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ENT 92181:2017 PG 1 of 25  
**Jeffery Smith**  
**Utah County Recorder**  
2017 Sep 20 08:35 AM FEE 126.00 BY SW  
RECORDED FOR SEB Legal  
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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE  
EVERGREEN EAST PLANNED UNIT DEVELOPMENT  
(A Utah Condominium)

**Table of Contents**

Table of Contents .....	1
1 Definitions .....	5
1.1 Articles .....	5
1.2 Association .....	5
1.3 Board .....	6
1.4 Bylaws .....	6
1.5 Common Areas .....	6
1.6 Common Expenses .....	6
1.7 Condominium Act .....	6
1.8 Declaration .....	6
1.9 Director .....	6
1.10 Eligible Mortgagee .....	6
1.11 Family .....	6
1.12 Governing Documents .....	6
1.13 Limited Common Areas .....	7
1.14 Map .....	7
1.15 Member .....	7
1.16 Mortgage .....	7
1.17 Mortgagee .....	7
1.18 Nonprofit Act .....	7
1.19 Owner .....	7
1.20 Percentage Interest .....	7
1.21 Person .....	7
1.22 Project .....	7
1.23 Resident .....	7
1.24 Unit .....	8
2 Submission .....	8
3 Improvements .....	8

3.1 Description of Improvements ..... 8

3.2 Description of Common Areas and Limited Common Areas ..... 8

3.3 Description of Units ..... 8

3.4 Contents of Exhibit “B” ..... 8

3.5 Computation of Percentage Interests ..... 8

4 Easements..... 9

4.1 Easement for Encroachment..... 9

4.2 Emergency Repairs ..... 9

4.3 Right of Ingress, Egress, and Enjoyment..... 9

4.4 Common Facilities Locates within a Unit..... 9

4.5 Association Easement ..... 9

4.6 Easement for Utility Services ..... 9

5 Maintenance ..... 9

5.1 Common Areas..... 9

5.2 Limited Common Areas .....10

5.3 Units .....10

6 Membership and Association .....10

6.1 Membership .....10

6.2 Voting Rights.....10

6.3 Status and Authority of Board .....10

6.4 Composition and Selection of Board..... 11

7 Use Restrictions..... 11

7.1 Use of Units..... 11

7.2 No Obstruction of Common Areas..... 11

7.3 Cancellation of Insurance/Nuisance..... 11

7.4 Rules and Regulations.....12

7.5 Signs .....12

7.6 Pets .....12

7.7 Storage and Parking of Vehicles.....12

7.8 Aerials, Antennas, and Satellite Dishes .....13

7.9 Timeshares .....13

7.10 Open Fires and Grills .....13

7.11 Smoking.....13

7.12 Firearms and Projectile Weapons .....13

7.13 Limitations on Renting or Leasing .....13

8 Enforcement .....14

8.1 Compliance.....14

8.2 Remedies .....14

8.3 Action by Owner.....15

8.4 Hearings .....15

9 Assessments.....15

9.1 Covenant for Assessment .....15

9.2 Annual Budget.....15

9.3 Reserve Account.....16

9.4 Regular Assessment .....16

9.5 Special Assessment .....16

9.6 Emergency Assessment.....16

9.7 Individual Assessment .....16

9.8 Apportionment of Assessments .....17

9.9 Nonpayment of Assessment.....17

9.10 Application of Partial Payments .....17

9.11 Acceleration.....17

9.12 Suspension of Voting Rights .....17

9.13 Termination of Utility Service and Access to Recreational Facilities .....17

9.14 Collection of Rent from Tenant.....17

9.15 Lien for Assessment .....17

9.16 Enforcement of Lien.....17

9.17 Subordination of Lien .....17

10 Insurance .....18

10.1 Types of Insurance Maintained by the Association .....18

10.2 Insurance Company .....18

10.3 Premium as Common Expense .....18

10.4 Insurance by Owner .....18

10.5 Payment of Deductible .....18

10.6 Right to Adjust Claims .....18

11 Damage, Destruction, Condemnation.....18

11.1 Damage or Destruction .....18

11.2 Damage caused by Owner .....19

11.3 Condemnation.....19

12 Mortgagees .....19

12.1 Application .....19

12.2 Eligible Mortgagees.....19

12.3 Notices of Action .....19

12.4 Restoration or Repair of Project .....20

12.5 Termination of Declaration after Substantial Destruction..... 20

13 Miscellaneous ..... 20

13.1 Amendment of Declaration..... 20

13.2 Termination of Declaration.....21

13.3 Votes without a Meeting .....21

13.4 Service of Process.....21

13.5 Taxes on Units.....21

13.6 Covenants Run with the Land.....21

13.7 Severability.....21

13.8 Waiver ..... 22

13.9 Gender..... 22

13.10 Headings..... 22

13.11 Conflicts..... 22

13.12 Effective Date..... 22

Exhibit A ..... 26

Legal Description..... 26

Exhibit B ..... 27

Undivided Ownership Interest ..... 27

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions is made on the date executed below by the Management Committee after being approved by at least 2/3rds of the undivided ownership interest in the Common Areas and Facilities.

**RECITALS**

A. Evergreen East is a planned unit development consisting of five phases located in Orem City, Utah County, Utah;

B. Evergreen East is governed by a declaration of condominium recorded as Entry No. 37628:1994, in the Utah County Recorder’s Office and amended as stated herein. The original declaration and its amendments are referred to herein as the “Original Declaration;”;

C. The Original Declaration includes the following amendments recorded in the Utah County Recorder’s Office:

- 1. Entry No. 8841:2006 on January 24, 2006;
- 2. Entry No. 164700:2006 on December 6, 2006;
- 3. Entry No. 72231:2010 on August 27, 2010.

D. The Original Declaration subjects the project to the Utah Condominium Ownership Act, as it may be amended from time to time.

E. The Evergreen East Homeowners Association may be incorporated as a Utah nonprofit corporation. If incorporated, it shall be entitled to the rights, obligations, and

benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time.

F. This Declaration replaces the Original Declaration and all its amendments in their entirety;

G. This Declaration shall be binding against all Units within the Project as described in Exhibit "A;"

H. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration;

I. Under the Original Declaration, declarant rights have expired;

J. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit "A" and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

K. Under the Original Declaration Article II, Section 23, the Management Committee by signing below certifies that 2/3 of the undivided ownership interest in the common areas and facilities have approved this Declaration;

L. Under the Original Declaration Article III, Section 27(l)(2) the rights of the any person named as a mortgagee or beneficiary under or holder of a deed of trust in an instrument recorded prior to this Declaration shall not be effected by any change of such rights made in this Declaration;

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:

## 1 DEFINITIONS

Capitalized terms used in the Governing Documents (including recitals) have the following meanings:

### 1.1 Articles

Articles mean the Articles of Incorporation for the Evergreen East Homeowners Association, Inc.

### 1.2 Association

Association means Evergreen East Homeowners Association. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval. All Owners are Members of the Association. Unless specifically reserved for a vote of the Members, all acts taken by the Association shall be taken through its Board of Directors.

**1.3 Board**

Board means the Board of Directors. The Board governs the property, business, and affairs of the Association. To keep the terms used in the Declaration and Bylaws consistent with the Nonprofit Act, the Management Committee will now be known as the Board.

**1.4 Bylaws**

Bylaws mean the bylaws of the Association, as amended or restated from time to time.

**1.5 Common Areas**

Common Areas mean:

1.5.1 The land included within the Project and outside the platted boundaries of the Units;

1.5.2 Parking spaces, driveways, walkways, sidewalks, landscape and planting areas, fences, and street lights;

1.5.3 Such community and commercial facilities as may be provided for in the Declaration;

1.5.4 All other parts of the Project not specifically included in the Units; and

1.5.5 All other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

**1.6 Common Expenses**

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas; expenses agreed upon as common expenses by a majority of the Owners; expenses authorized by the Governing Documents or the Condominium Act as common expenses; any other expenses necessary for the common benefit of the Owners.

**1.7 Condominium Act**

Condominium Act shall mean Utah Code §§ 57-8-1 *et seq.*, as amended or replaced from time to time.

**1.8 Declaration**

Declaration means this document, as amended, supplemented, or restated from time to time.

**1.9 Director**

Director means a member of the Board.

**1.10 Eligible Mortgagee**

Eligible Mortgagee means a Mortgagee that has made a written request for notice.

**1.11 Family**

Family shall mean Family as defined by Orem City municipal ordinance

**1.12 Governing Documents**

Governing Documents shall mean the Declaration, Bylaws, Articles of Incorporation, Map, and rules and regulations.

**1.13 Limited Common Areas**

Limited Common Areas mean Common Areas shown on the Map or designated in the Declaration as reserved for use by a certain Unit or Units to the exclusion of the other Units. Limited Common Areas include, without limitation:

1.13.1 Driveways;

1.13.2 Patios.

**1.14 Map**

Map means the plat maps on file with the Utah County Recorder for Evergreen East Phases 1 through 5.

**1.15 Member**

Member means an Owner.

**1.16 Mortgage**

Mortgage means any first position mortgage, trust deed, or other security instrument recorded to secure the purchase of a Unit.

**1.17 Mortgagee**

Mortgagee means a holder, insurer, or guarantor of a first Mortgage on a Unit.

**1.18 Nonprofit Act**

Nonprofit Act means Utah Code §§ 16-6a-101 *et seq.*, as amended or replaced from time to time.

**1.19 Owner**

Owner means the owner of the fee in a Unit together with an undivided interest in the Common Areas. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

**1.20 Percentage Interest**

Percentage Interest means a Unit's undivided percentage interest ownership in the Common Area. The Percentage Interest is assigned in Exhibit "B."

**1.21 Person**

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

**1.22 Project**

Project means Evergreen East as shown on the Map. The project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

**1.23 Resident**

Resident means any Person living or staying at the Project. Residents include without limitation: Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

**1.24 Unit**

Unit means the land and improvements on the land identified as Private Space on the Map and any public utility lines or any other type of installation serving a single Unit, whether or not located within the Unit boundaries as defined on the Map.

**2 SUBMISSION**

The Project and the Governing Documents are submitted to provisions of the Condominium Act.

**3 IMPROVEMENTS****3.1 Description of Improvements**

The improvements included in the Project consists of parking lots, landscaping, and Units.

The buildings are constructed with the following materials: wood frames with exterior walls of brick; interiors are wooden studs and drywall; the floors are wood; roofs are asphalt shingle.

**3.2 Description of Common Areas and Limited Common Areas**

The Common Areas and Limited Common Areas are described and identified in the Declaration and shown on the Map. Neither the undivided percentage ownership interest in the Common Areas nor the exclusive use of Limited Common Areas shall be separated from the Unit. Even if not specifically mentioned in the deed, the undivided percentage ownership interest in the Common Areas and exclusive use of Limited Common areas will automatically accompany the transfer of a Unit.

**3.3 Description of Units**

The Map shows the Units, their location, and dimensions from which their area may be determined. Units may be independently owned, encumbered, and conveyed.

The legal description in a deed to a Unit shall substantially be stated in the following form:

“Unit \_ shown in the record of survey map for Evergreen East a Planned Unit Development appearing in the records of the Utah County Recorder, as Entry No. \_\_\_\_\_, Map No. \_\_\_\_ and as identified and described in the Declaration of Evergreen East recorded in the Utah County Recorder’s Office as Entry No. \_\_, as amended and supplemented, together with an undivided interest in and to the Common Areas appertaining to said Unit as established in said Declaration and map. This conveyance is subject to the provisions of the Declaration, including any amendments thereto.”

**3.4 Contents of Exhibit “B”**

Exhibit “B” shows the following information about each Unit: (a) the Unit designation; and (b) the percentage interest of undivided ownership interest in the Common Areas appurtenant to a Unit. To avoid a perpetual series of digits and to obtain a total of 100% undivided ownership interest, the last digit has been rounded up or down to a value that is most nearly correct.

**3.5 Computation of Percentage Interests**

The proportionate share of the Unit Owner’s interest in the Common Areas of the Project has been calculated to give all Units an equal percentage ownership.

After partial destruction or condemnation of the Project, the proportionate share of the Owners



interest in the Common Areas shall be based adjusted to reflect an equal percentage ownership interest in the Common Areas for the remaining Units.

## **4 EASEMENTS**

### **4.1 Easement for Encroachment**

If any part of the Common Areas or Limited Common Areas encroaches on a Unit, an easement for the encroachment and for maintenance shall exist. If any part of a Unit encroaches upon the Common Areas or Limited Common Areas, an easement for the encroachment and for maintenance shall exist. Such encroachments will not be considered to be encumbrances to the Common Areas, Limited Common Areas, or Units. Encroachment causes include, without limitation, errors in the original construction; errors in the Map; settling, rising, or shifting of the earth; or changes in position caused by repair or reconstruction of the Project.

### **4.2 Emergency Repairs**

The Board has the right to enter a Unit at any time to make emergency repairs. An emergency repair is one that is necessary to prevent an imminent threat of damage to the Common Areas or to another Unit.

### **4.3 Right of Ingress, Egress, and Enjoyment**

Each Resident, guest, or invitee has the right to ingress and egress across the Common Areas and Limited Common Areas necessary for access to his Unit. Subject to the rules and regulations, each Resident has a right to enjoyment of the Common Areas. The rights described in this Section are appurtenant to and pass with title to the Unit.

### **4.4 Common Facilities Locates within a Unit**

All Owners have an easement to use all pipes, wires, ducts, cables, conduits, public utility lines, structural supports, and other Common Areas located within a Unit, if any, but serving their Unit. Each Unit is subject to an easement in favor of the other Units with pipes, wires, ducts, cables, conduits, public utility lines, structural supports, and other Common Areas located within a Unit, if any, but serving other Units.

### **4.5 Association Easement**

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

### **4.6 Easement for Utility Services**

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

## **5 MAINTENANCE**

### **5.1 Common Areas**

The Common Areas shall be maintained, repaired, and replaced by the Association. If any maintenance, repair or replacement of the Common Areas is required because of damage caused by a Resident, Owner's or Resident's guest or invitee, the Owner shall be responsible for the full cost of the maintenance, repair, or replacement. Such cost shall be assessable to the Owner as

an Individual Assessment.

### **5.2 Limited Common Areas**

Limited Common Area shall be repaired and replaced by the Association, however, the Owner shall keep all Limited Common Areas in a clean, well maintained, sanitary condition. If any maintenance, repair or replacement of the Limited Common Areas is required because of damage caused by a Resident, Owner's or Resident's guest or invitee, the Owner shall be responsible for the full cost of the maintenance, repair, or replacement. Such cost shall be assessable to the Owner as an Individual Assessment.

### **5.3 Units**

The Association shall also maintain, repair, and replace the exterior finished surfaces of the walls, soffit, fascia, and roofs of the Units. The Association shall also repair the water line between the main meter and the outside surface of the exterior Unit wall.

Unless otherwise assigned to the Association, all maintenance, repair, and replacement of the Unit and improvements shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in good repair and in accordance with the Governing Documents. Maintenance responsibility shall include, by way of illustration only: all interior and structural components; exterior doors, door frames, door casings, door jambs, door hardware, thresholds, and any weatherproofing required for the exterior doors; garage doors, garage door casing and molding, garage door hardware and openers; windows, window frames, window casing, window hardware, any weatherproofing required for the windows; blinds and curtains; exterior light fixtures, exterior electrical outlets, light bulbs; HVAC installations; plumbing installations; electrical installations; and any other component of the Unit not expressly assumed by the Association.

Prior to maintaining, repairing, or replacing exterior doors, windows, or exterior casings an Owner must submit their plans showing color, style, and shapes for approval by the Association. An Owner may not make any alteration, addition or change to the structure, exterior or roof of the Unit.

## **6 MEMBERSHIP AND ASSOCIATION**

### **6.1 Membership**

Every Owner is a Member of the Association. Membership in the Association is mandatory, is appurtenant to the Unit, and shall not be separated from the Unit.

### **6.2 Voting Rights**

The weight of an Owner's vote shall be determined by the Owner's Unit's percentage ownership interest in the Common Areas. Voting is governed by the Bylaws.

### **6.3 Status and Authority of Board**

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. Any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

## **6.4 Composition and Selection of Board**

The Bylaws govern how the Board is established and selected.

# **7 USE RESTRICTIONS**

## **7.1 Use of Units**

The use of each Unit is restricted to residential, single-family occupancy. Occupancy limits may be established by the Board via rule based upon the Unit's size and facilities, and the fair use of the Common Areas. Home businesses are allowed as long as they do not increase traffic flow, cause a nuisance, or have an exterior indication of a business. Home businesses must be licensed and comply with zoning code.

## **7.2 No Obstruction of Common Areas**

Owners and Residents shall not obstruct Common Area. Owners and Residents shall not use Common Areas for their private use, unless approved by the Board. Owners and Residents shall not store anything in the Common Areas, except for parking in designated parking areas. Owners and Residents shall not alter Common Areas. Owners and Residents may not damage or commit waste to the Common Areas.

## **7.3 Cancellation of Insurance/Nuisance**

Owners and Residents shall not do or keep anything in a Unit, which would result in the cancellation of insurance or increase the premium. Owners and Residents shall not do or keep anything in a Unit which would violate a law. No noxious, destructive, or offensive activity shall be done in a Unit. No Resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes behavior which annoys, disturbs or interferes with other Residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

7.3.1 The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Unit, Limited Common Area, or the Common Areas;

7.3.2 The storage of any item, property or thing that will cause any Unit, Limited Common Area, or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses.

7.3.3 The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board or the Association;

7.3.4 The storage of any substance, thing or material upon any Unit, Limited Common Area, 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;

7.3.5 The creation or maintenance of any noxious or offensive condition or activity in or about any Unit, Limited Common Area, or the Common Areas;

7.3.6 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;

7.3.7 Flying of drones or unmanned aircraft by Residents in or above any Unit, Limited Common Area, or Common Area;

7.3.8 Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal,

noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Project by other residents, their guests or invites;

7.3.9 Excessive noise in, on or about any Unit, Limited Common Area, or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.;

7.3.10 Excessive traffic in, on or about any Unit, Limited Common Area, or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.;

7.3.11 Storing trash receptacles outside of the garage or keeping them curbside longer than 24 hours from trash pick-up;

7.3.12 Allowing a pet to be unleashed while outside of the Unit;

7.3.13 Continuous barking, meowing, or other animal noises;

7.3.14 Allowing a pet to urinate or defecate in the Limited Common Area, Common Areas, or failing to clean up immediately any feces deposited by a pet in the Limited Common Area or Common Area.

#### **7.4 Rules and Regulations**

Owners and Residents shall obey the rules created by the Board.

#### **7.5 Signs**

Owners and Residents shall not post signs in the Property, whether in a window or otherwise, unless prior written authorization has been approved by the Board.

#### **7.6 Pets**

No animals, livestock, birds, insects, or poultry of any kind shall be raised, bred, or kept in any Unit, Common Area or Limited Common Area, except for domesticated dogs, cats, birds, and fish, and only in accordance with pet rules adopted by the Board. The Board has the authority to establish a pet fee as part of the pet rules.

If an Owner or Resident violates the pet rules, the Board has authority, in addition to all other enforcement remedies, to require the Owner to remove the pet from the Project.

#### **7.7 Storage and Parking of Vehicles**

The driving, parking, standing, and storing of motor vehicles in, on or about the Project shall be subject to the following:

7.7.1 The parking rules and regulations adopted by the Board from time to time.

7.7.2 No recreational, commercial or oversized vehicles shall be allowed within the Project except for temporary loading and unloading.

7.7.3 No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any portion of the Common Area or Limited Common Area or to create an obstacle.

7.7.4 Except for emergency repairs to enable movement to a repair facility, Owners and Residents shall not repair or restore vehicles in the Common Area or Limited Common Area.

7.7.5 Vehicles parked in unauthorized areas, or in violation of parking rules, may, at the owner's expense, be towed away. The Board shall be required to follow all laws regarding towing enforcement prior to towing a vehicle.

7.7.6 All parking spaces shall be used for the purpose of parking operable and licensed vehicles. Parking spaces and driveways shall not be used for storage.

**7.8 Aerials, Antennas, and Satellite Dishes**

Aerials, antennas, and satellite dishes larger than one meter in diameter are prohibited. Aerials, antennas, and satellite dishes may not be installed on Common Areas or Limited Common Areas without the prior written consent of the Board. One antenna or satellite dish smaller than one meter in diameter may be installed within the Unit or other areas designated by the rules and regulations. If an antenna or satellite dish is allowed to be installed in Common Area or Limited Common Area, it shall be removed as soon as it is no longer used.

**7.9 Timeshares**

Timeshares and time-sharing of Units is prohibited. Under no circumstances shall any unit be owned or used as a “time period unit” as defined by Utah Code § 57-8-3(26), as amended from time to time.

**7.10 Open Fires and Grills**

Fireworks, fire pits, and open fires are prohibited on the Common Areas and Limited Common Areas. No charcoal or gas grills are permitted inside a Unit. Unless expressly stated in a rule established by the Board, no electric, charcoal, gas, or similar grills are permitted on porches or against any exterior wall of a building, or in any other location that poses a fire-hazard to the building.

**7.11 Smoking**

Smoking is only allowed in areas of the Project specifically designated by the rules and regulations. Smoking in the Common Areas, Limited Common Areas, or Units which are not included as designated areas is prohibited. Owners shall inform their tenants and guests about the smoking policy.

**7.12 Firearms and Projectile Weapons**

The use of firearms, airsoft guns, BB guns, pellet guns, archery equipment, or any other projectile weapon, however powered, is prohibited.

**7.13 Limitations on Renting or Leasing**

No Unit may be rented or leased, except as provided in subparagraphs 7.13.1 and 7.13.2 of this Section. The rental and leasing of Units shall be restricted as follows:

7.13.1 Any Owner who presently has a rental in the Project prior to this Declaration being recorded with the Utah County Recorder may continue renting their Unit without being subject to the prohibition on renting and leasing until such time as:

7.13.1.1 The Owner re-occupies the Unit;

7.13.1.2 An officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an

ownership interest in the Unit, re-occupies the Unit; or

7.13.1.3 Upon the conveyance, sale, or other transfer of the Unit by deed.

7.13.2 The Board shall allow the following exemptions to the prohibition on renting in such cases as:

7.13.2.1 An Owner is in the military for the period of the Owner's deployment;

7.13.2.2 A Unit is occupied by an Owner's parent, child, or sibling;

7.13.2.3 An Owner's employer has relocated the Owner for no less than two (2) years; or

7.13.2.4 A Unit is owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

7.13.2.4.1 A current resident of the Unit; or

7.13.2.4.2 The parent, child, or sibling of the current resident of the Unit.

7.13.3 Notwithstanding the exemptions listed above, it is the intent and desire of the Association to consist solely of Owner-occupied Units. Consequently, all decisions of the Board with respect to the implementation of Section 7.13 shall be made, to the extent reasonable, to fulfill this intent and desire.

7.13.4 In the event that a rental is permitted, the Owner of the Unit that is being rented must pay a refundable security deposit, in an amount to be determined by the Board, to cover any damages to the Common Areas of the building that the Association is responsible to repair.

7.13.5 The Board will create rules to establish procedures regarding Section 7.13 to:

7.13.5.1 Determine and track the number of rentals and Units in the Project subject to the provisions described in Sections 7.13.1 and 7.13.2; and

7.13.5.2 Ensure consistent administration of these rental-lease limitations.

## 8 ENFORCEMENT

### 8.1 Compliance

Each Owner and Resident shall comply with the Governing Documents. Failure to comply will be grounds for the remedies provided in this Declaration.

### 8.2 Remedies

The remedies for violations shall be levied against the Owner in all cases and the Residents in cases involving injunctive relief. Remedies shall not be mutually exclusive and can be exercised concurrently. The Association shall have rights to take the following actions to correct violations of the Governing Documents:

8.2.1 After 15-days' notice, to enter a Unit and abate and remove any violation of the Governing Documents. Any expense incurred in abating the violation will be an individual assessment against the Owner. If the Association exercises this right of entry, they will not be guilty of any manner of trespass or nuisance;

8.2.2 To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board. In the absence of a resolution to the contrary, fines shall be \$100.00 for non-continuing violations and \$100.00 per day up to \$500.00 per month for continuing violations. Unless otherwise defined in a resolution, a continuing violation is one that is not cured 48 hours after the Association gives Owner notice of the violation. All other violations shall be non-continuing;

8.2.3 After notice and hearing, to terminate access to and use of recreational facilities, if any;

8.2.4 To suspend the voting right of the Owner; and

8.2.5 To bring suit for damages, to enjoin, abate, or remedy the violation on behalf of the Association and the Owners.

### **8.3 Action by Owner**

An Owner may bring an action against another Owner or the Association for damages, to enjoin, abate, or remedy a violation being committed by another Owner or the Association.

### **8.4 Hearings**

The board shall adopt procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's procedures.

## **9 ASSESSMENTS**

### **9.1 Covenant for Assessment**

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, emergency assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Unit, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney's fees, shall pass to the successor in title. If title passes through foreclosure sale, the successor in title shall only be liable for six months' unpaid assessments, late fees, interest, and collection costs, including attorney's fees. A successor in title is entitled to a statement from the Association setting forth the amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Unit to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

### **9.2 Annual Budget**

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; and the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual

budget, the last adopted budget shall continue in effect.

### **9.3 Reserve Account**

The Association shall establish a reserve account to fund long-term maintenance and replacement items. The Board shall use prudent efforts to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

### **9.4 Regular Assessment**

The Board shall fix the amount of the regular assessment for each Unit by multiplying the total budget by the Unit's percentage ownership interest in the Common Areas. The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to fix a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect.

### **9.5 Special Assessment**

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, maintenance, repair, or replacement of the Common Areas. The Association may levy a special assessment up to 25% of the annual budget without approval from the Owners. If a special assessment exceeds 25% of the annual budget, it must be approved by a majority of a quorum of Owners.

### **9.6 Emergency Assessment**

If the regular assessments are inadequate to pay the Common Expenses, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget. The Association may levy an emergency assessment to fund the supplemental budget. The Association may levy an emergency assessment up to 50% of the original annual budget without approval from the Owners. If an emergency assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

### **9.7 Individual Assessment**

Any expenses attributable to less than all the Units may be assessed exclusively against the affected Units. Individual assessments include, without limitation:

9.7.1 Assessments levied against a Unit to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

9.7.2 Fines, late fees, interest, collection costs (including attorney's fees);

9.7.3 Services provided to a Unit due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Units and Common Areas;

9.7.4 Reinvestment or transfer fees in an amount equal to two times the monthly assessment amount, which amount is due at the time a Unit is sold; and

9.7.5 Any charge described as an individual assessment by the Governing Documents;



**9.8 Apportionment of Assessments**

Regular, special, and emergency assessments will be apportioned among the Units based on their percentage ownership interest in the Common Areas. Individual assessments shall be apportioned exclusively to the Units benefitted or affected.

**9.9 Nonpayment of Assessment**

Assessments not paid within 30 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee in an amount to be determined by the Board. Late fees may only be charged once for a missed payment.

**9.10 Application of Partial Payments**

Partial payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

**9.11 Acceleration**

If an Owner fails to pay their assessments for 61 days or more, the Board may elect to accelerate the remainder of the Assessments due that year.

**9.12 Suspension of Voting Rights**

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

**9.13 Termination of Utility Service and Access to Recreational Facilities**

If an Owner fails to pay their Assessments, the Association may terminate utility services paid in common (including, but not limited to, cable television or internet services) and access to recreational facilities, if any. The Board shall establish procedures for terminating utilities and access to recreational facilities, which shall comply with the Condominium Act.

**9.14 Collection of Rent from Tenant**

If an Owner rents their Unit and fails to pay their Assessment, the Association may demand the tenants to pay the Association any rent owed to the Owner. Payment of rent to the Association shall not be a violation of the lease by the tenant. The Board shall establish procedures for collecting rents from tenants, which shall comply with the Condominium Act.

**9.15 Lien for Assessment**

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Unit against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

**9.16 Enforcement of Lien**

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

**9.17 Subordination of Lien**

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Unit. The sale of a Unit pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay 6 months of assessments, late fees, and penalties.

## **10 INSURANCE**

### **10.1 Types of Insurance Maintained by the Association**

10.1.1 Property and liability insurance for the Project as required by Condominium Act;

10.1.2 Directors and officers for at least \$1,000,000.00; and

10.1.3 Fidelity bond or dishonest acts insurance for at least the value of the reserves and operating capital of the Association.

The Board may adopt insurance rules and policies to maintain the insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

### **10.2 Insurance Company**

The Association shall use an insurance company knowledgeable with condominium insurance, which is qualified to issue insurance policies in Utah.

### **10.3 Premium as Common Expense**

The premiums for the Association's insurance policies shall be a Common Expense.

### **10.4 Insurance by Owner**

Owners shall obtain insurance for personal property, contents, and personal liability. Owners shall also obtain loss assessment and dwelling coverage in the amount of the Association's deductible.

### **10.5 Payment of Deductible**

The deductible on a claim made against an Association policy shall be allocated amongst the parties to the loss as described in Condominium Act, as amended or replaced from time to time.

### **10.6 Right to Adjust Claims**

The Association has the right and authority to adjust claims.

## **11 DAMAGE, DESTRUCTION, CONDEMNATION**

### **11.1 Damage or Destruction**

If part or all of the improvements in the Project are damaged or destroyed, the following procedures apply:

11.1.1 If insurance proceeds are sufficient to repair or reconstruct the improvements, the improvements shall be repaired or reconstructed as quickly as possible;

11.1.2 If insurance proceeds are insufficient to repair or reconstruct the improvements and less than 75% of the Project's improvements are destroyed or damaged, repair or reconstruction shall be carried out. If necessary, the Board may levy an Individual Assessment against the affected Owners.

11.1.3 If insurance proceeds are insufficient to repair or reconstruct the improvements and more than 75% of the Project's improvements are destroyed or damaged, the Association

must conduct a vote of the Owners within 100 days. If 75% of the Owners approve the repair or reconstruction of the project, it shall be carried out. If necessary and in compliance with the Declaration, the Board may levy a Special Assessment to fund the repair and reconstruction. If fewer than 75% of the Owners approve the repair or reconstruction, the Board shall record, with the county recorder, a notice setting such facts. Upon recording of the notice the provisions of Condominium Act § 31 "Disposition of Property Where Insurance Proceeds are Insufficient for Reconstruction" shall apply.

Any required repair or reconstruction shall be accomplished at the direction of the Board. Determinations about the extent of damage or destruction shall be made by three qualified appraisers. The Board will select the appraisers. The decision of any two appraisers shall be conclusive.

### **11.2 Damage caused by Owner**

Each Owner is liable for any damage they or their guests cause to the Common Areas or Limited Common Areas. The Association shall repair the damage to substantially the same condition as it existed prior to the damage. The Owner shall reimburse the Association for the cost of repair. The cost of repair shall be collected as an Individual Assessment.

### **11.3 Condemnation**

The Board shall represent all Owners and the Association in any condemnation proceeding for Common Areas or Limited Common Areas. Any proceeds from a condemnation proceeding for Common Areas and Limited Common Areas shall be payable to the Association. The Association will use any condemnation proceeds for the benefit of the Owners and their Mortgagees.

## **12 MORTGAGEES**

### **12.1 Application**

The protections and requirements under this Article shall only apply to Mortgagees obtaining an interest in a Unit after this Declaration is recorded. Mortgagees with an interest in a Unit prior to the recordation of this Declaration shall be bound by the Mortgagee protections in the Original Declaration.

### **12.2 Eligible Mortgagees**

A Mortgagee that fails to provide written request for notice to the Association shall not be an Eligible Mortgagee. Only Eligible Mortgagees are entitled to notice or any other rights extended to Mortgagees in the Governing documents.

### **12.3 Notices of Action**

Upon written request, an Eligible Mortgagee will be given timely notice of the following:

12.3.1 Any proposed amendment to the Governing Documents affecting:

- 12.3.1.1 The boundaries of a Unit or easement rights of an Owner;
- 12.3.1.2 A Unit's undivided ownership interest in the Common Areas; or
- 12.3.1.3 The calculation of assessments or votes;

12.3.2 Any proposed termination of the Project or Declaration;

12.3.3 Any condemnation or casualty loss which materially affects the Project or a Unit on which there is a Mortgage;

12.3.4 An Owner subject to a Mortgage who is 60 days past due in payment of assessments;

12.3.5 A lapse, cancellation, or material modification of any insurance policy required under this Declaration.

**12.4 Restoration or Repair of Project**

If the Project is partially damaged by an insurable loss, it shall be restored to the original design of the Project unless 51% of the Eligible Mortgagees approve a change.

**12.5 Termination of Declaration after Substantial Destruction**

51% of Eligible Mortgagees must approve any Owner vote to terminate the Project after substantial destruction or condemnation.

**13 MISCELLANEOUS**

**13.1 Amendment of Declaration**

Owners representing 67% or more of the undivided ownership interests in the common areas must approve any amendment to the Declaration. However, the Board may amend without Owner approval, to correct misspellings, grammar, or to comply with changes in the loan underwriting guidelines, if failure to comply would disqualify the Project from financing eligibility. 51% of Eligible Mortgagees must approve any amendment affecting the following provisions:

13.1.1 Calculation of votes based on undivided ownership interest in the Common Areas;

13.1.2 Calculation of assessments based on undivided ownership interest in the Common Areas or priority of liens;

13.1.3 Reserves for maintenance, repair, and replacement of Common Areas;

13.1.4 Insurance or fidelity bonds;

13.1.5 Rights to use the Common Areas;

13.1.6 Maintenance responsibilities;

13.1.7 Expansion or contraction of the Project;

13.1.8 Convertibility of Units to Common Area or vice versa;

13.1.9 The undivided ownership interests in the Common Areas and Limited Common Areas;

13.1.10 Imposition of a right of first refusal or similar restriction on the right of an Owner to sell or transfer a Unit;

13.1.11 If professional management is required by a governmental institution or Mortgagee, the establishment of self management;

13.1.12 Any provision expressly benefitting a Mortgagee.

**13.2 Termination of Declaration**

Owners representing 75% or more of the undivided ownership interests in the Common Area must approve a termination of the Declaration. If terminating for any reason other than destruction or condemnation, 75% or more of Eligible Mortgagees must approve termination of the Declaration.

**13.3 Votes without a Meeting**

The Association may collect votes without a meeting as outlined in the Bylaws.

**13.4 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.

**13.5 Taxes on Units**

Each Unit and its undivided percentage interest in the Common Areas is subject to separate taxation of each taxing authority. Consequently, no taxes will be assessed against the Project except for Association personal property. Each Owner will pay all taxes which may be assessed against him or his Unit.

**13.6 Covenants Run with the Land**

The Declaration contains covenants which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Association, all parties who hereafter acquire any interest in or occupy a Unit or any part of the Project, their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. Each Owner or Resident shall comply with the Governing Documents. All interests in the Units shall be subject to the Governing Documents. Failure to comply shall be grounds for an action for damages or injunctive relief by the Association or an Owner. By acquiring any interest in a Unit, each Owner or Resident agrees to be bound by the Governing Documents.

**13.7 Severability**

If any provision of the Declaration is determined to be invalid or unenforceable, it shall not affect the remaining provisions of the Declaration.

**13.8 Waiver**

No provision of the Declaration shall be waived or abrogated by reason of a failure to enforce it.

**13.9 Gender**

The use of one gender shall be deemed to refer to all genders. The use of the singular shall be deemed to refer to the plural and vice versa.

**13.10 Headings**

The headings are for reference only and not to describe, interpret, limit, extend or affect the content of the Declaration.

**13.11 Conflicts**

If the Declaration conflicts with the Condominium Act, the Condominium Act shall control. If the Declaration conflicts with the Map, the Map shall control. If the Declaration conflicts with the Bylaws, Articles, or rules, the Declaration shall control.

**13.12 Effective Date**

The Declaration and any amendments take effect upon recording in the Utah County Recorder's Office.

IN WITNESS WHEREOF, the Board (Management Committee) has caused this Declaration to be executed in certification that the proper number of votes were obtained.

DATED: 08/14/17.

*Jeffery W. Hall* ID#  
By: JEFFERY W. HALL

*Gail L. Christensen* ID#  
By: GAIL L. CHRISTENSEN

*John E. Miller* ID#  
By: JOHN E. MILLER

*David W. Walton* ID#  
By: DAVID W. WALTON

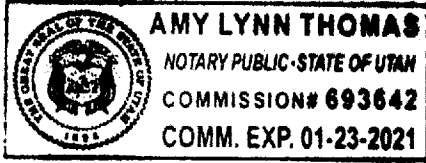
*Larry D. MacFarlane* ID#  
By: LARRY D. MACFARLANE

By: \_\_\_\_\_

*Susanne Nelson* ID#  
By: SUSANNE NELSON

STATE OF UTAH )  
 )  
 ) :SS.  
County of UTAH )

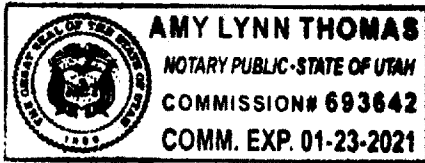
On this 14 day of August, 2017, personally appeared before me Jeffery Hall who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 2/3 of the undivided ownership interests in the Common Areas approved this Declaration.



Amy Thomas  
NOTARY PUBLIC

STATE OF UTAH )  
County of UTAH ) :SS.

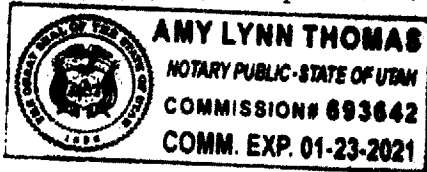
On this 14 day of August, 2017, personally appeared before me John Miller who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 2/3 of the undivided ownership interests in the Common Areas approved this Declaration.



Amy Thomas  
NOTARY PUBLIC

STATE OF UTAH )  
County of UTAH ) :SS.

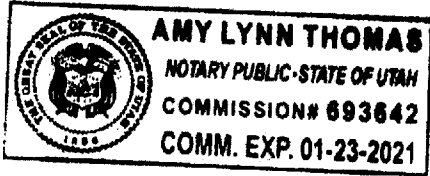
On this 10 day of August, 2017, personally appeared before me Larry D. Macfarlane who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 2/3 of the undivided ownership interests in the Common Areas approved this Declaration.



Amy Thomas  
NOTARY PUBLIC

STATE OF UTAH )  
County of Utah ) :SS.

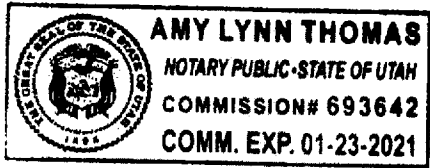
On this 14 day of August, 2017, personally appeared before me Gail Christensen who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 2/3 of the undivided ownership interests in the Common Areas approved this Declaration.



Amy Thomas  
NOTARY PUBLIC

STATE OF UTAH )  
 ) :SS.  
County of UTAH )

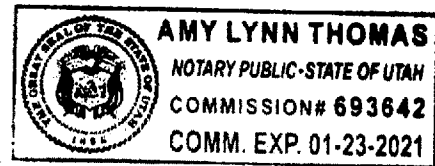
On this 14 day of August, 2017, personally appeared before me Susanne Nelson who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 2/3 of the undivided ownership interests in the Common Areas approved this Declaration.



Amy Thomas  
NOTARY PUBLIC

STATE OF UTAH )  
 ) :SS.  
County of Utah )

On this 14 day of August, 2017, personally appeared before me David Walton who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 2/3 of the undivided ownership interests in the Common Areas approved this Declaration.



Amy Thomas  
NOTARY PUBLIC

STATE OF UTAH )  
 ) :SS.  
County of \_\_\_\_\_ )



**EXHIBIT A  
LEGAL DESCRIPTION**

LOTS 1 THROUGH 14 EVERGREEN EAST PHASE 1 P.U.D. SUBDIVISION AS SHOWN ON THE PLAT MAP RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcels Nos.: 38:175:0001 and all other parcels in Evergreen East Phase 1, P.U.D. Subdivision.

LOTS 1 THROUGH 15 EVERGREEN EAST PHASE 2 P.U.D. SUBDIVISION AS SHOWN ON THE PLAT MAP RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcels Nos: 38:200:0001 and all other parcels in Evergreen East Phase 2 P.U.D. Subdivision.

LOTS 1 THROUGH 15 EVERGREEN EAST PHASE 3 P.U.D. SUBDIVISION AS SHOWN ON THE PLAT MAP RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcels Nos: 38:225:0001 and all other parcels in Evergreen East Phase 3 P.U.D. Subdivision.

LOTS 29 THROUGH 42 EVERGREEN EAST PHASE 4 P.U.D. SUBDIVISION AS SHOWN ON THE PLAT MAP RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcels Nos: 38:273:0029 and all other parcels in Evergreen East Phase 4 P.U.D. Subdivision.

LOTS 1 THROUGH 11 EVERGREEN EAST PHASE 5 P.U.D. SUBDIVISION AS SHOWN ON THE PLAT MAP RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcels Nos: 38:273:0029 and all other parcels in Evergreen East Phase 5 P.U.D. Subdivision.