to applicable law, no Owner shall construct or use an external radio or television antenna or satellite dish except for one (1) exterior single-family residential television satellite dish per Lot having a radius of no more than one (1) meter screened from view from streets in and around the Property.

8.22. Right to Lease. The Lots shall be used only as single-family residences, and shall not be rented for transient purposes (defined as rental for a period of less than thirty (30) days). Subject to the foregoing restrictions, the Owners of the Lots shall have the right to lease same provided that the lease is in writing, expressly provides that the tenancy is made subject to the covenants, conditions, limitations, and restrictions contained in this Declaration, and provides that any failure by the tenant to comply with the terms of this Declaration shall be deemed to be a default under the lease.

8.23. Clothes Lines. No clothing or household fabrics shall be hung, dried, or aired in such a way upon any Lot so as to be visible from any street or other Lot in the Property.

8.24. No Subdivision. No Lot shall be further subdivided by any Owner into smaller Lots and no portion less than all of any such Lot shall be conveyed, transferred or hypothecated by any Owner. Nothing in the foregoing shall preclude Declarant from replatting the Property or re-subdividing any Lot.

8.25. Maintenance by Owner. Each Owner shall maintain all Improvements upon his Lot in good condition and repair and in a clean and attractive condition. All slopes on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property. Each Owner shall maintain, to the point where it meets the curb, all front yard and side yard landscaping, or other landscaping extending beyond such Owner's property line/fence lines. This includes maintenance of any landscaping in the park strip in front of a Lot, whether or not within the public right of way.

8.26. Trees. Each Owner of a Lot shall be required to install the number of tree(s) as may be required by the Association's Rules or the Design Guidelines, including, whether or not required in the Rules or Design Guidelines, at least one tree in the park strip on each side of a Lot adjoining a public street. All trees installed in the park strip area shall be of the following varieties: Washington Hawthorn, Flowering Crabapple, Canada Red Coke Cherry, Capital Pear, Amur Maple, or Pacific Sunset Maple. Each Owner shall be responsible for the continued maintenance of such tree(s) on such Owner's Lot or the adjoining park strip and shall promptly repair or replace any damaged or destroyed tree(s).

## ARTICLE 9 ARCHITECTURAL CONTROLS

9.1. 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 Community harmonize with existing surroundings and structures. The ACC need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC.

9.2. Architectural Controls. To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the ACC. In the event of any reconstruction of an improvement or a 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 construction 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 Community, 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, as needed, from the city.

9.2.1 No construction, reconstruction or modification of a Residence or landscaping may commence without approval by the ACC of the working drawings including, but not limited to, the following:

9.2.1.1 A site plan to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.

9.2.1.2 Detailed floor plans showing dimensions and measurements.

9.2.1.3 Detailed elevations, indicating all materials and colors and showing existing and finished grades.

9.2.1.4 Detailed sections, cross and longitudinal.

9.2.1.5 Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

9.2.2 Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ACC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon

compliance with the Design Guidelines, any other guidelines adopted by the Association. Any costs incurred by the Association in reviewing any plans, specifications, or the like shall be assessed against the requesting Owner as an Individual Assessment. The ACC may also establish a reasonable fee for reviewing plans and specifications.

9.3. Design Guidelines. The ACC may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the Property.

9.3.1 The Declarant shall have sole and full authority to amend the Design Guidelines during the Declarant Control Period. The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the ACC. Upon termination or delegation of the Declarant's right to amend, the ACC shall have the right to amend the Design Guidelines.

9.3.2 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 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.

9.3.3 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.

9.4. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Community. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Lots, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of Residences within the Community so long as the location of such model homes and the opening and closing hours are approved by the ACC, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The ACC may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with city ordinances and any rules of the ACC. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of residences within the Community, and no home shall be used as a model home for the sale of homes not located within the Community.

9.5. 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.

9.6. 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 10 COMPLIANCE AND ENFORCEMENT

10.1. Compliance. Every Owner, tenant, occupant and visitor to a Lot must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to the Owner's Lot and for any damage to the Common Area that such Persons may cause.

10.2. Remedies for Non-Compliance. The Association, the Declarant, any Declarant Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

10.2.1 Sanctions Requiring Prior Notice and Hearing. After written notice and an opportunity for an informal hearing in accordance with this Section 10.2.1 and Section 10.3, the Board may impose the sanctions described in this section. The Board may impose reasonable monetary fines, which shall constitute a lien upon the violator's Lot. Before assessing a fine, the Board shall notify the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not remedied within five (5) days. In the event that any occupant, tenant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, which shall not be less than five (5) days, the Owner shall pay the fine upon notice from the Board. Unpaid fines shall be collected as an Individual Assessment with all available remedies applicable thereto. An Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within 30 days after the date on which the fine is assessed. No interest or late fees may accrue until after the informal hearing has been conducted and a final decision has been rendered. Notice of the informal hearing shall be given in accordance with Section 10.3.1 and the informal hearing shall be in accordance with Section 10.3.2.

10.2.2 Sanctions Requiring Prior Notice and an Opportunity to Cure. Except as provided in Section 10.2.1, after written notice and an opportunity to cure in accordance with this Section 10.2.2 and Section 10.4, the Board may suspend an Owner's right to vote (except that no notice or opportunity to cure is required if the Owner is more than 90 days delinquent in paying any Annual Assessment or Special Assessment).

### 10.3. Notice and Informal Hearing.

10.3.1 Notice of an informal hearing shall be in writing and shall state that the hearing will be before the Board and that the Owner may have witnesses at the hearing. Notice of the hearing shall be sent by first class mail, certified mail return receipt requested, or by hand delivery, to the Owner's Registered Address. If the Owner attends the hearing, the Owner is deemed to have waived any objections related to the notice.

10.3.2 The date for the hearing may be no less than ten (10) days after the date the notice of hearing is mailed or delivered to the Owner. The hearing shall be before the Board, which shall meet in executive session if requested by the Owner. The Owner shall be entitled to present a statement of defense and present supporting witnesses at the hearing. The Board may restrict the number of witnesses and limit the duration of the hearing in a reasonable manner commensurate with the nature of the matter and the circumstances of the Board members. If the Owner attends the hearing with an attorney, the Board may postpone the hearing to allow the Association's attorney to be present at the hearing. If the Owner fails to attend the hearing, no sanction may be imposed unless proof of notice of the hearing is placed in the minutes of the hearing. Such proof is adequate if a copy of the notice and a statement of the date and manner of delivery by the Person who mailed or delivered the notice are entered in the minutes. The minutes of the hearing shall contain a written statement of the decision of the Board and the sanction, if any, imposed.

10.4. Notice and Opportunity to Cure. Notice of an opportunity to cure shall be in writing and shall state in ordinary language (a) the acts or omissions with which the Owner is charged, (b) a reference to the specific provisions of the Governing Documents which the Owner is alleged to have violated, (c) the date and time by which the violation is to be cured, and (d) the sanctions which may be imposed if the violation is not cured in the time specified. The notice shall be sent by first class mail, certified mail return receipt requested, or hand delivery, to the last known address of the Owner shown on the Association's records.

10.5. Board Decision to Pursue Enforcement Action. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

10.5.1 The Association's position is not strong enough to justify taking any or further action;

10.5.2 The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

10.5.3 Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; and/or

10.5.4 That it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.



10.5.5 A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

10.6. Attorneys' Fees and Costs. In any Proceeding to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such Proceeding.

10.7. Enforcement of Ordinances. The Association, by contract or other agreement, may enforce applicable County ordinances. In addition, the County may enforce ordinances within the Community.

## **ARTICLE 11 EASEMENTS**

11.1. Utility Easements. Each Owner agrees, by acceptance of his deed, that his Lot is granted subject to easements for utility installations and maintenance as shown on the Plat for the Property. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities. These utility easement areas and all improvements therein shall be maintained continuously by the Owner of such Lot, except for those improvements for which a public authority or utility company is responsible.

11.2. Reservation of Easements. Easements for installation and maintenance of utilities are reserved as shown on the Recorded Plat or appearing in the public records of the County. Declarant hereby reserves a temporary blanket easement, subject to automatic termination as provided in this Article, upon, across, over, through, and under each Lot for ingress, egress, construction, installation, operation, replacement, repair, and maintenance of all utility and service lines, mains, conduits, meters, systems, and other devices, facilities, and improvements which may be reasonably necessary or beneficial to the development, marketing and sale of the Lots within the Property, including, but not limited to, water, storm sewer, sanitary sewer, gas, telephone, electricity, television, cable and/or communication lines and systems, and storm and water drains and pipes (each a "Facility") as further provided below.

11.2.1 Declarant shall have the power to grant and convey to any third party one or more particularly described easements and rights-of-way in, on, over, or under each Lot ("Special Easement(s)") for the purposes described above. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights-of-way and authorizes and appoints Declarant (so long as Declarant owns one or more Lots in the Community) as attorney-in-fact of such Owner to execute any and all instruments particularly describing and conveying such easements or rights-of-way. Each such Owner specifically recognizes that more than one particularly described Special Easement may be reasonably necessary or beneficial to the development, marketing and sale of the Lots within the Property.

11.2.2 The locations of each Special Easement shall be fixed at the earlier of (a) Recordation of a document whereby the Special Easement is granted, in which case the Special Easement shall be located at the location referenced in such document, or (b) initial

construction or installation of the Facility, in which case the Special Easement shall be located at the location where the Facility is actually installed; provided, however, that such Special Easement locations may be moved or altered upon reconstruction of the Facility.

11.2.3 Within the locations of each Special Easement so fixed, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the permitted use of such Special Easement or the operation of the applicable Facility, which may be in violation of any ordinance or resolution of a governmental agency, or which may change the direction or flow of drainage channels or may obstruct or retard the flow of water through such channels; provided, however, that an Owner may install property-line fencing or walls subject to removal or destruction at the Owner's risk and expense if necessary to accommodate the purposes of this Section.

11.2.3.1 The easement area of each Lot, as set forth on the Recorded Plat or other Recorded document or established herein, and all Improvements on it shall be maintained continuously in good condition and repair by the Owner of said Lot, except for those Improvements which a public authority or utility is responsible to maintain.

11.2.3.2 The grantee of each Special Easement shall, after exercising its rights under the Special Easement, expeditiously repair, replace, and reconstruct any damage to a Lot caused by the exercise of such rights to at least the condition existing prior to such exercise.

11.2.3.3 Upon Declarant's sale of the last Lot owned by Declarant in the Community, the blanket easement described in the first paragraph of this Section shall terminate and each Owner's Lot shall be subject only to the particularly described Special Easement(s) actually conveyed by Declarant prior to the sale of such last Lot as otherwise provided in this Section.

11.3. Encroachment Easements. Should any Improvement made by Declarant or an Owner on a Lot, including walls or fences, encroach on any portion of the Property adjacent thereto due to engineering errors, errors in original construction, settlement or shifting of structures, or any other inadvertent cause, the Owner of the adjacent portion of the Property shall be deemed to have granted an appurtenant easement for such encroachment for so long as said Improvement, as constructed or reconstructed, shall remain in a useful state, provided, however, that no valid easement for encroachment shall exist if said encroachment occurred due to negligence or willful misconduct of the Owner of the portion of the Property to be benefited thereby.

11.4. Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Article 11 shall likewise require the prior written approval of Declarant.

11.5. Nature of Easements. Unless otherwise set forth herein any easement reserved to Declarant herein shall be nonexclusive.

11.6. Emergency Vehicle Access. There is hereby reserved to Declarant, together with the right to grant and transfer the same to its successors and assigns, easements over the Property, for fire department and other emergency vehicle access, as needed to service the Property and/or the Lots, provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Owners of their Lots.

11.7. Drainage and Overland Release Easements. There is hereby reserved to the Declarant together with the right to transfer and grant same, easements in and over portions of Lots for the purpose of: (i) the drainage of water from one Lot over one or more of the other Lots within the Property (including but not limited to sheet flow drainage, drainage from streets or open space) and (ii) installation and placement of drainage pipes in order to drain water from the roof of a Lot. No Owner shall interfere with the operation of such drainage or such drainage pipes, gutters or other drainage device. These drainage and overland release easement areas and all Improvements therein shall be maintained continuously by the Owner of such Lot, except for those Improvements for which a public authority or utility company is responsible.

## ARTICLE 12 RIGHT TO EXPAND AND WITHDRAW

12.1. Right to Expand. Declarant reserves the right to subject all or a portion of the Additional Land to this Declaration by the recordation of one or more Supplemental Declarations and Supplemental Plats without the prior consent of any other party or Owner. Declarant shall identify in each Supplemental Declaration the Additional Land, specify the number of additional Lots to be added to the Community, and the number of votes and Assessments to be allocated to the Additional Land based upon the formulas described in this Declaration, as may be unilaterally amended by the Supplemental Declaration. The owner of such Additional Land, if different from the Declarant, shall also execute the Supplemental Declaration and Supplemental Plat. Upon recordation of the Supplemental Declaration and Supplemental Plat, the subject Additional Land shall be deemed added to the Property pursuant to the terms and provisions of this Declaration. The Supplemental Declaration may modify any of the covenants, conditions and restrictions otherwise applicable to the Additional Land in the Supplemental Declaration where such changes are deemed necessary in the sole and absolute discretion of Declarant to address a unique condition affecting or relating to the Additional Land that is the subject of the Supplemental Declaration or to more fairly allocate the benefits and obligations of membership within the Association. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Community in accordance with the provisions of this Section 12.1.

12.2. Right to Withdraw. Any property that is subject or annexed to the Property and the Community by the Declarant in accordance with the provisions of this Declaration, may be removed by Declarant at any time by the Recordation of any appropriate declaration of deannexation or withdrawal, provided that such withdrawal shall take place before any Lot in the property to be withdrawn has been sold by Declarant to an Owner. After the Recording of such declaration, title to each such portion of withdrawn land shall be vested in and held by Declarant, and none of the Owners, Association, nor any other Person having any right or interest in all or any portion of the Community prior to or subsequent to withdrawing all or portions of such land shall have any claim or title to or interest in such withdrawn land. Any withdrawn land shall no

longer be subject to this Declaration. Any property which is removed by Declarant may be annexed, at a future date, to the Property in accordance with the provisions of this Declaration.

**ARTICLE 13  
EXEMPTION AND SPECIAL DECLARANT RIGHTS**

13.1. Exemption from Restrictions. Nothing in this Declaration shall limit, condition or abridge the unfettered right of Declarant to specify and approve the design for the complete construction of Improvements on Lots owned by Declarant, or to alter or modify completed Improvements or to construct such additional Improvements as Declarant deems advisable prior to the final sale by Declarant of all of the Lots in the Property. Such right shall include, but shall not be limited to, designing, erecting, constructing, and maintaining on any portion of the Property owned by Declarant such structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease, or otherwise. Declarant specifically reserves the right to use any unsold Lots on the Property for models, construction offices, trailers, and sales offices, and further reserves the right to rent any unsold Lots and the Improvements thereon. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Property additional easements, reservations, and rights of way for itself, utility companies, or others as may from time to time be reasonably necessary for the proper development and disposal of the Lots. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. Any rights of Declarant under this Declaration may be assigned by Declarant to a Declarant Successor.

13.2. Improvements. Declarant hereby reserves the right, without obligation, to construct:

13.2.1 Any improvements shown on the Plat;

13.2.2 Any Residence upon any portion of the Additional Land, and subject to the requirements of Section 12.1, the addition of the same to the Community; and

13.2.3 Any other buildings, structures, or improvements that Declarant desires to construct on the Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Community.

13.3. Other Special Declarant Rights. "Special Declarant Rights" are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

13.3.1 the right to expand the Community and withdraw property therefrom in accordance with Article 12;

13.3.2 the right to maintain sales offices, model homes, and signs advertising the Community or any Residence at any location in the Community;

13.3.3 the right to use easements through the Common Area as set forth in this Declaration;

13.3.4 the exclusive right to appoint or remove members of the Board during the Declarant Control Period;

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

13.3.6 the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

13.4. Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Community, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Community. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

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

13.6. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Declarant Control Period, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally constructed or created by Declarant.

13.7. Transfer of Special Declarant Rights. The Declarant may transfer, convey, or assign its rights, in whole or in part, created or reserved under this Declaration to any Person.

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

13.9. Easements Reserved to Declarant.

13.9.1 Declarant reserves until itself and its successors and assigns a non-exclusive easement and right-of-way in, through, over and across the Common Area, for the purpose of the storage of building supplies and materials, and for all other purposes

reasonably related to the completion of construction and development of the Community and the provision of utility services, and related services and facilities.

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

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

#### **ARTICLE 14**

#### **TERM OF DECLARATION, TERMINATION, AND AMENDMENTS**

14.1. Term and Termination. This Declaration and all provisions herein shall bind and inure to the benefit of Declarant and all Owners for a term of twenty (20) years from the date this Declaration is Recorded. At and after that initial twenty (20) year term, this Declaration shall be automatically extended for successive terms of ten (10) years unless an instrument signed by Owners owning a majority of the Lots in the Community agreeing to terminate this Declaration at the end of the term then in effect has been Recorded; provided, however, as long as Declarant or a Declarant Successor is the Owner of a Lot, this Declaration shall not be terminated without the prior written consent of Declarant and such Successor(s).

#### 14.2. Amendment.

14.2.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to correct any scrivener's error; (c) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (d) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (e) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

14.2.2 By Owners. This Declaration may be amended prior to the expiration date herein established only by the affirmative vote or written assent of at least sixty-seven

percent (67%) of the Voting Interests in the Association, and further, this amendment provision shall not itself be amended to allow amendments by vote of less than sixty-seven percent (67%) of the Voting Interests in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

14.2.3 Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**ARTICLE 15**

**BINDING ARBITRATION FOR ENFORCEMENT OF GOVERNING DOCUMENTS**

15.1. Opt-Out Right. IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, THE OWNER MUST SEND A LETTER TO DECLARANT, SIGNED BY THE OWNER (AND ANY CO-OWNER OF THE SAME LOT) AND ADDRESSED TO WOODSIDE HOMES OF UTAH, LLC, 460 WEST 50 NORTH, SUITE 300 SALT LAKE CITY, UT 84101, ATTN: ARBITRATION OPT-OUT. THE LETTER MUST BE SENT (I) WITHIN 30 DAYS AFTER THE DATE OF THE OWNER’S REAL ESTATE PURCHASE CONTRACT, OR (II) IN THE CASE OF A LOT UNDER CONTRACT ON THE DATE THIS DECLARATION IS RECORDED, WITHIN THIRTY (30) DAYS OF THE DATE THE DEED OF CONVEYANCE TRANSFERRING THE LOT IS RECORDED IN THE OFFICIAL RECORDS OF UTAH COUNTY, UTAH, AND MUST STATE THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS ARTICLE 15. ANY OPT OUT WILL RENDER THIS ARBITRATION PROVISION NULL AND VOID BUT WILL HAVE NO OTHER EFFECT ON THE OWNER’S RIGHTS.

15.2. Arbitration Terms Defined. In the arbitration provision described in this Article 15 (“Arbitration Provision”), the following capitalized words, phrases or terms have the meanings set forth below:

15.2.1 “Institutional Party” means Declarant and Declarant Affiliates; the Association during the Declarant Control Period; any third party that provides any product or service to a Consumer Party in connection with this Declaration, if and only if such third party is named as a co-party with another Institutional Party in a Claim asserted by a Consumer Party; their successors and assigns; and the agents, representatives, members, employees, officers and/or directors of the foregoing entities.

15.2.2 “Consumer Party” means the Owners; their heirs, successors and assigns; and the Association after the Declarant Control Period.

15.2.3 “Bound Party” means any Institutional Party or Consumer Party who asserts a Claim or has a Claim asserted against such party.

15.2.4 “Claim” means any claim, dispute or controversy between an Institutional Party and a Consumer Party, other than an Exempt Claim, arising out of or relating in any way to this Declaration or any other Governing Documents, the Property, the Community, the Lots or the Residences, including any such claim, dispute or controversy regarding or arising over the marketing and sale of Lots or Residences; the terms of this Declaration or any other Governing Documents; the design, specifications, surveying, planning, supervision, testing, observation of construction or construction of an Improvement to, or survey of, the Property; or the maintenance or use of the Property. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation or common law; and disputes involving requests for declaratory relief, injunctions or other equitable relief.

15.2.5 “Exempt Claim” means any of the following Claims, which will not be subject to this Arbitration Provision: (i) any individual action brought by a Consumer Party in small claims court or a relevant state’s equivalent court, unless such action is transferred, removed, or appealed to a different court; (ii) any action to effect a judicial or non-judicial foreclosure; (iii) any eviction or other summary proceeding to secure possession of real property or an interest therein; (iv) any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (v) any action to quiet title; (vi) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; (vii) any self-help remedy, such as the refusal of an Institutional Party to allow a Consumer Party to use a Residence or Lot, or any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind; and (viii) any dispute concerning the validity and effect of Section 15.8 below, the ban on class actions and certain other proceedings (the “Class Action Ban”). Notwithstanding the prior sentence, at the request of a Consumer Party, the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (ii)–(vi) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (ii)–(vi) above, the Consumer Party may assert in court on an individual basis any related defenses or Claims such Consumer Party may have.

15.2.6 “Administrator” means either of the following companies to be selected by the Bound Party initiating the arbitration: National Arbitration Forum (“NAF”), P.O. Box 50191, Minneapolis, MN 55405, <http://www.arb-forum.com>, or the American



Arbitration Association (“AAA”), 1633 Broadway, 10th Floor, New York, NY 10019, <http://www.adr.org>. However, neither NAF nor AAA may serve as Administrator, without the consent of all Bound Parties asserting or defending a Claim, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Ban.

15.3. Arbitration of Claims. Unless a Consumer Party has opted out of this Arbitration Provision, upon the election of any Consumer Party or Institutional Party asserting or defending a Claim, such Claim shall be resolved by binding individual (and not class) arbitration. Notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

15.4. Fees. If a Consumer Party cannot obtain a waiver of any fees of the Administrator or arbitrator, the Institutional Parties will consider in good faith any request for them to pay such fees for the Consumer Party. Each Bound Party shall bear the fees and expenses of that Bound Party’s attorneys, experts, and witnesses, provided that the Institutional Parties will bear the reasonable fees and expenses incurred by a Consumer Party if the Consumer Party prevails on a Claim the Consumer Party has asserted against the Institutional Parties. Also, the Institutional Parties will pay any arbitration, attorneys’ and/or other fees and expenses they are required to pay by applicable law or they are required to pay in order to enforce this Arbitration Provision. If a participatory arbitration hearing is requested, it will take place in Utah County, Utah or, if the Administrator determines that such location would be unfair to a Consumer Party, at a location reasonably convenient to such Consumer Party and the Institutional Parties.

15.5. Governing Law. This Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (the “FAA”) and not state arbitration laws, provided that Utah law shall govern to the extent that state law is relevant under the FAA in determining the enforceability of this Arbitration Provision. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any Claim. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys’ fees and costs. Upon the timely request of any Bound Party, the arbitrator shall write a brief explanation of the grounds for his or her decision. In addition to the Bound Parties’ rights under the Administrator’s rules to obtain information prior to the hearing, any Bound Party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other Bound Party the opportunity to object.

15.6. Appeal of Arbitrator’s Decision. Any court with jurisdiction may enter judgment upon the arbitrator’s award. The arbitrator’s decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than \$50,000, any Bound Party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel’s decision will

be final and binding, except for any appeal right under the FAA. Fees and costs associated with an appeal shall be governed by Section 15.4 above.

15.7. Jury Trial Waiver. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM, NO BOUND PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM.

15.8. Class Action Ban. NO BOUND PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE. NO BOUND PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN ARBITRATION. NO CLAIMS BY OR AGAINST A BOUND PARTY MAY BE JOINED OR CONSOLIDATED WITH CLAIMS BY OR AGAINST ANY OTHER PERSON (EXCEPT FOR CLAIMS INVOLVING THE HEIRS AND SUCCESSORS OF SUCH CONSUMER PARTIES). THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTI-PARTY ARBITRATION INCONSISTENT WITH THIS SECTION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the above Class Action Ban shall be resolved by a court and not an arbitrator or the Administrator.

15.9. Severability. If a determination is made that any part of this Arbitration Provision is unenforceable (other than the Class Action Ban) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If the Class Action Ban is held to be unenforceable in connection with any Claim subject to the Class Action Ban, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding, provided that the Institutional Party seeking to enforce the Class Action Ban shall have the right to appeal at the earliest possible time any holding that the Class Action Ban is unenforceable.

15.10. Notice of Claim; Right to Address. Prior to asserting a Claim, the Bound Party with the Claim (the "Potential Claimant") shall give the Bound Party that is the subject of the Claim written notice of the Claim and a reasonable opportunity, not less than thirty (30) days, to resolve the Claim. The Potential Claimant's claim notice must include the Potential Claimant's name, address and telephone number. Any claim notice must explain the nature of the Claim and the relief that is demanded. A Consumer Party may only submit a claim notice on his or her own behalf and not on behalf of any other party. The Potential Claimant must reasonably cooperate in providing any information about the Claim that the other Bound Party reasonably requests. If: (i) a Consumer Party submits a claim notice in accordance with this Section on his or her own behalf (and not on behalf of any other party); (ii) the Institutional Party refuses to provide the requested relief; and (iii) an arbitrator subsequently determines that the Consumer Party was entitled to such relief (or greater relief), the arbitrator shall award the Consumer Party at least \$5,500 (not including any arbitration fees and attorneys' fees and costs to which the Consumer Party may be entitled under this Arbitration Provision or applicable law).

**ARTICLE 16**  
**GENERAL PROVISIONS**

16.1. Enforcement by City. The City shall be a third-party beneficiary to the duties and covenants imposed by this Declaration and shall be entitled, without obligation, to take appropriate legal action to enforce such duties and covenants. If an action is commenced, the City shall be entitled to recover costs including reasonable attorneys' fees. The provisions of this paragraph may not be amended or rescinded without the prior written approval of the City.

16.2. Right to Cure Alleged Defects. In the event that any Owner or Owners (collectively, "Claimant") claim, contend or allege that any portion of any Lot, and or any improvements constructed on the Property are defective or that Declarant, its agents, consultants, contractors or subcontractors (collectively, "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves and is granted the right for itself and any successor or assign to inspect, repair, and/or replace such Alleged Defect as set forth herein.

16.2.1 Notice. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, but in no event later than fifteen (15) days after discovery, notify Declarant, in writing, of discovery of the Alleged Defect and of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

16.2.2 Right to Enter, Inspect, Repair, and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, any residence, including any residential dwelling unit constructed thereon, and/or any improvements for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant shall be entitled to take any actions, as it shall deem reasonable and necessary under the circumstances.

16.2.3 Legal Actions. In the event that a Claimant initiates any arbitration, reference, or other proceeding against Declarant alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by reason of such Alleged Defect in correcting and/or repairing the Alleged Defect.

16.2.4 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Lots and/or the improvements constructed thereon. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and

may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the official records of the County.

16.3. LIMITED WARRANTY. Each Owner, by taking title to a Lot acknowledges and agrees that Declarant may issue a “Home Builder’s Limited Warranty” (the “Limited Warranty”) regarding the Lots to each initial third-party Owner upon the close of escrow. The Limited Warranty is currently administered by Bonded Builders, or its successor (“BB”). The actual terms of the Limited Warranty are defined by the Limited Warranty documents themselves. If issued, a copy of the Limited Warranty will be provided to each initial third-party Owner, and may be obtained from BB at its current address of 11101 Roosevelt Boulevard N, St. Petersburg, FL 33716. Each Owner whether they are an initial purchaser of a Lot or a subsequent purchaser, is hereby advised and agrees that:

16.3.1 the Limited Warranty is the only warranty provided by the Declarant;

16.3.2 all “Disputes,” as that term is defined in the Limited Warranty documents provided to the initial third-party Owner will be resolved under and in accordance with, the Limited Warranty;

16.3.3 final, binding arbitration is the sole remedy for resolving Disputes under the Limited Warranty;

16.3.4 by taking title to a Lot, each Owner (whether an initial purchaser of a Lot or a subsequent purchaser) agrees to be bound by the terms of the Limited Warranty; and

16.3.5 the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

16.4. No Waiver. Failure by any Owner or Mortgagee to enforce any covenant, condition, or restriction herein contained in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition, or restriction.

16.5. Cumulative Remedies. All rights, options and remedies of the Association, Declarant, Owners, or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other. The Association, Declarant, Owners and Mortgagees shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

16.6. Severability. Invalidation of any one, or a portion of any one, of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

16.7. Covenants to Run with the Land. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and each Lot within the Property, and shall inure to the benefit of and be enforceable by the Association and any Owner or the Owner’s legal representatives, heirs, successors and assigns for the term of this Declaration and any extension thereof.

16.8. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and in addition to the disclaimers respecting drainage as set forth above, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can, or will be, carried out, or that any land now owned or hereafter acquired by Declarant is, or will be, subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is, or will be, committed to, or developed for, a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect. Declarant makes no representations or warranties that the use of any Property subject to this Declaration will not be changed in the future and Declarant makes no representations or warranties with regard to any neighboring property. Nothing contained in this Declaration and nothing which may be represented to a purchaser of a Lot by real estate brokers or salesmen representing the Declarant shall be deemed to create any implied covenants or restrictions with respect to the use of any Property. Each Owner acknowledges that Declarant may undertake development of the Property in phases and that by undertaking development of a phase; Declarant is making no representation that such phase or any other phase will be completed.

16.9. References to the Covenants in Deeds. Deeds to, and instruments affecting, a Lot or any part of the Property, may contain the covenants herein set forth by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants shall be binding upon the grantee/Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

16.10. Exempt Rights. Notwithstanding anything contained in this Declaration to the contrary, restrictions contained in this Declaration shall not be construed or deemed to limit or prohibit any act of Declarant or its employees, agents and subcontractors or parties designated by it in connection with the construction or completion of improvements upon or sale or leasing of the Lots or any other real property in the Property.

16.11. Sale or Title Transfer. Any Owner, prior to the sale or transfer of his interest, must provide the prospective purchaser with a copy of this Declaration.

16.12. Construction. The Section headings have been inserted for convenience only, and shall not be considered in resolving questions of interpretation or construction.

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

16.14. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association and any Owner. Such remedy shall be deemed cumulative and not exclusive.

16.15. Notice. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall comply with the requirements of the Act,

Utah Code Section 57-8a-214. Subject to the foregoing, the following shall constitute fair and reasonable notice.

16.15.1 Notice shall be in writing unless oral notice is reasonable under the circumstances.

16.15.2 Notice may be communicated in person, by telephone or fax, by any form of electronic communication, including email, text message, or the Association’s website, or by mail or private carrier; provided, however, if an Owner requests in writing that notice be given by mail, the Association shall provide notice by mail.

16.15.3 Without limiting the reasonableness or effectiveness of other forms of delivery, notice to an Owner shall be deemed to have been properly delivered when delivered to the Owner’s Registered Address. Any notice addressed to the Registered Address and deposited in the mail within the County shall be deemed delivered three (3) days after such deposit in the mail. 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 to be effective delivery on all such co-Owners.

16.15.4 Without limiting the reasonableness or effectiveness of other forms of delivery, notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in first class United States mail, postage prepaid, to the address furnished by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee or contractor in the City, or if no such office is located in the City, to any office of such Mortgagee or contractor.

16.16. Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

16.17. Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner, except with respect to Owners’ personal liability and obligation for assessments as provided in Article 6.

**ARTICLE 17  
MORTGAGEE PROTECTION**

17.1. Notice of Action. The Board shall maintain a roster containing the name and address of each holder of mortgage or deed of trust (“Mortgage”) Recorded against a Lot in first position (“First Mortgage”) that has requested in writing notice of the matters set forth herein (an “Eligible Mortgagee”). To be considered an Eligible Mortgagee, such mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the mortgagee and a statement that the Mortgage is a first position mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an

Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the related Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

17.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

17.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

17.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association.

17.2. Availability of Governing Documents and Financial Statements. The Association shall maintain and have current copies of the Governing Documents, membership register, books, records, and financial statements available for inspection by Members or by Eligible Mortgagees. Generally, these documents shall be available during the Association's normal business hours, and may be maintained and kept at the office of the manager for the Association. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Member's interest in the Association.

17.3. Subordination of Lien. The Assessment or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, and the mortgagee thereunder (the "First Mortgagee") which comes into possession of or which obtains title to such Lot shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Lot, shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned.

17.4. Priority. No provision of this Declaration or the Articles gives or may give a Member or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Area. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

17.5. Conflicts. In the event of any conflict between any of the provisions of this Article 17 and any of the other provisions of this Declaration, the provisions of this Article 17 shall control.

## ARTICLE 18 INSURANCE

18.1. Duty to Obtain Insurance; Types. Anything in this Article 18 to the contrary notwithstanding, the Board shall obtain and maintain insurance in accordance with the provisions of the Act, including Utah Code sections 57-8a-403, 405 and 406 and related provisions, as amended. Each Owner may also insure its own Lot for its benefit and may be required to obtain insurance to meet the Owner's portion of any deductible on the Association's policy. Consistent with the foregoing requirements of law, the Association shall satisfy at least the following minimum requirements to the extent such insurance is reasonably available (as the term "reasonably available" is defined in the Act, Utah Code Section 57-8a-401, as amended) and subject to reasonable deductibles:

18.1.1 Commercial General Liability Insurance. The Board shall cause to be obtained and maintained adequate commercial general liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area, in an amount determined by the Board but with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate or as may be considered acceptable to the Federal National Mortgage Association ("FNMA"). Each Owner shall be an insured under the liability insurance policy obtained by the Association, but only for liability arising from the Owner's interest in the Common Area, maintenance, repair, or replacement of the Common Area, and the Owner's membership in the Association.

18.1.2 Property Insurance.

18.1.2.1 The Board shall cause to be obtained and maintained blanket property insurance or guaranteed replacement cost insurance on the Common Area insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must not be less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of items normally excluded from property policies.

18.1.2.2 Each Owner shall be an insured under the property insurance policy obtained by the Association.

18.1.2.3 The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the deductible exceeds \$10,000, an amount not less than \$10,000.

18.1.2.4 If, in the exercise of the business judgment rule, the Board determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the



Association's property insurance insurer, the Association is responsible for any covered loss to any Common Area and the Association need not tender the claim to the Association's insurer.

18.1.2.5 The insurance proceeds for a loss under an Association's property insurance policy are payable to an insurance trustee that the Association designates or, if no trustee is designated, to the Association and may not be payable to a holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association. If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After such disbursement is made and the damaged property has been completely repaired or restored or the Community is terminated, any surplus proceeds are payable to the Association.

18.2. Fidelity Bonds. The Board shall cause to be obtained and maintained fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds in the custody of the Association at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the reserves and operating capital of the Association.

18.2.1 Directors and Officers Insurance. The Board shall cause to be obtained and maintained directors and officers liability insurance in a coverage amount not less than \$1,000,000.

18.2.2 Insurance Required by FNMA, the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"). The Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements established by FNMA, GNMA and FHLMC, so long as any of such entities is a Mortgagee or Owner of a Lot within the Property, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

18.2.3 Other Insurance. The Association may purchase such other insurance as the Board deems necessary including, but not limited to, errors and omissions, medical payments, and umbrella or excess liability insurance, and such other risks as are customarily covered with respect to projects similar in construction, location, and use.

18.3. Other Requirements.

18.3.1 If the Association becomes aware that property insurance or liability insurance as described in this Article is not reasonably available, the Association shall, within seven (7) days of becoming aware, give all Owners notice that the insurance is not reasonably available.

18.3.2 Except as otherwise required by the Act or as provided in this Declaration, the deductible for all insurance policies shall be as determined by the Board.

18.3.3 Nothing contained in this Article should be interpreted as releasing the Owner or occupant from the duty to insure the Lot and other Improvements located thereon.

18.3.4 Insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

18.4. Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of, or breach of any agreement by, any of said Persons.

18.5. Right and Duty of Owners to Insure. Each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of the Residence and all insurable Improvements on such Owner's Lot, less a reasonable deductible. It is the responsibility of each Owner to provide insurance on the Owner's personal property. Nothing herein shall preclude any Owner from carrying any public liability insurance as the Owner deems desirable to cover the Owner's individual liability for damage to person or property occurring upon such Owner's Lot. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by the Owner to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

18.6. Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms without thirty (30) days prior written notice to the Board and Declarant, and to each Owner and beneficiary, insurer, and guarantor of a first mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be canceled or substantially modified without thirty (30) days prior written notice to any insurance trustee named pursuant to this Declaration and to each FNMA servicer that has filed a written request with the carrier for such notice. Notwithstanding the foregoing, any cancellation of insurance coverage for nonpayment of a premium shall require not less than ten (10) days prior written notice.

18.7. Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be a Common Expense to be included in the Annual Assessments levied by the Association and collected from the Owners.

18.8. Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the coverage referred to in this Article. The Board may, but is not obligated to, obtain a current

appraisal of the full replacement value of the Common Area from a qualified independent insurance appraiser, prior to each such annual review.

18.9. Required Waiver. All policies of physical damage and liability insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

18.9.1 subrogation of claims against the Owners and tenants of the Owners;

18.9.2 any defense based upon co-insurance;

18.9.3 any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;

18.9.4 any invalidity or other adverse effect or defense on account of any breach of warranty or condition caused by any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any Owner or any tenant of any Owner or their respective agents, contractors and employees;

18.9.5 notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; and

18.9.6 any right to require any assignment of any mortgage to the insurer.

18.10. Damage to Community.

18.10.1 If all or any part of the Common Area is damaged or destroyed, the Association shall repair or replace the same within a reasonable time unless (a) the Community is terminated, (b) repair or replacement would be illegal under a state statute or City ordinance, or (c) at least seventy-five percent (75%) of the Voting Interests of the Owners in the Association vote not to repair or replace the damage.

18.10.2 Repair or replacement of the damaged Common Area shall mean to restore the Common Area to a condition reasonably similar to the condition of the Common Area before the damage.

18.10.3 The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense.

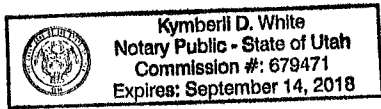
IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions, Restrictions, and Reservations of Easements of Stonecreek, American Fork to be signed as of the day and date first set forth above.

DECLARANT  
WOODSIDE HOMES OF UTAH, LLC,  
a Utah limited liability company

By Brian Kartchner  
Brian Kartchner  
Its President

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

This instrument was acknowledged before me this 11<sup>th</sup> day of September, 2018, by Brian Kartchner, the President of Woodside Homes of Utah, LLC.



Kymberli D. White  
NOTARY SIGNATURE  
Residing at: Davis County, Utah  
My Commission Expires: Sept. 14, 2018

Exhibit "A"  
Property Legal Description

BOUNDARY DESCRIPTION

Commencing at a point which is South 00°03'44" East 716.70 feet and North 89°22'23" West 14.53 feet from the North Quarter Corner of Section 26, Township 5 South, Range 1 East, Salt Lake Base and Meridian: thence South 01°07'34" West 1290.63 feet; thence North 89°58'32" West 925.17 feet; thence North 00°54'29" East 315.46 feet; thence North 00°25'56" East 170.20 feet; thence North 00°51'25" East 171.17 feet; thence North 00°51'24" East 320.68 feet; thence North 00°51'25" East 171.23 feet; thence North 00°52'11" East 151.57 feet; thence South 89°22'23" East 932.09 feet to the point of beginning.

Parcel contains: 27.62 acres more or less.

Number of lots = 92

Basis of bearing: The line between the North Quarter Corner and the Northwest Corner of Section 26, Township 5 South, Range 1 East, Salt Lake Base and meridian which bears South 89°48'57" West.

## Exhibit "B"

**BYLAWS  
OF  
STONECREEK ESTATES  
HOMEOWNERS ASSOCIATION, INC.**

These Bylaws of Stonecreek Estates Homeowners Association, 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 of Covenants, Conditions, Easements and Restrictions for Stonecreek, American Fork (the "Declaration") and Articles of Incorporation.

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

C. 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 Declaration.

D. All present and future Members, mortgagees, and occupants, and any other persons who may use the facilities of the Community 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 1  
MEMBERS**

1.1. Membership. The Association shall have three classes of membership: (1) the Owner membership, which is comprised of all Owners except the Owners of the Vista Lots, but including Builders; (2) the Vista Lots membership; and (3) the Declarant Membership, which consists solely of the Declarant.

1.2. Membership Book. The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Proper termination or transfer of ownership of any Lot by an Owner shall be recorded in the book, together with the date on which such ownership was transferred.

1.3. Voting Rights. Each Lot is assigned one (1) vote, subject to the limitations on voting set forth in these Bylaws and in the Declaration and provided that the Vista Association shall exercise all voting rights appurtenant to the Vista Lots. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised in accordance with the Declaration. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever until the matter is resolved to the reasonable satisfaction of the Association. In such case, the Association may, but shall not be required to apportion such Lot's vote among the Owners thereof.

## ARTICLE 2 MEMBER MEETINGS AND ACTIONS

2.1. Annual Meetings. The annual meeting of the Members 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 Directors, 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 Association. If the election of Directors 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 Members to be convened as soon thereafter as may be convenient or at the next annual meeting. The Board may from time to time by resolution change the month, date, and time for the annual meeting. Annual meetings shall not be required during the Declarant Control Period, but the Declarant may hold annual meetings at its discretion.

2.2. Special Meetings. Special meetings of the Members may be called by a majority of the Board, the Declarant, the President, or upon the written request of Members holding not less than forty percent (40%) of the Voting Interests of the Association. Any written request for a special meeting presented by the Members shall be delivered to the President and shall include the original signature of each Member 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 forty-five (45) days of receipt of the Members request. During the Declarant Control Period, special meetings may only be called by the Declarant.

2.3. Place of Meetings. The Board may designate any place in Utah County that is reasonably convenient for the Members as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association. Any or all of the Members may participate in an annual or special meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

2.4. 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 Member meetings. Such written or printed notice shall be delivered to each Member of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such

notice may be sent via email, text, hand-delivery, regular mail, or other electronic means. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Member'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 Member's address registered with the Association. Each Member shall register with the Association such Member'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, a Member's Residence shall be deemed to be the Member'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. A Member may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Member will not accept notices by way of email or text.

2.5. Qualified Voters. A Member shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if Assessments for such Member's Lot(s) are fully paid at least forty-eight (48) hours prior to the commencement of the meeting. The Vista Association shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if Assessments for all Vista Lots are fully paid at least forty-eight (48) hours prior to the commencement of the meeting. Only qualified voters shall be counted toward the quorum requirement and permitted to cast votes at a meeting.

2.6. 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 Members entitled to notice of any meeting of the Members. 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 Members 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 Community, as well as the Vista Association, shall be deemed to be the Members of record entitled to notice of the Members meeting.

2.7. Quorum. At any Member meeting, the presence of Members and holders of proxies entitled to cast more than twenty-five percent (25%) of the Voting Interests of the Association shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting, the Board shall have power to adjourn the meeting and reschedule for a time not earlier than twenty-four (24) hours, nor later than thirty (30) days after the set time for the original meeting. Notice of such rescheduled meeting shall not be required except an oral announcement at the meeting to be rescheduled. No other type of notice shall be required for the rescheduled meeting. At such rescheduled meeting, the number of Members present, either in-person or by proxy, shall constitute a quorum for the transaction of business at the rescheduled meeting.

2.8. Proxies. At each Member meeting, each Member entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Member or by the Member's attorney-in-fact. 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 Owner of such Lot or the Owner's attorney-in-fact when duly authorized in writing. A proxy given by a Member to any person who represents the Member at meetings of the Association shall be in writing, dated, and signed by such Member. 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. Every proxy shall be revocable and shall automatically cease upon the earlier of: (a) completion of the meeting for which the proxy was filed, or (b) upon conveyance by the Member of his or her Lot.

2.9. Action at Meeting. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration.

2.10. 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 Members present, and in the decision and votes of the Board or of the Members shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within thirty (30) days of notice of any decision by the Board. The presence of a Member in person at any meeting of the Members shall be deemed a waiver on any notice requirements.

2.11. Action Taken Without a Meeting. Members 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 Members 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 a Member 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.

### **ARTICLE 3 BOARD OF DIRECTORS**

3.1. Authority. The Community and the affairs and business of the Association shall be managed by the Board. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Members. Additionally, in furtherance and not in limitation of the foregoing general powers, the Board shall have the following additional powers and authority:

3.1.1 Manager. The Board may appoint for the Association a professional management agent at a compensation established by the Board, consistent with the Acts.

3.1.2 Rules. The Board shall have the authority to adopt and establish by resolution such Association Rules as it may deem necessary for the maintenance, operation, management, and control of the Community. 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 Members. Members are responsible to ensure that their occupants 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 Members at least ten (10) days prior to the effective date thereof.

3.1.3 Contracts. The Board may enter (i) lease agreements, including accepting lease assignments, and (ii) purchase contracts that touch or concern the Community.

3.1.4 Fiscal Year. The fiscal year of the Association shall be determined by the Board and, having been so determined, is subject to change from time to time as the Board shall determine.

3.1.5 Enforcement. The Board may enforce all provisions and terms of the Declaration and these Bylaws in any manner prescribed by law and shall have all rights and remedies available at law and in equity, including, without limitation, the right to levy fines, charge interest, and suspend use rights to Common Areas or other benefits of Association membership.

3.2. Number and Qualifications. The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of three persons appointed by the Declarant until termination of the Declarant Control Period, at which time the Members will elect a new Board composed of at least three persons but no more than seven persons. Directors must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Community. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Director. During the Declarant Control Period, the qualification requirements of these Bylaws shall not apply.

3.3. Election. Following the Declarant Control Period, the election of Directors shall be made by the Members at the annual meeting of Members. Any Person desiring to be a candidate for an open Director position shall submit the Person's name, and evidence of qualification, to the Secretary of the Association at least thirty (30) days prior to the scheduled annual Member meeting, or at such time as otherwise designated by the Board. At the election, the Members 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. Regardless of the number of candidates, the candidates receiving the highest amount of votes among the number of candidates equaling the number of Directors to be elected shall be elected as Directors. Cumulative voting is not permitted.

3.4. Term of Office. During the Declarant Control Period, Director terms shall be determined exclusively by Declarant. Following the Declarant Control Period, the terms of the Directors shall be staggered so that the terms of one-third of the directors will expire and successors

will be elected at each annual meeting of the Association as provided by these Bylaws. Thereafter, at such annual meetings, successors to the Directors whose terms then expire shall be elected to serve terms of three years. Directors shall serve until their successors have been duly elected and qualified unless removed pursuant to Section 3.13.

3.5. Regular Meetings. The Board shall hold meetings at least quarterly or more often at the discretion of the Board. During the Declarant Control Period, Board meetings shall be held at the discretion of the Declarant so long as at least one Board meeting is held each year. Regular Board meetings, including any annual meetings, may be held without notice of the date, time, place or purpose of the meeting.

3.6. Special Meetings. Special meetings of the Board may be called by the President or a majority of Directors on at least two (2) business days' prior notice to each Director. The person or persons authorized to call special meetings of the Board may fix any place, reasonably convenient, as the place for holding the meeting and shall provide a conference call-in number for Directors not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message. By unanimous consent of the Board, special meetings may be held without call or notice to the Directors.

3.7. Quorum and Manner of Action. A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors 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 Directors shall act only as the Board of Directors, and individual Directors shall have no powers as such.

3.8. Open Meetings. During the Declarant Control Period, Board meetings may be closed to Members, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Members. Except as provided below in 3.8.1 through 3.8.6, following the Declarant Control Period, Board meetings shall be open to Members. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

3.8.1 Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;

3.8.2 Discuss existing or potential legal actions;

3.8.3 Discuss a labor or personnel matter;

3.8.4 Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;

3.8.5 Discuss a matter involving any Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or

3.8.6 Discuss a delinquent assessment.

3.9. Board Meeting Location. During the Declarant Control Period, a Board meeting may take place at any location designated by Declarant. Following the Declarant Control Period, 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 Directors to communicate orally in real time. Following the Declarant Control Period, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Members may call-in to access the meeting.

3.10. Board Action. Notwithstanding noncompliance with any provision within this Article 3, 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.

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

3.12. Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Director it appoints at any time, with or without cause. A Director elected by the Members after the Declarant Control Period may be removed at any time, with or without cause, at a special meeting of the Members duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire Voting Interests of the Association.

3.13. Vacancies and Newly Created Directorships. If vacancies shall occur in the Board for any reason during the Declarant Control Period, the Declarant shall appoint a Director to fill the vacancy. Following the Declarant Control Period, if vacancies shall occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Members, the Directors then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Directors then in office, even if less than a quorum. Any vacancy in the Board occurring by reason of removal of a Director by the Members may be filled by election by the Members at the meeting at which such Director is removed. Any Director 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, Directors shall continue to serve until their successors are elected.

3.14. Action Without a Meeting. Directors 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.

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

3.16. 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.

3.17. Meeting. For purposes of this Article, a Board meeting does not include a gathering of one or more Directors at which the Board does not conduct and vote on Association business.

3.18. Fidelity Bonds. The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association as part of the Common Expenses.

3.19. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. In creating the committee the Board shall establish parameters for proceedings, meetings and actions of the committee as well as appointment, removal, and replacement of members of the committee. The Board may terminate any committee at any time.

#### **ARTICLE 4 OFFICERS**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may from time to time be appointed by the Board.

4.2. Election, Tenure, and Qualifications. The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each annual meeting of the Members. Each such officer shall hold such office until the next ensuing meeting of the Board following the annual meeting of the Members 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 or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office.

4.3. 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.

4.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association.

Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Directors at any time, with or without cause.

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

4.6. 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 Members. 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 Member 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.

4.7. 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 Members. The Vice President shall perform such other duties as required by the Board.

4.8. 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 such person to keep. The Secretary shall also act in the place of the President in the event of the President's and Vice President's absence or inability or refusal to act.

4.9. 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 Members and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

4.10. 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 5 INDEMNIFICATION**

5.1. Indemnification. In addition to the indemnification provisions and requirements set forth in the Declaration, no Director, officer, or committee member ("Association Official") shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Association Official performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each Association Official, 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 an Association Official or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken as such Association Official 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 Association Official 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 Directors, 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.

5.2. Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be entitled under the Acts or under any agreement, vote of disinterested Directors 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 Association Officials be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be an Association Official or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

5.3. 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 an Association Official, manager, or employee of the Association or is or was serving at the request of the Association as an Association Official, Manager, or employee 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.

5.4. 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 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 6 RECORDS

6.1. Accounting and Recordkeeping. The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Secretary. The Association shall maintain financial records, records of Assessments, and such other records as required by the Declaration or by the Acts. The cost of any audit shall be a Common Expense unless otherwise provided in the Declaration.

6.2. Maintenance and Inspection of Records. The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Board and of committees of the Board and all other records of the Community maintained by the Association or management company shall be made available for inspection and copying by any Member or his, her or its duly appointed representative at any reasonable time and for a purpose reasonably related to his, her or its interest as a Member, at the office where the records are maintained. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the Board to defray the costs of reproduction, the custodian of records of the Association shall prepare and transmit to the Member a copy of any and all records requested. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the Member's interest in the Association. The Board shall establish reasonable rules with respect to:

6.2.1 Notice to be given to the custodian of the records by the Member desiring to make the inspection or obtain copies;

6.2.2 Hours and days of the week when such an inspection may be made; and

6.2.3 Payment of the cost of reproducing copies of documents requested by a Member.

6.3. Inspection by Directors. Every Director shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Director agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Association and the Director's interest in the Association.

## ARTICLE 7 AMENDMENTS

7.1. Amendments by Declarant. During the Declarant Control Period, the Declarant acting alone may amend, alter, or repeal and adopt new Bylaws for any reason, without Member approval. No other amendment shall be valid or enforceable during the Declarant Control Period unless the Declarant has given written consent to such amendment. Any amendment during the Declarant Control Period shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Utah County Recorder.

7.2. Amendments by Association. After termination of the Declarant Control Period, amendments to the Bylaws shall be proposed by either a majority of Directors or by Members holding at least forty percent (40%) of the Voting Interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon, or included as part of the written ballot in lieu of such meeting. Except as otherwise provided herein, the Bylaws may be amended, altered, or repealed and new



Bylaws may be adopted by the Members upon the affirmative vote of more than fifty percent (50%) 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 the President shall execute the amendment and certify that the vote required by this Section has occurred. No signature or acknowledgment of any Member shall be required. No amendment shall in any way restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1. 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.


8.2. 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.

8.3. Conflicts. These Bylaws have been prepared in conjunction with the Declaration and should be read in light of that fact and liberally so as to effect the purposes of both instruments. In the event of a conflict between the provisions of these Bylaws and the provisions of the Declaration, the provisions of the Declaration shall prevail and the conflicting provision(s) of these Bylaws shall be amended to conform to the Declaration.

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association.

DATED this 4<sup>th</sup> day of September, 2018.

**DECLARANT**  
**WOODSIDE HOMES OF UTAH, LLC,**  
a Utah limited liability company

By   
Brian Kartchner  
Its President