

WHEN RECORDED MAIL TO:
Century Land Holdings of Utah, LLC
c/o Century Communities
8390 E. Crescent Parkway, Suite 650
Greenwood Village, CO 80111
ATTN: Legal Dept.

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Jeffery Smith
Utah County Recorder
2020 Jun 24 04:21 PM FEE 92.00 BY SW
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUMMERFIELD ESTATES**

In Reference to Tax ID Number(s):

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21-043-0219
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After recording return to:
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**DECLARATION OF COVENANTS, CONDITIONS AND
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUMMERFIELD ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERFIELD ESTATES (“Declaration”) is made and entered into on as this 23rd day of June, 2020 by Century Land Holdings of Utah, LLC, a Utah limited liability company (“Declarant”).

RECITALS

A. Declarant is the owner of certain real property in the City of Provo, Utah County, Utah, which is more particularly described as set forth in *Exhibit A* attached hereto and by reference made a part hereof.

B. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the Property (as defined below) and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of the Project (as defined below) as a planned unit development, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

C. Declarant intends to sell and convey to various purchasers fee title to individual Lots (as defined below) included in the Project, subject to this Declaration, and the covenants, conditions, restrictions, easements and limitations contained herein, which are also hereby declared to be for the benefit of all of the Property and the Project as described herein.

D. The Owners (as defined below), and their guests, invitees, agents, and residents shall abide by the provisions of this Declaration.

E. Declarant has caused the Summerfield Estates Owners Association, a Utah non-profit corporation, to be incorporated under the laws of the State of Utah in accordance with the Utah Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*), as amended from time to time, for the purpose of exercising the functions set forth herein.

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

ARTICLE 1. SUBMISSION/NAMES/DEFINED TERMS

Section 1.1 Submission of Property. Declarant hereby submits the real estate described in *Exhibit A*, and such additional property as may subsequently be annexed hereto, pursuant to the annexation rights reserved in this Declaration, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the “Property”), to the provisions of the Act, as it may be amended from time to time, and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act

on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Property described in *Exhibit A*, and as added by annexation, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Lot Owner thereof.

Section 1.2 **Names.** The name of the Project (as defined below) is the “Summerfield Estates”. The name of the Association is “Summerfield Estates Owners Association”.

Section 1.3 **Property.** The Property and the Project are located in the City of Provo, Utah County, Utah. The initial property of the Project is described in *Exhibit A*.

Section 1.4 **Defined Terms.** Each capitalized term in this Declaration or on the Plat (as defined below) shall have the meaning specified in the Act or as used in the Act, unless otherwise defined in this Declaration or as context requires otherwise:

(a) **“Act”** shall mean the Utah Community Association Act, Utah Code §§ 57-8a-101 *et. seq.*, as it may be amended.

(b) **“Allocated Interests”** shall mean the Common Expense Liability (as defined below) and the votes in the Association allocated to each Lot.

(c) **“Annexable Area”** shall mean the property described on *Exhibit B*, attached hereto and incorporated herein.

(d) Intentionally Deleted.

(e) Intentionally Deleted.

(f) **“Architectural Review Committee”** or **“Committee”** shall mean the committee appointed by the Declarant or the Board of Directors (as defined below) pursuant to this Declaration for the purpose of administering the architectural approval and design review provisions contained in this Declaration.

(g) **“Articles of Incorporation”** mean the Articles of Incorporation for Summerfield Estates Owners Association, as amended from time to time.

(h) **“Assessment”** shall include all Common Expense Assessments, Special Assessments, Supplemental Assessments (each as defined below), and any other expense levied to a Lot pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(i) “**Association**” shall mean and refer to Summerfield Estates Owners Association, a Utah non-profit corporation (previously referred to “Kelshaw Lane” in some documents), and its successors and assigns.

(j) “**Board**” or “**Board of Directors**” shall mean the body designated in the Governing Documents (as defined below) to act on behalf of the Association.

(k) “**Builder**” shall mean any Owner other than the Declarant who acquires one or more Lots for the purpose of constructing one or more residential structures thereon, and who is designated as a “Builder” by the Declarant in its sole discretion from time to time (including the right to withdraw such designation). Any such designation (or withdrawal of such designation) shall be made by a written instrument, a copy of which shall be provided to the Association, and which also shall be duly recorded in the records of the Utah County Recorder’s Office, Utah County, Utah.

(l) “**Bylaws**” shall mean the bylaws of the Association, as amended, supplements or restated from time to time.

(m) “**Common Area**” shall mean all real property owned or leased by the Association, excluding the Lots, for the common use and enjoyment of the Owners, together with all improvements located thereon and all common property owned by the Association, and shall include any Common Area located upon any real property which is annexed to the Property. The Common Area included in the Project at the time of recordation of this Declaration are described on *Exhibit A*, and real property which may become Common Area is described on *Exhibit B* attached hereto and incorporated herein by this reference.

(n) “**Common Expense Assessments**” shall mean those assessments levied by the Association against all of the Lots with respect to the Common Expenses.

(o) “**Common Expenses**” shall mean expenditures made or liabilities incurred by or on behalf of the Association which are for the general benefit of all Lots, together with any allocations to reserves.

(p) “**Common Expense Liability**” shall mean the liability for Common Expenses allocated to each Lot as set forth in Section 3.4 of this Declaration.

(q) “**Declarant**” shall mean Century Land Holdings of Utah, LLC a Utah limited liability company, and any other and any successor and/or assignee and any Person (as defined below) or group of Persons which succeeds to all or any portion of the Declarant’s rights, or any successor to the Declarant duly designated in accordance with this definition. Any such successor must be so identified by means of an express written assignment executed and acknowledged by the Declarant and the duly designated successor Declarant, and recorded in the records of the Utah County Recorder’s Office, Utah County, Utah.

(r) “**Design Guidelines**” shall mean a manual of design guidelines for the Property, or other design or architectural guidelines, to interpret and/or implement any provisions of Article 6 of this Declaration, specifically, and this Declaration in general, as more fully provided for in Section 6.3 of this Declaration.

(s) “**Governing Documents**” shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, the Design Guidelines and any Rules and Regulations (as defined below) of the Association, as they may be amended from time to time.

(t) “**Improvements**” shall mean all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball hoops, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

(u) “**Lot**” shall mean and refer to any platted lots shown upon any recorded Plat of the Property, together with all appurtenances thereto and improvements now or hereafter located thereon, with the exception of the Common Area.

(v) “**Member**” shall mean any Owner. The terms “Member” and “Owner” may be used interchangeably.

(w) “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(x) “**Period of Declarant Control**” shall mean a length of time expiring no later than the first or occur of the following: (i) ninety (90) days after the conveyance of 100% of the Lots in the Project to Owners other than Declarant, (ii) twenty (20) years after the first conveyance of a Lot with home constructed thereon by Declarant in the ordinary course of business, or (iii) ninety (90) days after the date Declarant gives the Board written notice of Declarant’s election to terminate the Period of Declarant Control.

(y) “**Person**” shall mean a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other legal entity or any combination thereof.

(z) “**Plat**” shall mean and refer to the map(s) and/or plat(s) of the Property recorded in the records of the Utah County Recorder’s Office, Utah County, Utah. More than one Plat or supplement thereto may be recorded, and, if so, then the term “Plat” shall collectively mean and refer to all of such maps, plats and supplements thereto.

(aa) “**Project**” means the residential community governed by the Association and created from the Property as shown on the Plat (as the same may be amended by the annexation of any or all of the Annexable Area), including all of the Lots and Common Areas. The Project is not a cooperative.

(bb) “**Property**” shall mean the property described in *Exhibit A* to this Declaration or which hereinafter becomes subject to this Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(cc) “**Rules and Regulations**” shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Project, and/or clarification of the Governing Documents, including any amendment to those instruments.

(dd) “**Special Assessment**” shall mean a special Assessment levied by the Association from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund.

(ee) “**Supplemental Assessment**” shall mean expenses incurred by the Association which are for the benefit of any individual Lot, as more fully provided in Section 5.5 of this Declaration.

(ff) “**Supplemental Declaration**” shall mean a written instrument containing covenants, conditions, restrictions, or equitable servitudes and/or any other provisions, or any combination thereof, which may be recorded on any portion of the Property by the Declarant, including, without limitation the Annexation of Additional Land as provided in Section 11.4 below.

ARTICLE 2. PROERTY RIGHTS IN THE COMMON AREAS/EASEMENTS

Section 2.1 Easement for Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by the original construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist.

Section 2.2 Blanket Easements.

(a) *Maintenance Easement*. An easement is hereby granted to the Association, its officers, agents, and employees to enter in or to cross over the Common Area and any Lot to perform the duties of operation, installation, maintenance, repair and replacement of the Lot or Common Area provided for in this Declaration.

(b) *Utility Easement.* A blanket easement is granted to the Association upon, across, over and under all of the Lots, other than that portion of any Lot occupied by the building footprint of the residential structure thereon, for ingress, egress, installation, replacing, repairing and maintaining any utilities, including but not limited to water, sewer, gas, telephone, electricity, and cable to the extent the Association is responsible for such utilities. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Common Area or Lots, except as part of the original construction on the Lots, as shown on the Plat or otherwise as approved by the Board of Directors. The easements provided for in this paragraph shall in no way affect any other prior recorded easements on the premises.

Section 2.3 Access. For the purpose of performing any of the functions or obligations required or permitted by this Declaration, and inspections related thereto, the Association, through its duly authorized agents, contractors, employees, and/or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon the exterior portions of any Lot, and such entry shall not be deemed a trespass. In emergency situations, the Association or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing any of the functions or obligations required or permitted by this Declaration, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 2.4 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Lot with the consent or at the request of the Owner thereof, his or her agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, the Common Area, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Lot. The Association may pay any sums necessary to eliminate any lien filed against Common Area not benefitting from the labor and/or materials furnished and all sums paid shall be an Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

Section 2.5 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration;
- (b) The right of the Association to adopt Rules and Regulations governing the use of the Common Area and the Lots;
- (c) The right of the Association to borrow money for the purpose of maintaining or improving the Common Area and for other such purposes deemed

appropriate or necessary by the Board of Directors to fulfill the Association's obligations, duties or authority as set forth in the Governing Documents;

(d) The right of the Association, upon approval of Owners holding at least sixty-seven percent (67%) of the votes in the Association, including, if and as required under the Act, sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declaration, to mortgage the Common Area as security for any loan or liability incurred by the Association, provided, that the rights of such mortgagee shall be subordinate to the rights of the Owners;

(e) The right of the Association to assign its right to future income, including the right to assign its right to receive Assessments;

(f) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, or similar interest through, over or in the Common Area;

(g) The right of the Association to transfer or convey ownership of the Common Area, or any portion thereof, subject to the prior approval of Owners holding at least sixty-seven percent (67%) of the votes in the Association, including, if and as required under the Act, sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant;

(h) The right of the Association to close portions of the Common Area for maintenance, repair, replacement and improvement; and

(i) The right of the Association to change the use of, and/or to add or remove improvements to or from the Common Area.

Section 2.6 Delegation of Use. An Owner may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Board of Directors, his or her right of enjoyment to the Common Area to the members of his or her family, tenants, or contract purchasers who reside on the Owner's Lot. If an Owner delegates such rights to use the Common Area to tenants or contract purchasers who reside on the Owner's Lot, the Owner shall not be entitled to use the Common Area.

Section 2.7 Disclaimer of Liability. The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

Section 2.8 Future Development and Views. Owners acknowledge that existing views, if any, of the immediate and surrounding areas and mountains may be subject to change or

elimination as a result of future development of residential and non-residential uses, road construction, tree growth and landscaping. Neither the Declarant, the Association nor the Architectural Review Committee guarantee or represent that any view over and across the Lots or other Improvements, or that any open space, will be preserved without impairment, nor is there any obligation to relocate, prune, or thin trees or other landscaping. The Declarant and the Association have the right to add Improvements, including but not limited to trees, walls, fences, berms, structures, signs, lighting, water features and landscaping, from time to time, without regard to any view impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. The Declarant, the Association and the Architectural Review Committee do not assume any responsibility for any representation or promise made by any other party, including but not limited to any Builder, sales counselor, independent broker or other agent or employee of a homebuilder, with regard to views. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Property, views of or from the Property, the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot, subject to the foregoing, and waives and releases any claim against the Declarant, the Association and the Architectural Review Committee arising out of or associated with any of the foregoing.

ARTICLE 3. THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 General Purposes and Powers of the Association. The Association has been formed to perform functions and manage the Project as provided in this Declaration to protect the value and desirability of the Project and the Lots, to further the interests of the residents, occupants, tenants and guests of the Project and Members of the Association, and to promote a harmonious Project and responsible leadership. The Association shall have a Board of Directors to manage the affairs of the Association. All Owners and any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.2 Authority of the Association. The business affairs of the Project shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat, the Articles of Incorporation, the Bylaws, the Design Guidelines and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents or by Utah law, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to affect such right or privilege or to satisfy such duty or obligation.

Section 3.3 Membership. Every Person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for such membership. When more than one Person holds an interest in any Lot, all such Persons shall be Members.

Section 3.4 Allocated Interests. The Common Expense Liability and votes in the Association allocated to each Lot are as follows:

- (a) The Allocated Interests allocated to each Lot are set as follows:
 - (i) Unless otherwise provided in this Declaration, the Common Expense Liability allocated to each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Project from time to time.
 - (ii) The number of votes in the Association shall be allocated among the Lots, with each Lot being entitled to one (1) vote.
- (b) Intentionally Deleted.

Section 3.5 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three (3) years and shall be subject to cancellation by the Association on thirty (30) days' notice, with or without cause, and without a cancellation fee. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Right to Notice. Notice of matters affecting the Project shall be given by the Association or through access to Association records, as further provided in the Bylaws or as otherwise provided by the Board of Directors.

Section 3.7 Indemnification. To the full extent permitted by law, each officer, director, committee member and volunteer of the Association shall be and hereby are indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duties.

Section 3.8 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Project ; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that Association is not required to provide safety or security

services and shall have no duty to provide any specific level or standard of safety or security in the Project. Furthermore, the Association does not guarantee that non-residents will not gain access to the Project and commit criminal acts in the Project, nor does the Association guarantee that criminal acts in the Project will not be committed by residents. Regardless of any measures or actions the Association may, but is under no obligation to, take related to safety, it shall be the responsibility of each Owner, at all times, to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

ARTICLE 4. BOARD OF DIRECTORS

Section 4.1 Authority of the Board of Directors. The affairs of the Association shall be managed by a Board of Directors. Except as otherwise provided in the Governing Documents or Utah law, the Board of Directors may act in all instances on behalf of the Association.

Section 4.2 Election of the Board of Directors During the Period of Declarant Control. Except as otherwise provided in this Article, during the Period of Declarant Control the Declarant may appoint all members of the Board of Directors and officers of the Association and may remove all such members of the Board of Directors and officers of the Association appointed by it.

Section 4.3 Election of the Board of Directors Following the Period of Declarant Control. Not later than the expiration or termination of the Period of Declarant Control, the Owners shall elect a Board of Directors (the exact number of members of the Board of Directors to be set forth in the Bylaws of the Association), at least a majority of whom must be Owners other than the Declarant or representatives of the Declarant.

ARTICLE 5. COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Creation of Lien and Personal Obligation to Pay Assessments. Declarant, for each Lot, and each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual expenses related to the Common Expense Assessments, and such other Assessments as imposed by the Association.

(a) Such Assessments, including but not limited to fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of any Assessment by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessment is made.

(b) The Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited, credit card convenience fees from whatever source, shall be a charge on the respective Lot generating such charges and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

(c) All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Assessments shall be assessed against all Lots based on the Common Expense Liability allocated to Lot, as applicable, as set forth in this Declaration.

Section 5.2 Basis and Budget for Common Expense Assessments.

(a) The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. Unless otherwise provided herein, all Assessments shall be apportioned among the Lots in accordance with the Common Expense Liability allocated to each Lot as set forth in Section 3.4(a) of this Declaration.

(b) Intentionally Deleted.

(c) Intentionally Deleted.

(d) Common Expenses Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy a Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

(e) If for any year the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

Section 5.3 Intentionally Deleted.

Section 5.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by a general reserve fund. Special Assessments shall be allocated among the Lots

subject thereto in accordance with the Common Expense Liability allocations set forth in Section 3.4 and Section 5.2 of this Declaration. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the subject services or materials.

Section 5.5 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment the following:

(a) Those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: improvement, repair, replacement and maintenance specific to a Lot; or improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;

(b) Any extraordinary maintenance, repair, improvement or replacement costs of any area which the Association maintains required on fewer than all the Lots for which the Association has a maintenance obligation;

(c) Any extraordinary insurance costs incurred as a result of the actions of an Owner (or his or her agents, guests, licensees, invitees or lessees);

(d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(e) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 5.6 Application of Payments. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any Common Expense Assessments or Supplemental Assessments due or to become due with respect to such Owner.

Section 5.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within fifteen (15) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Owner's annual Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Common Expense Assessment.

(c) The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints the Association's attorney as trustee, who qualifies under Utah Code Ann. §57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to Utah Code Ann. §57-1-20 and §57-8a-302 to the Association's attorney, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

(d) Further, the Association may bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(e) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.8 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. Sale or transfer of any Lot shall not affect the lien for

said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.9 Reinvestment Fund. Except as provided herein, Each Person who purchases a Lot shall make a non-refundable contribution to the Association in an amount determined by the Board, with the initial contribution to equal five hundred dollars (\$500), which amount may be amended from time to time without prior notice. Said contribution shall be collected and transferred to the Association at the time of closing of the sale of each Lot and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payment of Assessments as the same become due. Notwithstanding the above, no such contribution shall be levied upon transfer of title to a Lot when the transfer is from: (i) Declarant to a Person designated by Declarant as a Builder, who is to hold title to the Lot for the purpose of development and resale; (ii) By a co-Owner to any Person who was a co-Owner immediately prior to such transfer; (iii) To the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner; (iv) To an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, however, that upon any subsequent transfer of an ownership interest in such entity, the contribution shall become due; and (v) to an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage.

Section 5.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and prepayment of or provision for reserves shall be retained by the Association as reserves or in such other funds as the Board of Directors may direct and need not be paid to the Owners or credited to them to reduce future Assessments.

Section 5.11 Declarant Exception and Obligation; Reserve Account.

(a) Declarant, as and whole an Owner of any Lot, shall not be subject to any Assessments but, at all times prior to the expiration or termination of the Period of Declarant Control, Declarant shall contribute such amounts to the Association as are necessary for the Association to meet its obligations under the annual budget after collecting Assessments from any Lots owned by third parties.

(b) After the termination or expiration of the Period of Declarant Control, the Association shall establish a reserve account to fund long-term capital expenditures, maintenance, and replacement items related to the Common Areas in accordance with the Act. The Board shall use reasonable efforts under the circumstances at any given time, subject to the Owners rights under the Act, to fund the reserve account. "Reasonable efforts under the circumstances" shall be determined by the Board and does not require fully funding the reserve account. The Board shall not be personally liable for failure to fund the

reserve except in the event of gross negligence or intentional misconduct of the Board members is proven in a court of law.

ARTICLE 6. ARCHITECTURAL REVIEW

Section 6.1 Composition of the Architectural Review Committee and Appointment. The Architectural Review Committee will consist of three (3) or more natural persons, or a separate entity such as an architectural firm, appointed by the Board of Directors; provided, however, that until the expiration of the Period of Declarant Control, the Declarant may appoint the Architectural Review Committee. If no Architectural Review Committee is appointed, the Board of Directors shall act as the Architectural Review Committee. The power to "appoint" the Architectural Review Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of a vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Board of Directors.

Section 6.2 Architectural Review Requirements; Authority of the Architectural Review Committee.

(a) No Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified, upon any Lot, unless the Improvement is in full compliance with all provisions of the Governing Documents. Prior to constructing, erecting, placing, altering, planting, applying, installing or modifying an Improvement upon any Lot, the Owner of the Lot must submit plans and specifications for the proposed Improvement to the Architectural Review Committee for review and consideration, and then receive approval in writing from the Architectural Review Committee, all in accordance with the Design Guidelines and/or the Rules and Regulations.

(b) In the event a Builder is improving any real property within the Property, other than a Lot, which real property is to be conveyed to the Association as Common Area, the Builder must submit plans and specifications for the proposed Improvements to such property to the Architectural Review Committee for review and consideration, and then receive approval in writing from the Architectural Review Committee, all in accordance with the Design Guidelines and/or the Rules and Regulations.

(c) The Architectural Review Committee shall endeavor to exercise its reasonable judgment in an attempt to provide for each proposed Improvement to generally harmonize with the existing surroundings, residences, landscaping and structures.

(d) In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) pay an architectural review fee and/or reimburse the Architectural Review Committee for the actual expenses incurred by the Architectural Review Committee in the review and

approval process. Such amounts, if any, shall be collectible by the Association in the same manner as Assessments.

Section 6.3 Design Guidelines. The Architectural Review Committee may propose Design Guidelines or revisions or amendments thereto, which may be approved by the Board of Directors, at any time and from time to time; provided, however, that during the time that the Declarant has the right to appoint the Architectural Review Committee as set forth in Section 6.1 of this Declaration, any Design Guidelines or revisions or amendments thereto, shall also be subject to the approval of the Declarant. Without limiting the generality of the foregoing, any such Design Guidelines may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Architectural Review Committee, may state procedural requirements, or may specify acceptable Improvements that may be installed without prior approval of the Architectural Review Committee.

Section 6.4 Procedures. The Architectural Review Committee will review and approve in writing (which may be with conditions and/or requirements), or disapprove, each request for architectural approval within forty-five (45) days after the Architectural Review Committee receives complete plans and specifications and other materials and information which the Architectural Review Committee may require in conjunction therewith in accordance with the design review procedures set forth in the Design Guidelines. If the Architectural Review Committee fails to review and approve in writing (which may be with conditions and/or requirements), or disapprove, a request for architectural approval within forty-five (45) days after the complete submission of the plans and specifications and other information requested with respect thereto, such request is deemed approved by the Architectural Review Committee.

Section 6.5 Vote and Appeal. If the Board of Directors is not acting as the Architectural Review Committee, an Owner whose plans have been disapproved or conditionally approved by the Architectural Review Committee may appeal any decision of the Architectural Review Committee to the Board of Directors in writing within thirty (30) days of the date of the decision of the Architectural Review Committee. The Board of Directors shall review the decision of the Architectural Review Committee pursuant to the criteria set forth in this Article and the Design Guidelines. Any decision of the Architectural Review Committee may be overruled and reversed on appeal by a majority of the Board of Directors by a written decision setting forth the reasons for the reversal when the Board of Directors concludes that the Architectural Review Committee's decision was inconsistent with the criteria set forth in this Article and/or the Design Guidelines.

Section 6.6 Commencement and Completion of Construction. Except as specifically provided in Section 9.10 of this Declaration in regard to the initial landscaping to be installed on a Lot, all Improvements approved by the Architectural Review Committee must be commenced within six (6) months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Architectural Review Committee, unless the Architectural Review Committee gives a written extension for commencing the work. Additionally, except with written Architectural Review Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the

Architectural Review Committee shall be completed within twelve (12) months of commencement.

Section 6.7 Inspection of Work. The Architectural Review Committee and the Board of Directors have the right to inspect any Improvement at any time, including prior to or after completion, to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article.

Section 6.8 Variances. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration or the Design Guidelines in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in the Design Guidelines.

Section 6.9 Waivers. The approval or consent of the Architectural Review Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Architectural Review Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 6.10 Liability. Neither the Declarant, the Association, the Architectural Review Committee, nor any member, director, officer, agent, representative, affiliate, designee, consultant or contractor of any the same (collectively, the “**Released Parties**”) are liable or shall be liable to any Person by reason of any action, including but not limited to failure to act, approval (which may be with conditions and/or requirements), disapproval, or failure to approve or disapprove, in regard to any matter whether for damage or in equity. In reviewing or approving any matter, the Released Parties are not responsible for any issue related to the Improvements, whether structural or otherwise, and whether submitted for review or otherwise. The Released Parties are not responsible for any matter related to safety. The Released Parties are not responsible for the conformance of Improvements with applicable law or compliance with any other standard or regulation, and any approval (which may be with conditions and/or requirements) of any Improvement by the Architectural Review Committee will not be deemed an approval of any such matters, will not be deemed to represent that the Improvement conforms to applicable law or complies with any other standards or regulations, and will not constitute a warranty by the Released Parties to any applicant of the adequacy of design, workmanship or quality of such work or materials for any applicants’ intended use. The Released Parties shall not be held liable for matters related to their decisions including, but not limited to soil conditions, ground water, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not any of the Released Parties have approved or featured such contractor as a builder in the Project; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Released Parties shall be defended and indemnified by the Association as provided in Section 3.7 of this Declaration. The Architectural Review Committee will not make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to property with respect to architectural requests and shall not be liable for any disputes relating to the same. No Person is a third party beneficiary of any obligation

imposed upon, rights accorded to, action taken by, or approval granted by, the Released Parties. Each Owner (i) waives and releases the Released Parties from all claims related to approval or disapproval of any Improvements and (ii) waives and releases all claims against the Released Parties. The foregoing release and waiver are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The Released Parties shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Released Parties have no personal liability with respect to any contract or other commitment made or action taken on behalf of the Released Parties.

Section 6.11 Declarant's Exemption. Notwithstanding anything to the contrary, the Declarant is exempt from this Article and all provisions of this Declaration that require Architectural Review Committee review and/or approval.

Section 6.12 Builders Exemption. Notwithstanding anything to the contrary, as long as, and to the extent that, a Builder has received written architectural approval from the Declarant for Improvements to be constructed or installed upon any Lot or other property owned by the Builder that is to be conveyed to the Association as Common Area, such Builder shall be exempt from this Article and all provisions of this Declaration that require Architectural Review Committee review and/or approval to the extent such proposed Improvements have been reviewed and approved in writing by the Declarant.

ARTICLE 7. MAINTENANCE AND SERVICE RESPONSIBILITIES

Section 7.1 Association Maintenance and Service Responsibilities.

(a) The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association shall maintain, repair, replace, and keep in good repair in a workmanlike manner as a Common Expense the Common Area and all Improvements thereon.

(b) Intentionally Deleted.

(c) The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, which lies within or outside the Project. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided, however, the Association shall provide Owners with fifteen (15) days prior written notice of the assumption of any obligation which would normally be that of the Owners pursuant to this Declaration. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed, as well as the color and/or type of materials used.

Section 7.2 Owner's Maintenance Responsibility. Unless otherwise provided, the maintenance, repair and replacement of each Lot and the Improvements thereon shall be performed

by the Owner thereof at such Owner's sole cost and expense, including, without limitation: (a) interior and exterior of the residence and other Improvements constructed thereon; (b) sidewalks located on the Lot or sidewalks adjacent to the Lot and located in a public right of way, including, without limitation, snow removal, and (c) installation and maintenance of all landscaping as provided in Section 9.10 below, including irrigation on the Lot and in any tree lawns adjacent to the Lot or adjacent sidewalks. The Owner of a Lot shall also be responsible for the maintenance, repair and replacement of the following, at Owner's sole cost and expense: (i) any water service line and any sanitary sewer service line that provides water or sewer service solely to the Owner's Lot from the water meter pit or the connection to the sewer main line, as applicable, to the Owner's Lot whether or not the water or sewer service line is located in part within a Common Area, and (ii) the components of an underdrain system, if any, that exclusively serve the Owner's Lot. Each Lot shall be maintained in a clean, sightly and wholesome condition.

Section 7.3 Inspection, Repair and Replacement of Designated Owner Maintenance Components. If the Association, either through inspection or otherwise, determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance of his or her Lot and/or the Improvements thereon, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association. The Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and to diligently thereafter pursue the same to completion. If an Owner has not complied with the demand given by the Association as provided in this Section, the Association may enter upon the Lot and provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

Section 7.4 Owner's Negligence. If the Board determines that the need for maintenance or repair of any portion of the Common Area, any Lot or otherwise is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Lot, which shall become a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

ARTICLE 8. INSURANCE

Section 8.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Utah. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 8.2 Real Property Insurance on the Common Area.

(a) The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Areas, as more fully provided herein, and the other property of the Association.

(b) All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the Utah County Recorder's Office, Utah County, Utah.

(c) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Project by the Board of Directors.

(d) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent one hundred percent (100%) of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

(e) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

Section 8.3 Intentionally Deleted.

Section 8.4 Association Flood Insurance. The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

Section 8.5 Liability Insurance. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering the Common Area, in such limits as the Board may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Common Area. The foregoing liability insurance shall name the Association as the insured.

Section 8.6 Fidelity Insurance. If the same is commercially available, the Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or

are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation.

Section 8.7 Workers Compensation. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 8.8 Director and Officer Liability Insurance. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 8.9 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 8.10 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days prior written notice to all of the Owners, holders of first mortgages on any of the Lots and the Association.

(d) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first mortgages on the Lots at least ten (10) days prior to expiration of the then current policies.

(e) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association as insureds.

(f) Prior to renewing casualty insurance and not less than every three (3) years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Improvements on the Common Area and any other Improvements the Association is required to insure, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining

the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 8.11 Insurance Obtained by Owners. Unless otherwise provided, each Owner shall be responsible for maintaining insurance which covers his or her Lot and all Improvements thereon. Such insurance shall include, but may not be limited to, furnishings and personal or other property on the Lot and liability insurance for injury, death or damage upon the Lot. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

Section 8.12 Insurance Premium. Insurance premiums for insurance carried by the Association shall be a Common Expense to be included as a part of the annual Common Expense Assessment levied by the Association.

Section 8.13 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Section 8.14 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board of Directors, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 8.15 Adjustments by the Association. Any loss covered by an insurance policy carried by the Association shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a mortgage on any Lot. The Association shall hold any insurance proceeds in trust for the Association, Owners and such mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the

damaged property has been completely repaired or restored. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 8.16 Duty to Repair.

(a) Any portion of the Common Area for which insurance is required to be carried by the Association under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association.

(b) Any damage to or destruction of any structure located on a Lot shall, except as hereafter provided, be promptly repaired and reconstructed by the Owner thereof using insurance proceeds and personal funds of such Owner. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a structure located on a Lot shall be destroyed or so damaged that the structure is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a structure shall include removal of any foundation slab, basement walls and floors, regrading of the Lot to a level condition, and the installation of such landscaping as may be required by the Architectural Review Committee pursuant to a plan submitted to the Committee by the Owner of the Lot. If the Owner of a Lot does not either commence repair, reconstruction or demolition activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Architectural Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Article VII hereof, enter upon the Lot for the purpose of demolishing the residence and then landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to all the terms and provisions applicable to assessments as provided in Article V hereof, including, without limitation, interest, late charges and lien rights.

Section 8.17 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 8.18 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is the liability of

an Owner, his or her family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration.

(b) The Owner shall pay or absorb the deductible for any loss to the Lot unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, or another Owner's family, guests or invitees, in which case the Association or such other Owners, as the case may be, shall be responsible for the deductible. If an Owner fails to pay the deductible pursuant to this Section, the Association may, but shall not be obligated to seek the deductible on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments.

Section 8.19 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense.

Section 8.20 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any Improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

ARTICLE 9. USE RESTRICTIONS

Section 9.1 Flexible Application of the Subsequent Covenants and Restrictions. Unless otherwise provided in this Declaration, all Lots within the Project shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 9.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.

(c) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(d) All fines imposed are collectable as Assessments.

Section 9.3 Use/Occupancy. All Lots within the Project shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, Lots may be used for business activities provided that the following are satisfied:

(a) The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

(b) The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

(c) The business does not result in an undue volume of traffic or parking within the Project, which determination may be made by the Board of Directors in its sole discretion from time to time;

(d) The business conforms to all zoning requirements and is lawful in nature; and

(e) The business conforms to any Rules and Regulations that may be imposed by the Association from time to time on a uniform basis to protect the peace, tranquility and quality of the Project.

Section 9.4 Leasing and Occupancy. The Leasing of Lots shall be subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner, provided, however, for the purposes of this Declaration, leasing shall not include (i) the occupancy of the Lot by the child or parent of an Owner, or (ii) leasing of a Timeshare Interest (as defined below). For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing.

(b) Short term occupancies and rentals of Lots having a lease term of less than thirty (30) consecutive days shall be prohibited without the prior written approval of the Board of Directors.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(f) All occupancies of Lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Governing Documents of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may, but has no obligation hereunder, to commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

(g) Leases shall be for or of the entire Lot.

(h) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(i) The Association shall have the authority to adopt reasonable Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 9.5 Restrictions on Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that

a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets may be kept on a Lot, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Project. When on the Common Area, pets must be on a leash and under control. Feces left by pets upon the Common Area must be removed promptly by the owner of the pet or the person responsible for the pet. The Association shall have, and is hereby given, the right and authority to: set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that any dog(s), cat(s), or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; or determine that an Owner is otherwise in violation of the provisions of this Section. In any of the foregoing instances, the Association may take such action or actions as it deems appropriate to correct the same, including the right to require removal of the pet from the Project. The right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets.

Section 9.6 Antennae. "Permitted Antennas" are defined as (a) an antenna which is less than one (1) meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one (1) meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt Rules and Regulations regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

Section 9.7 Tanks. No tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill, shall be erected, placed or permitted upon any Lot without the prior written approval of the Architectural Review Committee.

Section 9.8 Nuisances. No nuisance shall be permitted within the Project, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Project by residents, including, without limitation:

- (a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- (b) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- (c) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
- (d) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, or of a nature that diminishes or destroys the enjoyment of the Project by other residents, their guests or invitees;
- (e) Too much noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.; and
- (f) Allowing a pet to be unleashed while outside of a home on a Lot or a fenced backyard.

Further, no improper, offensive or unlawful use shall be permitted within the Project or any portion thereof. Regardless of the foregoing, the Association shall have no obligation to enforce the statutes, rules, ordinances, regulations, or the requirements imposed by a governmental body.

Section 9.9 Vehicular Parking, Storage, and Repairs.

- (a) Except for parking on the public streets, which shall be controlled by the City of Provo, all parking within the Project and upon any Common Area shall be regulated by the Association.
- (b) The following may not be parked or stored on a Lot within the Project, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Association or as otherwise exempted by Utah law: oversized vehicles, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by Rules and Regulations. The foregoing may be parked as a temporary expedience for loading or delivery of goods or services. Overnight parking of the foregoing is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Project which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.

(c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Project unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Utah statutes governing inoperable, unlicensed or abandoned vehicles on public streets, or as defined by Rules and Regulations adopted by the Association.

(d) No motor vehicle may impede the safe and efficient use of streets within the Project by residents, obstruct emergency access to/from the Project or interfere with the reasonable needs of other residents to use their driveway, streets, or guest parking within the Project .

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages in the Project. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(g) If any vehicle is parked on any portion of the Project in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after seventy-two (72) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed within the Project stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If seventy-two (72) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(h) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Lot, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(i) If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all

other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 9.10 Landscaping.

(a) Within the time hereinafter provided, Declarant or a Builder which has constructed a home on any Lot shall install the initial landscaping in the front yard of the Lot, which area shall include the tree lawn area between the street and the sidewalk, and the remainder of the front yard area up to any wing fences installed on the Lot. Declarant or such Builder shall install such front yard landscaping on such Lot no later than one hundred and eighty days (180) days after the issuance of the certificate of occupancy for the home constructed on such Lot if the same is issued between April 1 and July 31 of any year. If the certificate of occupancy is issued on a date not within the aforementioned range, the Builder shall install such front yard landscaping by the following June 30. The Builder shall be obligated to install such landscaping within such time periods regardless of whether the Builder has conveyed the Lot to another Owner or still retains ownership of the Lot

(b) The first Owner of each Lot (other than the Declarant or a Builder) shall install the initial landscaping on the remainder of the Lot which was not landscaped by a Builder as provided above. If such Owner acquires the Lot between April 1 and July 31 of any year, such Owner shall install such landscaping on the Lot, within one hundred and eighty (180) days after date of acquisition. If the Owner acquires the Lot on a date not within the aforementioned range, the Owner shall install such landscaping by the following June 30.

(c) Except for any landscaping plans of a Builder which have been approved by the Declarant pursuant to Section 6.12 of this Declaration, all landscaping plans must be submitted to the Architectural Review Committee for review and approval, and such approval shall be obtained prior to the installation of the landscaping. Each Owner shall maintain all landscaping on such Owner's Lot, and on the adjacent tree lawn area, in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds and debris, and replacement of landscaping.

Section 9.11 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Architectural Review Committee.

Section 9.12 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Project which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Project which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used

on any portion of the Project except with the prior written approval of the Architectural Review Committee.

Section 9.13 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any Property within the Project which is unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Project. No open fires shall be lighted or permitted on any Property within the Project except in a contained barbeque unit while attended and in use for cooking purposes. No wood burning outdoor fireplaces or fire pits are permitted. Only gas or propane fueled outdoor fireplaces or fire pits are permitted, and then only when placed at least twenty (20) feet from any structure on the Lot, unless otherwise prohibited by governmental ordinances. No Owner shall permit any condition on his or her Lot which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 9.14 Restrictions on Clotheslines and Storage; Other Improvements.

(a) Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board of Directors and except as otherwise permitted by Utah law, no clotheslines drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Architectural Review Committee.

(b) No service yards, wood piles or outdoor storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot, except to the extent otherwise provided in the Rules and Regulations adopted by the Association.

(c) No types of refrigerating, cooling or heating apparatus shall be placed, allowed or maintained anywhere on a Lot, other than on the ground, except as approved by the Architectural Review Committee or pursuant to the Design Guidelines or the Rules and Regulations promulgated by the Association.

(d) Notwithstanding any provision in the Governing Documents to the contrary, the Association may not effectively prohibit renewable energy generation devices or the installation or use of any energy efficient measures, provided that the Association may adopt reasonable aesthetic rules and regulations concerning dimensions, placement or external appearance of such devices or measures to the extent such rules and regulations do not conflict with or violate applicable laws.

Section 9.15 Restrictions on Signs and Advertising Devices. Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Architectural Review Committee. Signs intended to impact the outcome of an election and other "political signs" which are displayed on an Owner's Lot may be displayed in accordance with the Association's Rules and Regulations. One (1) professionally lettered "For Sale" or "For Rent" sign not to exceed three (3) feet by two (2) feet and one (1) professionally lettered security or alarm

system sign not exceeding six (6) inches by six (6) inches may be displayed inside a window of the home on any Lot.

Section 9.16 Outbuildings. An “outbuilding” shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Architectural Review Committee. Further, no outbuilding or temporary structure shall be used on any Lot at any time for residential purposes, either temporarily or permanently.

Section 9.17 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container and suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. If trash removal is a service offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 9.18 Timeshares. Timeshares and time-sharing of Lots (or home thereon) within the Project is prohibited, and under no circumstances shall any Lot (or home thereon) be owned or used for time sharing, including but not limited to a “Timeshare Interest” as that term is defined in Utah Code Ann. § 57-19-2(17), as amended.

Section 9.19 Subdivision of Lots. No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board, and any condominium so approved by the Board would also be governed by Utah Condominium Act, Utah Code §§ 57-8-1 *et seq.*, as it may exist at any given time. No further covenants, conditions restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use in compliance with this Declaration. Nothing in this Section shall affect the rights of the Declarant in amending subdivision plats prior to the expiration or termination of the Period of Declarant Control.

Section 9.20 Prohibition of Marijuana Distribution and Growing. No Owner or occupant of a Lot may utilize such Lot for the purpose of unlawful growing or any distribution of marijuana or medical marijuana. This prohibition may be further clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction.

Section 9.21 Prohibited Activities. No Owner or occupant of a Lot may engage in any activity or practice which is considered a threat to the health and/or safety of other Owners and residents within the Project , including but not limited to, hoarding, creating conditions conducive

to indoor fires, allowing Lots to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Lots in the Project. In addition, nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Section 9.22 Utility Service. All lines, wires, or other devices for the communication or transmission of electric current of power, including telephone, television and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Board.

Section 9.23 Structural Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of a Lot or the improvements located thereon shall be made without the prior approval of the Board during the time of Architectural Control under Article 6. No building, fence, wall, or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Board.

Section 9.24 Maintenance of Grade and Drainage. The grading upon each Lot shall be maintained by the Owner thereof at the slope and pitch fixed by the final grading thereof. No Owner shall interfere in any way with the established drainage pattern over the Lot, from adjoining or other real property. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading on the Lot is completed by the builder of residence or structure on the Lot in accordance with the Project's lot grading plan as approved by the City of Fort Lupton. Any Owner who changes the established drainage on his or her Lot may void warranties applicable to affected components of the home and shall be liable for all costs and expenses of repairing such changes, or any costs, liabilities, damages or causes of action arising out of such changes. Each Owner shall hold harmless the Declarant, the Association and the Architectural Review Committee for any and all damage to any party caused by any change to the established drainage on the Owner's Lot.

Section 9.25 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Project or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 9.26 Use of the Words "Summerfield Estates" and "Summerfield Estates Owners Association". No resident or Owner shall use the words "Summerfield Estates" or "Summerfield Estates Owners Association" or the logo of the Project or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 10. DISPUTE RESOLUTION PROCEDURES

Section 10.1 Definitions Applicable to this Article 10. For purposes of this Article 10 only, the following terms have the meanings set forth in this Section 10.1:

(a) **“Arbitrator”** means any arbitrator chosen in accordance with the procedures established by the Association or any other Person agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of an arbitrator under this Declaration with a minimum of ten (10) years’ experience in the subject matter of the dispute. In the event that the Association does not establish procedures for selecting an Arbitrator, and Claimant and Respondent are unable to otherwise agree on an Arbitrator, then an Arbitrator shall be selected in accordance with the Utah Uniform Arbitration Act (Utah Code Ann. 78B-11-101, *et. seq.*), as amended from time to time, provided the Arbitrator shall have a minimum of ten (10) years’ experience in the subject matter of the dispute.

(b) **“Bound Party”** means each of the Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article 10. Notwithstanding the foregoing, “Bound Party” does not include any of the parties identified in this subsection (b) if such parties have jointly entered into a separate written agreement providing for dispute resolution applicable to the Claim; in such circumstance, the dispute resolution mechanism set forth in such separate written agreement between such parties shall apply with respect to such Claim unless the parties mutually agree to submit such Claim to the provisions of this Article 10.

(c) **“Claimant”** means any Bound Party having a Claim.

(d) **“Claim”** means, except as exempted by the terms of this Article 10, any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including those arising out of or related to the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Bound Party under any of the Governing Documents; or (ii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

(e) **“Notice”** means the written notification given by a Claimant to a Respondent and which shall comply with the requirements of Section 10.5(a) of this Declaration.

(f) **“Party”** means the Claimant and the Respondent individually; “Parties” means the Claimant and the Respondent collectively.

(g) **“Respondent”** means any Bound Party against whom a Claimant asserts a Claim.

(h) “**Termination of Mediation**” means a period of time expiring thirty (30) days after submission of the matter to mediation (or within such other time as determined by the mediator or agreed to by the Parties) and upon the expiration of which the Parties have not settled the Claim.

(i) “**Termination of Negotiations**” means a period of time expiring thirty (30) days after the date of the Notice (or such other period of time as may be agreed upon by the Parties) and upon the expiration of which the Parties have not resolved a Claim.

(j) “**Utah ADR**” means Utah ADR Services, or any other Person agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of a mediator under this Declaration.

Section 10.2 Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.

(a) Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims to the procedures set forth in Section 10.5 of this Declaration.

(b) By acceptance of a deed to a Lot, each Owner agrees to abide by the terms of this Article 10.

(c) Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article 10.

Section 10.3 Commencement or Pursuit of Claim Against Bound Party.

(a) A Bound Party may not commence or pursue a Claim against any other Bound Party except in compliance with this Article 10.

(b) Prior to any Bound Party commencing any proceeding to which another Bound Party is a party, the Respondent shall have the right to be heard by the Claimant, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 10.4 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties are subject to the provisions of this Article 10. Notwithstanding the foregoing, unless all Parties otherwise agree, the following are not Claims and shall not be subject to the provisions of this Article 10:

(a) Any action or suit by the Association regarding the imposition or collection of Assessments or other charges levied by the Association pursuant to this Declaration, including actions to foreclose assessment liens;

(b) Any action or suit by the Association or the Declarant to enforce any provisions of the Governing Documents, including obtaining a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary;

(c) Counterclaims brought by the Association in proceedings instituted against it;

(d) Any suit between or among Owners, which does not also include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(e) Any suit in which any indispensable party is not a Bound Party;

(f) Any claims for which the provisions of Section 12.2 apply.

Section 10.5 Mandatory Procedure.

(a) *Notice.* Prior to proceeding with any Claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely:

(i) The nature of the Claim, including all Persons involved and Respondent's role in the Claim;

(ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises); the proposed remedy; and

(iii) The fact that Claimant will give the Respondent an opportunity to inspect all Property and Improvements potentially involved with the Claim, and that Claimant will meet with Respondent within a reasonable amount of time after such inspection to discuss in good faith ways to resolve the Claim.

(b) *Negotiation and Mediation.*

(i) The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, any Party may appoint a representative to assist the Parties in negotiation.

(ii) Upon a Termination of Negotiations, Claimant has thirty (30) days to submit the Claim to mediation under the auspices of Utah ADR in accordance with the rules of Utah ADR in effect on the date of the Notice that is provided for in Section 10.5(a) of this Declaration.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant waives the Claim, and Respondent will be released and discharged from any and all liability to Claimant on account of such Claim.

(iv) Any settlement of the Claim through mediation must be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator must issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Each Party will bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

(vi) If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 10. In such event, the Party taking action to enforce the agreement will recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including attorneys' fees and court costs.

(c) *Binding Arbitration.*

(i) Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant may initiate final, binding arbitration of the Claim under the auspices of Arbitrator in accordance with the rules of Utah ADR in effect on the date of the Notice that is provided for in Section 10.5(a) of this Declaration.

(ii) If the Association is the Claimant and the Claim the Association is initiating is a construction defect action under Utah law, the Association shall follow the notice procedures as required by law, and obtain the approval of the greater percentage of Owners either as required either under Utah law or as provided in Section 12.3 below, prior to initiating final, binding arbitration of such Claim.

(iii) Any judgment upon the award rendered by the Arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, one arbitrator who has expertise in the areas of dispute, which may include legal expertise if legal issues are involved, will arbitrate the dispute.

(iv) In any arbitration action brought pursuant to this Article, the prevailing Party shall recover from the other Party all costs and expenses associated

with such proceedings, including reasonable attorney's fees. For purposes of this Article, "prevailing party" shall mean the party in whose favor a judgment, decree, or final order is rendered, either by an arbitrator or the court, after appeal, if any. In the event both Parties prevail on one or more Claims, the prevailing party shall mean the net winner of a dispute, taking into account the Claims pursued, the Claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other Party. Further, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

Section 10.6 Award. The award of the Arbitrator must be accompanied by detailed written findings of fact and conclusions of law. Except as required by applicable law or for confirmation of an award, neither Party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties.

Section 10.7 Intentionally deleted.

Section 10.8 Authority. Notwithstanding anything to the contrary in this Declaration, the Association may not sue anyone or arbitrate claims on behalf of two or more Owners with respect to any claims or issues on individual homes, including without limitation, construction and warranty claims.

Section 10.9 Amendment. Notwithstanding anything to the contrary in this Declaration, the terms and provisions of this Article 10 shall not be amended, modified or repealed without the prior written consent of the Declarant.

ARTICLE 11. DEVELOPMENT RIGHTS; SPECIAL DECLARANT RIGHTS AND CONTINUING DECLARANT RIGHTS

Section 11.1 Development Rights. The Declarant hereby reserves for itself and its successors and assigns, the following rights, herein after the "**Development Rights**":

- (a) The right to add real estate to the Project , as more fully provided in Section 11.4 of this Declaration;
- (b) The right to create Lots or Common Area within the Project;
- (c) The right to subdivide Lots or convert Lots to Common Area; and
- (d) The right to withdraw real estate from the Project.

Section 11.2 Special Declarant Rights. In addition to the Development Rights reserved above, the Declarant further reserves those rights granted to or reserved by the Declarant as

hereinafter set forth or as otherwise set forth in this Declaration or the Act for the benefit of the Declarant, including but not limited to the following acts (collectively, the “**Special Declarant Rights**”):

- (a) To build and complete Improvements in the Project;
- (b) To exercise any Development Right;
- (c) To maintain sales offices, construction offices, management offices, and signs advertising the Project and sale of Lots;
- (d) To use easements through the Common Area for the purpose of making Improvements within the Project or within real property which may be added to the Project;
- (e) To grant or create easements for access, utilities, drainage, water and other purposes incidental to the development and sale of the Project located in or across Lots owned by the Declarant or the Common Area, provided such easements do not create a permanent, unreasonable interference with the rights of any Owners at the time such easement is created;
- (f) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;
- (g) To convert any Lot or other portion of the Property in the Project owned by the Declarant into Common Area;
- (h) To convey Common Area to the Association;
- (i) To record a Supplemental Declaration against all or any portion of the Property owned by the Declarant, or if not owned by the Declarant, with the consent of the Owner thereof;
- (j) To perform any other right of the Declarant set forth in this Declaration; and
- (k) To construct, install and maintain “for sale”, directional signs and “wayfinding” signage and other signage within the Project to direct potential sales traffic to sales offices and model homes – including within any of the Common Areas.

Section 11.3 Exercise of Development Rights or Special Declarant Rights. All of the Development Rights and Special Declarant Rights may be exercised by the Declarant with respect to any portion of the Property now or hereafter within the Project owned by Declarant or with the consent of the Owner of such Property. The Declarant may exercise any or all of the Development Rights or Special Declarant Rights at any time and from time to time. Unless otherwise provided herein, the Development Rights and Special Declarant Rights shall terminate twenty (20) years from the date of the recording of this Declaration, unless surrendered by the Declarant prior to that date by the recording of a written statement that the Declarant has surrendered any such

Development Rights or Special Declarant Rights, except that the surrender by Declarant of any such rights shall not prejudice or act as a surrender of any Developer Rights or Special Declarant Rights held by another Declarant.

Section 11.4 Addition of Real Estate. At any time prior to the expiration of termination of the Period of Declarant Control, the Declarant may annex to this Declaration all or any portion of the Annexable Area described on the attached *Exhibit B*, regardless of whether such is then owned by the Declarant or another Person. Each such annexation shall be effected, if at all, by the recording of a written instrument in substantially in the form attached hereto as *Exhibit C* (each an “**Annexation of Additional Land**”), executed by the Declarant and the owner of the property to be annexed, if other than the Declarant, which shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land, shall state that the Declarant (or other Person) is the owner of the Lot(s) thereby created, shall assign an identifying number to each new Lot, shall describe the Common Area, if any, being annexed, shall reallocate the Allocated Interests among all Lots, and shall designate whether each Lot being annexed is to be a Lot. All provisions of this Declaration, including but not limited to, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the recording of any such Annexation of Additional Land. An Annexation of Additional Land may impose on the annexed property described therein covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the annexed property covered thereby. Any such additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes or other provisions contained in any Annexation of Additional Land and imposed on the property being annexed thereby may be amended only with the consent of Owners representing sixty-seven percent (67%) of the Lots subject to such Annexation of Additional Land, as shall be more fully set forth therein. Upon recordation, each Lot, Common Area or other separately described parcel of real property being annexed by such Annexation of Additional Land shall be deemed included on *Exhibit A* of this Declaration.

Section 11.5 Subdivision or Replatting of Lots. The Declarant may subdivide or replat any Lot(s) owned by the Declarant in the Project. Without limiting the generality of the foregoing, the Declarant reserves the right to move any lots line(s) on Lots(s) owned by the Declarant for the purpose of accommodating Improvements which are constructed or are to be constructed.

Section 11.6 Conveyance of Common Area. The Declarant may transfer to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests any in real property, improved or unimproved, as Common Area of the Association. Additionally, any Builder which has improved any real property that is intended to be used as Common Area of the Association, may transfer the same to the Association, and the Association shall accept the same. Notwithstanding the foregoing, during the time period set forth in Section 11.3 above, any acceptance of such property from a Builder by the Association shall be subject to the approval of the Declarant and subject to the terms of any agreement relative to such acceptance as approved by the Declarant.

Section 11.7 Reservation of Rights.

(a) Easements and Rights-of-Way. Declarant hereby reserves for itself, and its successors and assigns, the following non-exclusive easements and rights-of-way:

(i) Over (i) those strips or parcels of land designated or to be designated on a Map as “Public Utility Easement,” or otherwise designated as easements areas over any and all roads and Common Area within the Project, and (iii) those strips of land running along the front, rear, side and other Lot lines of each Lot shown on a Map;

(ii) For the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located;

(iii) For entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes;

(iv) 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 Project and the provision of utility services, and related services and facilities; and

(b) Utility Easements. Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Project in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Map.

(c) Right to Dedicate and Grant. Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as “open space” and storm water management reservation, to public use all as shown on the Map. Notwithstanding anything herein to the contrary, no road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in

this Declaration, or as laid down and shown on the Map, without the prior written approval of the Board.

(d) Grading Rights. 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.

(e) Common Areas. Declarant further reserves unto itself, for itself and any builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Project other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Project.

Section 11.8 Supplemental Declarations. The Declarant may record a Supplemental Declaration against all or any portion of the Property then owned by the Declarant, or with the consent of the then Owner of the portion of the Property, if not owned by the Declarant, which may contain additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes or other provisions to be imposed on that portion of the Property described therein. Any such additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes or other provisions contained in any such Supplemental Declaration may be amended only with the consent of Owners representing sixty-seven percent (67%) of the Lots subject to such Supplemental Declaration, as shall be more fully set forth therein, except that an Annexation of Additional Land shall not require approval of any Owners of any Lots not part of the Annexable Property being annexed in the Annexation of Additional Land.

Section 11.9 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the records of the Utah County Recorder's Office, Utah County, Utah. Such instrument shall be executed by the transferor Declarant and the transferee. Any rights created or reserved under this Article or the Act for the benefit of the Declarant may also be transferred to the Association by an instrument describing the right transferred and recorded in the records of the Utah County Recorder's Office, Utah County, Utah. Such instrument shall be executed by the transferor Declarant and the Association as transferee.

Section 11.10 No Further Authorizations Needed; Declarant Exemption. The consent of Owners or holders of security interests on the Lots shall not be required for the exercise of any reserved rights, and the Declarant or its assigns may proceed without limitation at its sole option. The Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. The Declarant or its assigns shall not be obligated to exercise any reserved rights or to expand the Project beyond the number of Lots initially submitted. Moreover,

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

Section 11.12 Continuing Rights of Declarant. Until the termination of the Special Declarant Rights or until twenty (20) years from the date of recordation of this Declaration, whichever last occurs (“**Continuing Rights Period**”), Declarant reserves the right, without obligation, to enforce the Declaration, and the Articles of Incorporation, Bylaws and Rules and Regulations (including, without limitation, the Association's duties of maintenance and repair, and reserve fund obligations). Until the expiration of the Continuing Rights Period, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Property or any portion(s) thereof. The Board shall also, until the expiration of the Continuing Rights Period, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondences to Owners, all inspection reports, any reserve studies prepared, maintenance reports prepared pursuant to the Association's governing documents, and audited or reviewed annual reports. Such notices and information shall be delivered to Declarant at its most recently designated address. This Section cannot be amended without the Declarant's express written consent.

ARTICLE 12. MISCELLANEOUS AND GENERAL PROVISIONS

Section 12.1 Compliance and Enforcement.

(a) Other than Declarant, every Owner and occupant of a Lot shall comply with the Governing Documents and all applicable state statutes. In addition, each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of the Governing Documents, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) Imposing reasonable monetary fines, after notice and opportunity for a hearing, which fines shall constitute a lien upon the violator's Lot;

(ii) Suspending an Owner's voting rights during any period in which the Owner shall be in default in the payment of any Assessment, including interest, fines, late fees, attorney fees and costs, levied by the Association;

(iii) Suspending an Owner's voting rights for a period not to exceed sixty (60) days or during any period of violation, whichever is greater, for the violation of any other provision of the Governing Documents other than the non-payment of Assessments;

(iv) Exercising self-help or taking action to abate any violation of the Governing Documents;

(v) Requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as a Supplemental Assessment under the terms of this Declaration;

(vi) Without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Project ;

(vii) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Supplemental Assessment. The Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action.

Section 12.2 Mediation and Right to Cure. Prior to any claim for damages being made for construction defect or construction related issues (including breach of contract), an Owner or the Association must provide the Declarant or Builder with reasonable notice of any alleged deficiencies and the Declarant or Builder shall have reasonable opportunity to cure any deficiencies. If the Association or Owner, after having provided reasonable notice and reasonable opportunity to cure, feels the matter has not been resolved and still wishes to pursue claims for damages against the Declarant or Builder, the parties shall submit the dispute to mediation in Utah prior to filing any action in accordance with Article 10 above.

Section 12.3 Owner Approval for Litigation. Because litigation can be slow, expensive, uncertain and negatively impact the property values within a community, the Association shall only enter into litigation by approval of Owners holding eighty percent (80%) of the voting rights of the Association, except for litigation to collect assessments, enforce any of the Governing Documents (including fines or curative measures) or to defend itself. This Section shall not be amended at any time, without the Declarant's express written consent.

Section 12.4 Covenants to Run. The covenants and restrictions contained in this Declaration shall run with and bind the land in perpetuity. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 12.5 Termination. This Declaration shall continue in perpetuity unless and until the Declarant files a notice of termination in the office of the Utah County Recorder at any time prior to the expiration or termination of the Period of Declarant Control, or (ii) the Members vote by not less than the greater of seventy five percent (75%) of all Members of the Association or that percentage required by law, to terminate the Declaration and dissolve the Association. In the event this Declaration is terminated pursuant to this Section, this Declaration shall be terminated by recording a notice with the Utah County Recorder and the Association shall be dissolved in accordance with Utah law.

Section 12.6 Attorney Fees. If an Owner fails to pay any Assessment or any other amount due to the Association as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs, without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Project, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner, shall be charged as an Assessment and shall constitute a lien against the Lot.

Section 12.7 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at a majority of the votes in the Association. Said approval may be obtained in any method allowed by the Governing Documents of the Association. The amendment or repeal shall be effective upon the recordation in the records of the Utah County Recorder's Office, Utah County, Utah, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association. All challenges to the validity of any amendment or repeal must be made within one (1) year after the date of recording of such amendment or repeal. Any

repeal or modification of any provision of the Governing Documents of the Association that permit or require the indemnification of directors and officers of the Association shall be prospective only, and shall not adversely affect any limitation on the personal liability of a current or former director or officer of the Association for acts or omissions prior to such repeal or modification; any such repeal or modification shall not be effective as against a current or former director or officer of the Association for acts or omissions prior to such repeal or modification without such director's or officer's written consent. Any indemnification or right of indemnification of directors and officers of the Association as provided by any of the Governing Documents shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the director's or officer's estate, heirs, personal representatives, executors and administrators.

Section 12.8 Amendment of Declaration by Declarant. The Declarant may amend this Declaration or the Plat to correct clerical, typographical or technical errors. The Declarant may also amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal national Mortgage Association.

Section 12.9 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving any rights to or for the benefit of the Declarant, or its assigns, shall not be effective unless the Declarant has given written consent to such amendment or repeal, which consent may be evidenced by the execution by the Declarant of any certificate of amendment or repeal. The foregoing requirement for consent to any such amendment or repeal shall terminate upon the expiration or termination of the Period of Declarant Control.

Section 12.10 Cooperation with Other Association or Districts. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community association(s) and/or any special district(s) to share facilities, to share the costs and/or responsibility for any operation, maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other community association(s) and/or any district(s), or to otherwise cooperate with any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community association(s) and/or any district(s) as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any district(s) to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 12.11 Registration of Mailing Address. Each Owner shall register his or her mailing address with the Association. Except as may otherwise be required by this Declaration, any notices or demands intended to be served upon an Owner shall be sent by first class mail, postage prepaid, addressed in the name of such Owner at such registered mailing address, or provided by other means as permitted or required by the Act. If an Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot.

Section 12.12 Interpretation. The provision of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Utah.

Section 12.13 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.14 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.15 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 12.16 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.17 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 12.18 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

Section 12.19 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and the Rules and Regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

Section 12.20 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the Association of the name and address of said grantee, vendee, mortgagee, lessee, or tenants.

Section 12.21 Taxes on Lots. Each Owner will pay all taxes which may be assessed against him or his Lot.

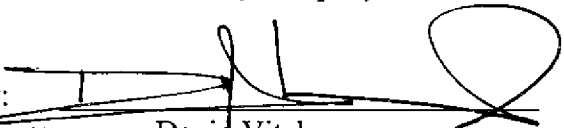
Section 12.22 Service of Process. The registered agent of the Association will be the Person named in the corporate records on file with the Utah State Department of Commerce. If the corporate status of the Association expires, the president shall be the successor agent. The name and address of the president shall be kept with the Association's records at its principal place of business.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 23rd day of June, 2020.

DECLARANT:

CENTURY LAND HOLDINGS OF UTAH, LLC,
a Utah limited liability company


By: 
Name: David Vitek
Title: Vice President

STATE OF UTAH)
)ss.
COUNTY OF UTAH)

On the 23rd day of June, 2020, personally appeared before me David Vitek, who by me being duly sworn, did say that he is a Vice President and authorized representative of Century Land Holdings of Utah, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of Century Land Holdings of Utah, LLC, a limited liability company, and executed with all necessary authority.

Witness my hand and official seal.

My commission expires: Dec 2, 2023


Notary Public

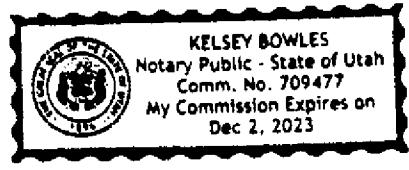


EXHIBIT A: DESCRIPTION OF PROPERTY

Lots:

- Kelshaw Lane Phase 1 Subdivision – Lot 118

Common Area:

Additional property, including the property identified on *Exhibit B*, may be annexed to this Declaration from time to time in accordance with Article XI, Section 11.4 hereof.

EXHIBIT B: ANNEXABLE AREALots:

- Kelshaw Lane Phase 1 Subdivision – Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130.
- Kelshaw Lane Phase 2 Subdivision – Lots 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246.

Common Area:

- Kelshaw Lane Phase 1 Subdivision – Parcel A
- Kelshaw Lane Phase 2 Subdivision – Parcel A, Parcel B.

BOUNDARY DESCRIPTION

A portion of the SE1/4 and SW1/4 of Section 11, Township 7 South, Range 2 East, Salt Lake Base & Meridian located in Provo, Utah, more particularly described as follows:

Beginning at a point on the Northerly line of that Real Property described in Deed Book 2740 Page 178 of the Official Records of Utah County, located N00°32'12"W along the 1/4 Section line 886.68 feet from the South 1/4 Corner of Section 11, Township 7 South, Range 2 East, Salt Lake Base & Meridian (Basis of Bearing: N38°54'49"E between the Southwest Corner and South 1/4 Corner of Section 11, T7S, R2E, SLB&M); thence S81°40'50"W along said deed 75.15 feet; thence N00°24'35"W along a fence line 317.03 feet; thence S83°19'45"W along a fence line 663.52 feet to the Easterly line of 1600 West Street; thence N00°17'18"E along said street 712.21 feet to a fence line; thence N89°37'42"E along said fence and extension thereof 524.23 feet; thence N00°00'18"W 7.00 feet; thence N89°37'42"E 522.73 feet; thence N00°14'09"E along a fence line 260.84 feet; thence S89°54'09"E 100.96 feet; thence N88°42'25"E 56.02 feet; thence S89°54'09"E 108.17 feet; thence S00°18'21"W 2.98 feet; thence S00°13'37"W along a fence line 257.05 feet; thence S00°22'18"E 56.00 feet; thence S89°37'42"W 558.65 feet; thence S00°12'46"W 894.47 feet; thence S81°41'14"W 18.64 feet to the point of beginning.

Contains: 14.64 acres +/-

Being the proposed plat of Kelshaw Lane Phase 2

EXHIBIT C: FORM OF ANNEXATION OF ADDITIONAL LAND

After recording, return to:

**ANNEXATION OF ADDITIONAL LAND TO
THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SUMMERFIELD ESTATES**

Century Land Holdings of Utah, a Utah limited liability company (“**Declarant**”) executes this Annexation of Additional Land to the Declaration of Covenants, Conditions and Restrictions for Summerfield Estates (“**Annexation of Additional Land**”), this ____ day of _____, 20____.

RECITALS

A. The Declaration of Covenants, Conditions and Restrictions for Summerfield Estates was recorded on in the records of the Utah County Recorder’s Office, Utah County, Utah on _____, 20____, at Entry Number _____(as thereafter amended and supplemented, the “**Declaration**”) (terms which are defined in the Declaration shall have the same meanings herein unless otherwise defined).

B. Century Land Holdings of Utah, LLC, a Utah limited liability company, is the Declarant under the Declaration.

C. Article 11, Section 11.4 of the Declaration reserves unto the Declarant the right, at any time prior to the expiration or termination of the Period of Declarant Control, to annex land to the Declaration by the recordation of one or more Annexations of Additional Land to the Declaration.

D. The purpose of this Annexation of Additional Land is to annex certain additional land to the Declaration and to include such land within the Property that is subject to the Declaration, which annexation is to be effective upon the recordation of this Annexation of Additional Land in the records of the Utah County Recorder’s Office, Utah County, Utah.

E. The additional land annexed to the Declaration by this Annexation of Additional Land is a part of the real property that is identified and described on *Exhibit B* of the Declaration as real property that is annexable to the Declaration.

F. The Period of Declarant Control remains in effect, and has not yet terminated or expired.

DECLARATION

NOW THEREFORE, the undersigned Declarant does hereby add to the Project and this Declaration that certain property more fully described on Exhibit A attached hereto and incorporated herein by this reference (“**Annexed Property**”), such that the property hereby annexed shall be part of the Project. The Declarant hereby further states and declares as follows:

1. Annexed Property. The Annexed Property is described as set forth on Exhibit A hereto.

Legal Description of Lot(s) to be annexed:

[INSERT LEGAL DESCRIPTION OF LOT(S) TO BE ANNEXED. IF NONE, INSERT N/A]

Legal Description of Common Area to be annexed:

[INSERT LEGAL DESCRIPTION OF COMMON AREA TO BE ANNEXED. IF NONE, INSERT N/A]

2. Annexation. The Annexed Property is annexed to the Declaration pursuant to the provisions of Article 11, Section 11.4 of the Declaration. The Annexed Property consists of Lots and/or Common Area as more particularly described above. A Plat containing the Annexed Property as more particularly identified above has been recorded in the records of the Utah County Recorder's Office, Utah County, Utah. Each Lot or tract in the Annexed Property and its identifying designation is set forth on the Plat and is listed above. The Annexed Property is part of the Annexable Area described on *Exhibit B* of the Declaration. The Declarant is the owner of the Annexed Property.

3. Effect of Annexation. The Annexed Property is annexed to and made subject to the Declaration and shall be held, transferred, sold, conveyed and occupied subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens set forth in the Declaration, as supplemented and amended from time to time, including all assessment obligations set forth in the Declaration. The Annexed Property is also subject to all of the provisions of the Articles of Incorporation and Bylaws of Summerfield Estates Owners Association, a Utah nonprofit corporation, as more particularly described in the Declaration, the Articles of Incorporation and the Bylaws.

4. Allocated Interests. Upon the annexation of the Annexed Property, and as provided in the Declaration, the Allocated Interests attributable to each Lot annexed hereby for purposes of liability for Common Expenses shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Project. Each Lot annexed hereby is allocated one (1) vote.

5. Binding Effect. This Annexation of Additional Land runs with the Annexed Property and is binding upon the successor and assigns of the signatories hereto and each successor owner of the Annexed Property.

6. Recitals. The Recitals set forth above are incorporated herein by this reference.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, 20____.

DECLARANT:

Century Land Holdings of Utah, LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

STATE OF UTAH)
) ss.
COUNTY OF _____)

On the ___ day of _____, 20 __, personally appeared before me _____, who by me being duly sworn, did say that he is a Vice President and authorized representative of Century Land Holdings of Utah, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of Century Land Holdings of Utah, LLC, a limited liability company, and executed with all necessary authority.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
ANNEXATION OF ADDITIONAL LAND TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUMMERFIELD ESTATES

LEGAL DESCRIPTION OF ANNEXED PROPERTY

[Add description here]

EXHIBIT B
ANNEXATION OF ADDITIONAL LAND TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUMMERFIELD ESTATES

LOTS

<u>Lot No.</u>	<u>Number and Street (address)</u>	Allocated Interests and Undivided Interest in the Common Area <u>Attributable to the Lot*</u>
		(1 Vote)
		100%

*The Allocated Interest, and undivided interest in the Common Area, that are attributable to each Lot are subject to change as more fully provided in the Declaration, including without limitation Article XI, Section 11.4 thereof.