

When recorded return to:  
Ridge Utah Development Corporation  
3718 N Wolf Creek Drive  
Eden, Utah 84310



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LEANN H KILTS, WEBER COUNTY RECORDER  
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AMENDED AND RESTATES DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE RIDGE TOWNHOMES  
PLANNED RESIDENTIAL UNIT DEVELOPMENT (P.R.U.D.)

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DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE RIDGE TOWNHOMES

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RIDGE TOWNHOMES PLANNED RESIDENTIAL UNIT DEVELOPMENT (P.R.U.D.) (“**Declaration**”) is made by Ridge Utah Development Corporation, a Utah corporation (the “**Declarant**”).

RECITALS

- A. This Declaration shall be recorded against that certain real property located in Weber County, Utah more particularly described under Exhibit “A”, which is attached hereto and incorporated herein by this reference (the “**Property**”). As of the recording of this Declaration, the Property is comprised of “Phase 1” of the Project.
- B. The Property is located in an area of unique natural beauty, featuring distinctive terrain, flora and fauna;
- C. Declarant is the owner of the Property.
- D. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a Planned Residential Unit Development (“**PRUD**”) and community in which the beauty of the surrounding area will be sensibly and reasonably preserved, which will enhance the desirability of living in and on the Property subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the real property and improvements located thereon.
- E. Declarant has constructed, is in the process of constructing, or intends to construct upon the Property a PRUD project which will include certain Units and Common Improvements and other improvements that have been or will be constructed on individually-owned Lots and on Association-owned Common Area and Limited Common Area, all as more particularly described in the Governing Documents. All such construction has been or will be performed in accordance with the plans contained in the Plat Map.
- F. Declarant intends to sell to various purchasers fee title to the individual Lots contained within the Project and also transfer to such purchaser a membership in the Association, subject to the Plat Map(s), and also subject to the rules, regulations, covenants, conditions, and restrictions set forth in the Governing Documents, as that term is defined below.
- G. The Project will be completed in Phases. As such, the Project will initially consist of Phase 1, and may consist of subsequent Phases to be added at a later time.



- H. By recording this Declaration in the Recorder's Office, Declarant desires and hereby submits the Property, and all improvements now or hereafter constructed thereon, to the provisions of this Declaration and the provisions of the Utah Community Association Act (the "**Community Act**").
- I. On or about August 23, 1982, Wolf Star, Inc., a Nevada corporation, acting as the "**Master Declarant**," made and executed that certain Master Declaration of Covenants, Conditions and Restrictions of the Wolf Creek Resort (the "**Master Declaration**") which was recorded in the Weber County Recorder's Office on September 24, 1982 in Book 1409 beginning at Page 1603 as Entry No. 864667.
- J. On or about October 14, 1982, the Master Declarant executed a second copy of the Master Declaration (the "**Revised Master Declaration**") with relatively minor revisions, which was recorded in the Weber County Recorder's Office on October 18, 1982 in Book 1411 beginning at Page 363 as Entry No. 866073.
- K. On or about September 23, 2014, the Declarant made and executed that certain Declaration of Covenants, Conditions and Restrictions for The Ridge Townhomes, which included Bylaws of Ridge Townhomes Association (collectively, the "**Prior Declaration**") which was recorded in the Weber County Recorder's Office on September 23, 2014 as Entry No. 2703784.
- L. On or about October 14, 1982, the Declarant executed a second copy of the Prior Declaration (the "**Revised Prior Declaration**") with relatively minor revisions, which was recorded in the Weber County Recorder's Office on July 14, 2015 as Entry No. 2745758.
- M. Immediately upon its recording, this Declaration shall (i) completely negate any authority or influence of the Master Declaration and Revised Master Declaration over the Property or any part of the Additional Land, (ii) completely replace and supersede the Prior Declaration, as well as the Bylaws that were attached to such Prior Declaration, and (iii) completely replace and supersede the Revised Prior Declaration, as well as the Bylaws that were attached to such Revised Prior Declaration, (iv) completely replace and supersede any other declarations or bylaws, and any amendments or supplements to any such other declarations or bylaws that may have been recorded or enforced against the Project prior to the date this Declaration is recorded, and (v) completely replace and supersede any similar recorded or unrecorded documents that may have been enforced against the Project prior to the date this Declaration is recorded.

## DECLARATION

It is acknowledged and agreed, by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment regarding any portion of the Project, that the Governing Documents are intended to impose covenants, conditions, restrictions, and reservations effecting a common plan for a PRUD that is mutually beneficial to all of the Lots, and that any and all rules, regulations, covenants, conditions, restrictions, reservations and common plans set forth under the Governing Documents are binding upon the entire Project, and upon the Owner of each Lot, as well as their tenants, guests, invitees, heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the Lot or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or the sale of such Lot under any security instruments or similar documents.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby declares that the foregoing Recitals are true, accurate, and correct and are incorporated herein by reference, and hereby makes the following Declaration:

### ARTICLE 1 - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

**1.1** “Act” or “Acts” individually or collectively means and refers to the Utah Community Association Act (Utah Code Section 57-8a *et seq.*) and/or the Utah Revised Nonprofit Corporation Act (Utah Code Section 16-6a *et seq.*) as such Act(s) may be amended or supplemented from time to time.

**1.2** “Additional Charges” shall mean and refer cumulatively to all collection and administrative costs, including but not limited to attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

**1.3** “Additional Land” shall mean and refer to additional real property which Declarant has the unilateral right to add to the Project as provided under Article 21 of this Declaration, which real property is more particularly described in Exhibit “B” which is attached hereto and incorporated herein by this reference. No portion of the Additional Land shall be subject to or governed by the provisions of the Community Act or any of the Governing Documents unless and until such portion of the Additional Land has been added to the Project as provided in this Declaration.

**1.4** “Articles” or “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Association that have been filed with the State of Utah, as such Articles may be amended from time to time.

**1.5** “**Assessment**” means any charge imposed or levied by the Association on or against Owners and/or Lots pursuant to the provisions of the Governing Documents or any applicable law. The term “Assessments” includes Annual Assessments, which are imposed against all Owners and/or Lots, and also includes Special Assessments which may be imposed against all or less than all Owners and/or Lots as more particularly described in the Governing Documents.

**1.6** “**Association**” means and refers to “Ridge Townhomes Association”, or any other entity as the Association may be known and identified according to the records of the State of Utah business entity records.

**1.7** “**Association Riser Room**” means and refers to those rooms, located in each Building, that are set aside for use by the Association for fire suppression, fire pump and automatic sprinkler system equipment.

**1.8** “**Board**” or “**Board of Directors**” shall mean and refer to the Board of Directors of the Association vested with the authority to administer and manage the Project, and to maintain and enforce the Governing Documents. The terms “member of the Board”, “Board member” and “Director” are also synonymous.

**1.9** “**Bylaws**” means the Bylaws of the Association, as they may be amended from time to time and which are attached hereto and incorporated herein by this reference as Exhibit “D”.

**1.10** “**Building(s)**” means, refers to, and includes:

- (a) Any building that contains Units;
- (b) the Project’s clubhouse; and/or
- (c) any other building or structure that may be located on the Project.

**1.11** “**Common Area(s)**” means, refers to, and includes:

- (a) Any real property included within the Project, whether held or owned in leasehold or in fee simple, excluding all Lots and the Units constructed on such Lots;
- (b) All Common Improvements constructed on any Common Area;
- (c) Those portions of the Project that are owned, operated, controlled and/or managed by the Association for the common benefit of the Owners including, without limitation, any open spaces, storm water detention areas, drainage easement areas, and any Association Riser Rooms;
- (d) All portions of the Project designated or described as Common Area pursuant to the Governing Documents and/or the Plat Maps;
- (e) All portions of the Project designated or described as Limited Common Area pursuant to the Governing Documents and/or the Plat Maps;

(f) Those portions and areas of the Project described under Article 5 of this Declaration; and

(g) All other portions of the Project (excluding the Lots and any Units constructed on such Lots) that are normally in common use by one or more Owners, or that are necessary or convenient to the Project's use, existence, maintenance, safety, operation and/or management.

**1.12 "Common Expenses"** means and refers to:

(a) Any costs or expenses lawfully incurred by the Association pursuant to the Governing Documents or the Acts;

(b) Expenditures lawfully made or incurred by or on behalf of the Association for the administration, maintenance, repair, or replacement of the Common Areas and/or any Common Improvements;

(c) Administrative costs and expenses incurred by the Board in creating, revising, interpreting or enforcing the Governing Documents;

(d) Any sums which are required by the Board and/or the Manager to perform or exercise their functions, duties or rights under the Acts or the Governing Documents;

(e) Expenses related to the normal, daily operation, management and regulation of the Project;

(f) Any other expenses lawfully and reasonably allocated by the Association among the Owners as determined by a majority vote of the Board members;

(g) Any sums deemed by the Board as necessary to address any budget deficit(s) remaining from any previous fiscal year(s);

(h) Any other expenses that are identified or defined as Common Expenses under the Community Act or the Governing Documents.

**1.13 "Common Expense Fund"** means and refers to that fund more particularly described under Section 12.3, which is to be used to cover basic expenses related to the administration, operation, maintenance, and management of the Association and Project including, without limitation, the Common Expenses and those expenses more particularly described under Subsection 8.3.1 of this Declaration.

**1.14 "Common Improvements"** means, refers to, and includes any infrastructure, buildings, structures, facilities, equipment and improvements that have been or may be installed, constructed or attached on or to any portion of any Common Area and that are intended for the common use and benefit of the Owners.

Without limiting the generality of the foregoing, the term “Common Improvements” shall include:

- (a) All utility infrastructure, installations and equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners or more than one Owner, such as telephone, electricity, gas, water, sewer, and any master antenna, cable or satellite TV equipment, system or component that is installed or maintained by the Association and is available for use by all Owners or more than one Owner;
- (b) Any outdoor lighting that has been installed and is maintained by the Association, as well as any fences, landscaping, sidewalks, pathways, tables, benches, recreation facilities, entryway monumentation, and private streets or roadways located within the Project;
- (c) Any utility pipe, line, system or other infrastructure servicing more than a single Unit, and all ducts, wires, conduits and other accessories used therewith;
- (d) Roof and gutter de-icing cable systems or equipment (or any other similar ice removal systems or equipment) that may be installed on any Building or any portion of the Common Areas;
- (e) Any improvements extending into or surrounding any Common Areas (including Limited Common Areas) that are intended for the common use, safety or benefit of one or more Owners, such as railings or dividing walls, or any outdoor water spigots connected to the Project’s secondary water delivery system;
- (f) Any fire suppression, fire pump and automatic sprinkler system pipes and equipment located in the Association Riser Rooms or any other portion of any Building; and
- (g) In general, any and all apparatus, installations, improvements, structures, Buildings and facilities included within the Project that are intended and existing for the Owners’ common use or benefit including, by example and without limitation, the clubhouse, mailbox banks, maintenance/storage structures, swimming pool, hot-tub facilities, gazebos or similar recreational or landscaping features.

**1.15** “Common Partition” shall have the meaning attributed to such term under Article 4 of this Declaration.

**1.16** “Declaration” means and refers to this Declaration of Covenants, Conditions, and Restrictions, as may be amended or supplemented from time to time.

**1.17** “Driveway” means and refers to the area located directly in front of each garage. The boundaries of each Driveway shall generally be determined by the entire width of paved area extending from the outside edge of the garage door to a point that will reasonably accommodate a vehicle no larger than a normal-sized car, van or sport utility vehicle, provided that (a) the operation or parking of such vehicle within the Project is not otherwise prohibited under the Governing Documents; and (b) the area required to accommodate such vehicle does not block or

inhibit the path, movement or parking of any other vehicles. Each Driveway shall be designated as is a "Limited Common Area" as more particularly described under Article 6.

**1.18 "Eligible Mortgagee"** means and refers to any Mortgagee, beneficiary under a trust deed, or lender who has requested written notice of certain matters from the Association in accordance with this Declaration.

**1.19 "Governing Documents"** means and refers to the Plat Maps, the Articles of Incorporation, this Declaration, the Bylaws, and any Rules and Regulations of the Association, all as may be adopted, amended or supplemented from time to time.

**1.20 "Limited Common Area(s)"** means and refers to any portion of the Project that may be designated, described or identified in this Declaration and/or the Plat Maps as being set aside or reserved for, or appurtenant or limited to, the use of one or more (but less than all) Units to the exclusion of any other Units. Limited Common Areas may consist of areas such as, for example and without limitation, Driveways, patios, courtyards, decks, balconies, window wells and certain designated parking spaces, provided that such areas have been specifically identified, described and/or set aside or reserved for use by a certain Unit (or certain Units) pursuant to this Declaration, any Supplemental Declaration and/or the Plat Maps. The term "Limited Common Area(s)" also refers to those portions of the Project described under Article 6.

**1.21 "Lot"** means and refers to the parcel of land upon which a Unit has been or may be constructed as shown on any Plat Map. All Lots shall be capable of being independently owned, encumbered, and conveyed. Where the context indicates or requires, the term "Lot" includes any Unit that has been constructed on such Lot. The boundaries of each Lot in Phase 1 of the Project are identified by, and identical to, the boundaries of the entire lower level of each Unit as depicted on the Lower Level Floor Plan, as shown on Exhibit "C" which is attached to an made part of this Declaration, and as also shown on the third page of that certain Plat Map entitled "The Ridge Townhomes Phase 1 – 1<sup>st</sup> Amendment, a Planned Residential Unit Development (P.R.U.D.), which was recorded in the Weber County Recorder's Office on July 14, 2015 on Pages 69 through 73 of Book 77 as Entry No. 2745732. The location and boundaries of each Lot located in any subsequent Phase of the Project shall be identified and depicted in the Plat Map and/or the Supplemental Declaration for such subsequent Phase.

**1.22 "Manager"** shall mean and refer to any person and/or entity that may be retained by the Association to operate, manage, maintain and/or repair the Project by, among other matters, enforcing the Governing Documents. The obligations, duties and authority of the Manager shall be specified in a written agreement that has been adopted and signed by the Manager and by the Board on behalf of the Association. The term "Manager" shall not refer to any person and/or entity (i.e. property manager, rental management company, etc.) that may be retained by any individual Owner(s) to manage and/or rent that Owner's Unit(s).

**1.23 "Majority of the Owners"** means more than Fifty Percent (50%) of the total Percentage Interest.

**1.24 "Member"** shall mean and refer to the Owner of a Lot (whether or not the Unit constructed on such Lot serves as the Owner's primary residence). Each Member is entitled to

participate in decisions made by the Association. Each Owner shall be a Member of the Association and shall be entitled to one membership for each Lot so owned. The term "Member" shall not refer to any tenant, guest or other non-Owner occupant of any Unit. The term "Member" and "Owner" shall generally be deemed as synonymous under the Governing Documents.

**1.25 "Mortgage"** means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that an instrument evidencing any such mortgage, deed of trust or other form of security instrument or arrangement has been recorded with the Recorder's Office. The term "Mortgage" shall not mean or refer to an executory contract of sale.

**1.26 "Mortgagee"** means the person or entity secured by a Mortgage. The term "Mortgagee" shall not mean or refer to a buyer or seller under an executory contract of sale.

**1.27 "Owner"** shall mean and refer to the owner(s) of record of any Lot according to the Recorder's Office. Where the context indicates or requires, the term "Owner" also refers to ownership of the Unit upon which the Lot has been constructed. As used in this Declaration, the term "Owner" does not include a Mortgagee, a beneficiary or trustee under a deed of trust, or any other person or entity holding a security interest in any Lot unless and until such party has acquired title to the Lot pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term "Owner" and "Member" shall be deemed as synonymous under the Governing Documents.

**1.28 "Percentage Interest"** means and refers to the percentage of the interest of that Owner in the Common Expense liability and for the purposes of voting in the Association. The Percentage Interest of each Owner shall be calculated by dividing the number "1" by the total number of Units in the Project that (a) have been completed as solely evidenced by the County's issuance of a Certificate of Occupancy; and (b) have been made subject to the terms and conditions of this Declaration.

**1.29 "Period of Declarant's Control"** means and refers to a period of time commencing on the date this Declaration is recorded and terminating upon the occurrence of the earliest of the following events:

- (a) 60 days after 100% of the total number of Lots (as the Project may be amended or expanded from time to time) have been conveyed to Owners other than the Declarant;
- (b) twenty-five (25) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business; or
- (c) the date upon which Declarant has recorded an instrument voluntarily surrendering all rights to control activities of the Association.

Termination of the Period of Declarant's Control shall not result in any loss or waiver whatsoever of Declarant's rights incident to Declarant's ownership of any Lots or any unbuilt and/or unsold Units.

**1.30 “Phase”** shall mean and refer to a particular stage or area of development within the Project as designated by the Declarant.

**1.31 “Plat Map(s)”** means any that certain record of survey map entitled “The Ridge Townhomes Phase 1 – 1<sup>st</sup> Amendment, a Planned Residential Unit Development (P.R.U.D.), which was recorded in the Weber County Recorder’s Office on July 14, 2015 on Pages 69 through 73 of Book 77 as Entry No. 2745732, and any other plats that may be so prepared and recorded as a substitution to or amendment of such record of survey map. The term “Plat Map(s)” also refers to any other plat or record of survey that may be recorded for any additional Phase of the Project, as well as any recorded substitution to or amendment of such plat or record of survey.

**1.32 “Project”** means and includes all of the Property, and all or any portion of the Additional Land that is added to and made part of the Project, including any and all Lots, Buildings, Units and Common Area (which includes any Limited Common Area or Common Improvements) located on such real property, as well as all easements, rights, and appurtenances belonging thereto. The Project is to be commonly known as "The Ridge Townhomes."

**1.33 “Recorder’s Office”** means the Recorder's Office of Weber County, State of Utah.

**1.34 “Reserve Fund”** means and refers to that certain fund more particularly identified and described under Section 12.5, which shall be used to cover the cost of repairing, replacing and/or restoring Common Areas and/or Common Improvements that have a useful life of three (3) calendar years or more and a remaining useful life of less than thirty (30) years, but excluding any cost that can reasonably be funded from the Common Expense Fund or other funds of the Association. The Reserve Fund may also be used for other purposes as may be specified in this Declaration.

**1.35 “Rules and Regulations”** means and refers to those rules and regulations that may be adopted or amended by the Board from time to time in order to further govern the Owners’ use and enjoyment of the Project.

**1.36 “Supplemental Declaration”** means and refers to any supplement to this Declaration that has been adopted in the same manner that amendments to the Declaration may be made, adopted, and approved pursuant to Article 22 of this Declaration.

**1.37 “Suspended Unit Area” or “Suspended Area”** means and refers to that portion of a Unit that is located directly above any portion of another Unit. The Suspended Unit Areas in Phase 1 of the Project are depicted in the Main Level Floor Plan of the diagram that is attached and made part of this Declaration as Exhibit “C”. The Suspended Unit Areas in any subsequent Phase of the Project shall be identified and depicted in the Plat Map and/or the Supplemental Declaration for such subsequent Phase. The Suspended Area of a Unit shall be deemed a part of that Unit but shall not, in any manner whatsoever, delineate or determine the boundaries of the Lot upon which that Unit has been constructed.



**1.38** “Unit” means and refers to any one of the individual townhomes in the Project, and may be designated on the Plat as a “Lot” or a “Unit.” Where the context indicates or requires, the term “Unit” includes the Lot upon which such Unit has been constructed. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Percentage Interest appurtenant to such Unit. The boundaries and components of Units are more particularly described under Article 3 and Article 4 of this Declaration .

## ARTICLE 2 DESCRIPTION OF PROJECT

The purpose of this Article 2 is to provide certain information required under Section 57-8a-212 of the Community Act.

**2.1 Project.** The name of the Project is “The Ridge Townhomes”.

**2.2 Association.** As set forth under Section 1.6, the name of the Association is “Ridge Townhomes Association.”

**2.3 No Cooperative or Condominiums.** The Project is not a cooperative, and no portion of the Project contains or will contain any condominiums.

**2.4 Right to Expand Project.** Pursuant to Article 21 of this Declaration, Declarant hereby reserves the option to expand the Project by adding any portion of the Additional Land to the Project with a recorded supplement to this Declaration.

**2.5 Description and Location.** The legal description of the land on which the Project is located is set forth in Exhibit “A” attached hereto. The entire Project is located within Weber County in the State of Utah.

**2.6 Legal Description of Lot.** The legal description used in any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot located anywhere within the Project may refer to either a “Lot” or a “Unit”.

**2.7 Common Area / Limited Common Area.** The Project shall include Common Areas as more particularly described under Article 5, and shall also include Limited Common Areas as more particularly described under Article 6.

**2.8 No Restrictions on Alienation.** There shall be no restriction or restraint on alienation of any Lot including, without limitation, the leasing of any Lot or any Dwelling Unit. The language of this Section 2.7 is subject to any applicable laws, rules, regulations or ordinances that may be imposed by Weber County or any local government agencies (*e.g.* restrictions on short-term rentals).

**2.9 Appointment of Trustee.** Metro National Title (“Metro”) located at 1366 South Legend Hills Drive, Suite #140, Clearfield, UT 84015 is hereby appointed and designated as the trustee for purposes of enforcing and securing payment of Assessments pursuant to Utah Code Sections 57-1-20 and 57-8a-302. Declarant hereby conveys and warrants pursuant to Utah Code Annotated Sections 57-1-20 and 57-8a-302 to Metro, with power of sale for the purpose of securing payment of Assessments under the terms of this Declaration and any amendment or

supplement thereto. Declarant at any time before the end of the Class "B" Control Period (as defined in the Bylaws), or the Association after the end of the Class "B" Control Period, may appoint a successor trustee at any time by filing a notice in the office of the Recorder pursuant to Utah Code Section 57-1-22.

### ARTICLE 3 – UNIT DESCRIPTION

**3.1 Plat Map Identification.** Each Unit is identified on the Plat by a distinct Unit number that identifies the Unit. That number may or may not be consistent with the mailing address of the Unit.

**3.2 Unit Boundaries and Components.** Subject to further specification herein, each Unit generally consists of and includes any and all portions of the Building located on or within the boundary of the Lot, including but not limited to:

3.2.1 Roof. Any portion of the Building roof that covers the main (upper) floor of the Unit, including, for example and without limitation, beams, rafters, underlayments, flashing, shingles, soffit, fascia, corbels, gables, eaves, gutters, roof vents.

3.2.2 Walls. Any and all interior and exterior, structural, load-bearing, non-structural or non load-bearing walls and wall surfaces, including, for example and without limitation, studs, underlayments, drywall, wallpaper, paint, trim, natural or cultured stone, and any other finished interior or exterior wall material. Certain perimeter walls located in certain Units may be subject to Article 4 regarding Common Partitions, which will determine a portion of the boundaries of those Units pursuant to Section 4.2.

3.2.3 Ceilings. Any and all portions of any ceiling located within any Unit, including, for example and without limitation, any ceiling joists, studs, beams, rafters, drywall, paint, trim and any other finished ceiling material. Certain ceilings located in portions of certain Units may be subject to Article 4 regarding Common Partitions, which will determine a portion of the boundaries of those Units pursuant to Section 4.2.

3.2.4 Floors. Any and all portions of any floors located within any Unit, including, for example and without limitation, any floor joists, subfloor materials, finished flooring materials, radiant heating system components, etc. Certain floors located in portions of certain Units may be subject to Article 4 regarding Common Partitions, which will determine a portion of the boundaries of those Units pursuant to Section 4.2.

3.2.5 Windows/Doors. Any and all exterior or interior window systems and door systems, including, for example and without limitation, frames, glass, screens, and garage doors.

3.2.6 Mechanical Equipment / Appurtenances. Any mechanical equipment and appurtenances located within the Unit or located outside of such Unit but designated and designed to serve only that Unit, such as appliances, fixtures, electrical receptacles and

outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like. Likewise, any and all pipes, wires, conduits or other public utility lines or installations that only serve the Unit are also part of that Unit.

3.2.7 Garage. As depicted on the Plat Map, any garage that is attached to and directly accessible from a Unit.

3.2.8 Fireplace. Any fireplace that is located within a particular Unit as well as any interior or exterior portions or components of such fireplace, including, for example and without limitation, the flue, chase cover, mortar crown, or chimney cap.

**3.3 Variances / Encroachments.** The original construction of any Unit shall be the controlling dimensions for such Unit. As used in this Declaration, the term "original construction" shall generally refer to the first installation of foundations, framing, and wallboard. Any structure, including any part of a Building, that extends beyond the vertical plane of the ground level boundary of the Unit shall be deemed a part of that Unit if it: (1) is attached to or part of such Unit, and (2) was constructed as part of the original construction of the Unit.

None of the rights and obligations of the Owners created herein, or by the deeds conveying any Lots, shall be altered in any way by any encroachments due to engineering errors, errors in original construction, errors in the Plat Map(s), settling, rising or shifting of the earth, settlement or shifting of structures, changes in position caused by repair or reconstruction of the Project or any part thereof, or any other similar cause. Accordingly, each Unit is hereby declared to have a perpetual and irrevocable easement over all immediately adjacent portions of the Common Areas and/or immediately adjacent Lots for the purpose of accommodating any such encroachments, including any encroachment that may cause any portion of a Unit to overhang or project into or onto an immediately adjacent portion of the Common Areas and/or an immediately adjacent Lot.

There shall be permanent and valid easements for any such encroachment and for the use, maintenance, repair and/or replacement of any such encroaching Unit so long as the encroachment shall exist, provided, however, that in no event shall a valid easement for encroachment be created in favor on an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a Unit is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over immediately adjacent portions of the Common Areas and/or immediately adjacent Lots shall be permitted, and that there shall be valid easements for the use, maintenance, repair and/or replacement of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot. Such encroachments shall not be considered to be encumbrances either to any Common Areas or to the Lots.

**ARTICLE 4 – PARTY WALLS AND SHARED FLOORS/CEILINGS  
[COMMON PARTITIONS]**

**4.1 Definitions.** Any wall, or portion thereof, that is built as part of the original construction of a Building and that divides any two Units shall constitute a “**Party Wall**”. Any floor/ceiling that is built as part of the original construction of a Building and that divides the lower portion of any Unit from the Suspended Area of another Unit shall constitute a “**Shared Floor/Ceiling**”. For the purposes of this Article 4, Party Walls and Shared Floor/Ceilings are each also referred to as a “**Common Partition**”.

**4.2 Unit Boundaries.** The boundary of any Unit that shares a Common Partition with another Unit shall extend to the center of such Common Partition, which shall form the boundary between those two Units.

**4.3 Ownership.** The Owner(s) of any Unit that adjoins any Common Partition shall be deemed the “Owner(s)” of such Common Partition for the purposes of this Declaration.

**4.4 General Rules of Law.** In the event of any damage to, destruction of, or dispute regarding a Common Partition, the provisions of this Article 4 shall apply. Any matters concerning Common Partitions that are not covered by the provisions of this Article 4 shall be governed by the general rules of law, including liability for damage due to negligence or willful acts or omissions concerning Common Partitions.

**4.5 Sharing of Maintenance and Repair.** In the event of damage or destruction to any Common Partition from any cause, other than the negligence or willful misconduct of any Owner of such Common Partition, the Owners of the Common Partition shall repair or rebuild such Common Partition. Except as otherwise set forth in this Article 4, the cost of repairing or rebuilding any portion of any Common Partition (including, for example and without limitation, the framing, structural components, and insulation of such Common Partition) shall be borne equally by the Owners of such Common Partition.

Any mechanical equipment and appurtenances located within any one Unit, or located outside said Unit, but designed and designated to serve only that Unit; including, for example and without limitation, electrical receptacles and outlets, air conditioning, heating and other ventilation apparatus, fixtures and the like, pipes, wires, conduits, or other utility lines or installations, shall be considered part of that Unit; and to the extent any such mechanical equipment and appurtenances penetrate, are attached to, or are located between or within a Common Partition, the Owner of that Unit shall be responsible for the maintenance, repair and replacement of such mechanical equipment and appurtenances. In the event any such mechanical equipment and appurtenances service both Units that are separated by the Common Partition, the cost for maintaining, repairing and/or replacing such mechanical equipment and appurtenances shall be equally shared by the Owners of the Common Partition.

Notwithstanding the above paragraph, if an Owner's negligence or willful misconduct is the cause of damage to or destruction of any Common Partition or to any mechanical equipment and appurtenances that penetrate, are attached to, or are located between or within such Common

Partition, such Owner shall bear the entire cost of repair or reconstruction of the Common Partition and said mechanical equipment and appurtenances.

**4.6 Failure to Contribute.** If any Owner shall fail or refuse to pay his or her share of the cost of repair or reconstruction of a Common Partition, or any Owner fails or refuses to pay all of such costs in the case of his or her negligence or willful misconduct, the other Owner(s) of the Common Partition may have such Common Partition repaired or restored and shall be entitled to have a mechanic's lien on the Lot and Unit of the Owner(s) so failing to pay for the amount of such defaulting Owners' share of the repair or replacement costs together with interest at the maximum rate allowable. The Owner having such Common Partition repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if filed in the Recorder's Office, by affidavit declaring under oath the claim of the mechanic's lien.

**4.7 Destruction by Fire or Other Casualty.** If a Common Partition is damaged or destroyed by fire or other casualty, any Owner thereof may restore the Common Partition, and the other Owner(s) thereof shall equally contribute to the cost of restoration thereof, subject, however, to the right of any such Owner(s) to demand a larger contribution from the other Owner(s) under any applicable rule of law regarding liability for negligent or willful acts or omissions.

**4.8 Arbitration.** In the event any dispute arises concerning a Common Partition, the Owners of the Common Partition shall attempt to resolve the matter through mediation as conducted by the President of the Association. If any Owner involved in the dispute objects to such attempted mediation, the Owners shall submit the matter to arbitration. The Owners may (but shall not be required to) mutually agree that the outcome of such arbitration shall be final and binding. If the Owners are unable to mutually agree to such binding arbitration, the arbitration shall be non-binding. The arbitration (whether binding or non-binding) shall be conducted on a confidential basis pursuant to the then applicable Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in real property litigation and shall include a written record of the arbitration hearing. The parties to the dispute shall have the right to object to the arbitrator. If the parties are unable to agree upon a single arbitrator, each party to the dispute shall choose one arbitrator, and such arbitrators shall select one additional arbitrator, and a final and binding decision regarding the outcome of the dispute shall be made by a majority of the arbitrators. Should either party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board shall select an arbitrator for such refusing party. Any award or decision resulting from such arbitration may be confirmed in a court of competent jurisdiction.

**4.9 Right to Contribution Runs With Land.** The right of any Owner(s) of a Common Partition to receive contribution from the other Owner(s) of a Common Partition under this Article 4 shall be appurtenant to the land and shall pass to such Owner's successor in title.

**4.10 Encroachments.** If any portion of any Common Partition now or hereafter constructed encroaches upon any part of the Common Area or upon any Lot, an easement for the encroachment and for the use, maintenance, repair and/or replacement of such Common Partition is hereby granted and reserved and shall exist and be binding upon the Declarant, the Association and all present and future Owners of any part of said Common Partition for the benefit of the present and future Owners of such encroaching Common Partition. In the event that a Common Partition becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements for the benefit of all present and future Owners of such Common Partition are hereby granted and reserved upon adjacent or impacted Common Area and/or Lot(s) to the extent reasonably necessary or advisable in order to maintain, repair and/or replace such Common Partition. The easements for encroachment herein granted and reserved shall run with the land.

**4.11 Alteration/ Removal Prohibited.** Except for non-structural interior decorations, Common Partitions shall not be altered, moved or removed under any circumstances or in any manner whatsoever. No doorway, hatch, stairway, elevator or similar alteration that permits passage between two Units may be created in or through any Common Partition.

## **ARTICLE 5 – COMMON AREAS**

**5.1 Generally.** Except as otherwise provided in this Declaration, the Common Areas shall consist of those areas, facilities and improvements of the Project that are described under Section 1.11 of this Declaration, and as described and depicted in the Plat Maps. Such Common Areas generally constitute all parts of the Project except the Lots and any Units built thereon.

**5.2 Specific Common Areas.** Without limiting the generality of the foregoing, the Common Areas shall include the following:

- (a) Any general parking spaces or parking areas located within the Project;
- (b) Entryways, landscaped and planted areas, and any private streets, private roadways or private thoroughfares that may be located within the Project;
- (c) All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated by the Association as Common Areas;
- (d) Any and all Common Improvements; and
- (e) All repairs, refurbishments or replacements of any of the foregoing.

Common Areas of the Project shall also include any Limited Common Areas. However, as more particularly set forth in the Governing Documents, the manner in which Limited Common Areas are owned, used, controlled, maintained, repaired and replaced may differ from the manner in which Common Areas are owned, used, controlled, maintained, repaired and replaced.

**5.3 Ownership.** Because the Project is a PRUD, all Common Areas of the Project are entirely owned by the Association for the benefit of, and on behalf of, the Owners. The Owners do not hold or own any interest (undivided or otherwise) in the Common Area of the Project. The Association shall continuously hold title to the Common Areas free and clear of any and all liens or encumbrances (other than current years taxes, if any). However, Declarant shall hold title to the Common Area of each Phase until such time as that Phase has been annexed into the Project pursuant to a Supplemental Declaration that has been recorded in the Recorder's Office.

**ARTICLE 6 – LIMITED COMMON AREAS**

The Limited Common Areas are those areas of the Project that are appurtenant to, or are set aside or reserved for use by, one or more Units to the exclusion of any other Units. Such Limited Common Areas are as follows:

(a) Any balcony, deck or patio area which is directly attached to and/or accessed from a particular Unit or Units shall be the Limited Common Area of such Unit(s). The boundaries of any such balcony, deck or patio area shall be defined by the surfaces of the any walls, floor, ceiling, doors, windows, ground, railings or fences enclosing or surrounding said balcony, deck or patio areas. With regard to any ground-level patio areas that are not enclosed or surrounded by railings or fences, the boundaries of such ground-level patio areas shall be determined by the edge of the paved area of such patio. Such paved areas may not be enlarged or extended beyond the original size of the ground-level patio as originally designed, designated or constructed by the Declarant, or as depicted on the Plat Map(s).

(b) Any Driveway that provides access to a garage shall be the Limited Common Area of the Unit to which such garage is attached. The Association may, but shall not be obligated to, mark the boundaries of any Driveway using painted striping or any other inconspicuous marking. The use of any such Driveway boundary markings must be approved by: (i) the Declarant during the Period of Declarant's Control or (ii) a Majority of the Owners after the Period of Declarant's Control has expired.

(c) Any courtyard located in front of any exterior door(s) serving as the main entry to one or more Units shall be the Limited Common Area of such Unit(s). As used throughout this Declaration, the term "courtyard" refers to any portion of the Project located in front of any exterior door which serves as the main entry to one or more Units as may be depicted or labeled on the Plat Map(s). Regardless of whether or not any such courtyards are depicted or labeled on the Plat Map(s), the boundaries of each such "courtyard" shall be determined by (a) the surfaces of any walls, floor, ceiling, doors, windows, ground, or railings enclosing or surrounding the area located in front of the exterior main entry door to any Unit(s), and (b) the exterior edge(s) of any permanent awning that may shelter such area located in front of the exterior main entry door to any Unit(s). As used throughout this Declaration, the definition of "courtyard" shall not include any portion of the Project located in front of any exterior doorway that connects any Unit to that Unit's balcony, deck or patio.

(d) Any window well that accommodates the window of any room located on the lower floor level of any Unit. Such window wells are intended to serve as an emergency means of exiting the lower level of such Unit. As such, window wells must, at all times, be maintained completely free of any property, items or debris whatsoever. Likewise, no objects, items or debris of any kind whatsoever may be temporarily or permanently placed on the grate that covers any window well. The Owner of the Unit to which any such window well is attached shall be responsible for maintaining the window well as described in this subparagraph.

(e) As used in this Article 6, the term “surfaces” shall mean decorative finishes, paint, stucco, natural or cultured stone, drywall paper and/or any other similar material applied to or covering the surfaces of walls, ceilings, ground or floor. Any such decorative finishes, coverings or similar materials shall be deemed a part of said Limited Common Area.

(f) In the event of any dispute regarding the boundaries of any balcony, deck, patio, courtyard, Driveway or any other Limited Common Area, the Board shall have the authority to resolve such dispute and determine such boundaries by reasonably applying and interpreting the descriptions and definitions of such areas of the Project as set forth in this Declaration.

(g) The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit or Units where so identified and may not be severed from the ownership of such Unit or Units.

## **ARTICLE 7 - OWNERS' ASSOCIATION**

**7.1 Form of Association.** The Association is a Utah nonprofit corporation organized under the laws of the State of Utah.

### **7.2 Membership**

**7.2.1 Qualification.** Each Owner shall be a Member of the Association and shall be entitled to one membership for each Lot so owned. Ownership of a Lot shall be the sole qualification for membership in the Association.

**7.2.2 Transfer of Membership.** Each Owner's Association membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall automatically transfer the membership in the Association appurtenant thereto to the Lot's new Owner.

**7.2.3 Mandatory Membership.** Each Owner is required to be a Member of the Association. Likewise, each purchaser of a Lot, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a Member of the Association. Membership may not be partitioned from the ownership of a Lot.



### 7.3 Voting

7.3.1 Voting Rights. The total collective voting power of the Owners shall be equal to the total number of Lots in the Project that (a) have been conveyed by the Declarant to any other entity or any individual; and (b) have been made subject to the terms and conditions of this Declaration. The Owner of each Lot shall be entitled to one (1) vote. If there is more than one Owner for a particular Lot, the Owners of such Lot shall collectively be entitled to one (1) vote.

7.3.2 Voting Owner. There shall be one "voting representative" for each Lot. If a person owns more than one Lot, that person shall have the votes for each Lot owned. For Lots held in trust, the Owner shall be the acting trustee of the trust at the time. The voting representative for a particular Lot shall be designated by the Owner (or all Owners) of such Lot by written notice to the Board, and need not be an Owner of that Lot. This "voting representative" designation shall be revocable at any time by actual notice to the Board from a party having an ownership interest in a Lot, or by actual notice to the Board of the death or judicially declared incompetence of any party with an ownership interest in that Lot. This power of designation and revocation may be exercised by the guardian of an Owner or by the administrators or executors of an Owner's estate. Where no designation is made, or where a designation has been made but is revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners.

7.3.3 Joint Owner Disputes. The vote for a Lot must be cast as a single vote, and fractional votes shall not be allowed. Unless notified in writing, the Board and the Association may assume that any joint Owner is authorized to cast the vote for such Lot. In the event of any dispute or disagreement concerning the authority to cast a vote for any Lot owned by two or more Owners, or if the joint Owners of a Lot are otherwise unable to agree among themselves as to how their vote or votes shall be cast, no vote shall be cast for such Lot until such disagreement or dispute is resolved by the joint Owners to the satisfaction of the Board. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

7.3.4 Pledged Votes. In the event the record Owner(s) of any Lot have pledged their vote regarding special matters to a Mortgagee or beneficiary of a deed of trust under a duly recorded mortgage or deed of trust, or to the vendor under a duly recorded real estate contract, only the vote of such Mortgagee, beneficiary, or vendor will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with such a pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting Owners and their respective Mortgagees, deed of trust beneficiaries, and vendors, if any.

7.3.5 Mail-In Ballots. In any instance where voting on a matter is permitted or required herein, such vote may be carried out without a meeting by mail-in ballot sent to all Owners entitled to vote on the matter pursuant to the applicable procedures set forth in the Bylaws and, provided a ballot has been mailed to all Owners entitled to vote on the matter in question, approval of the matter by a majority of the votes received by the Association shall be sufficient

to approve such matter, except where a different threshold is specifically required by the Acts or by the Governing Documents.

**7.3.6 Owners' Delivery of Mail-In Ballots.** Owners may deliver completed ballots to the Association via personal delivery, regular mail, facsimile, or by scanning and emailing a copy of their ballot to the Association pursuant to procedures established by the Board. Once a written ballot has been submitted (whether in-person, via regular mail or facsimile, or via an emailed scanned copy) such ballot may not be revoked or withdrawn. As of the date of the recording of this Declaration, electronic voting (for example, the election of Board members or voting on a particular issue via the Association's website without the mailing of ballots) is not permitted under the Acts or any other applicable Utah law, rule or regulation. In the event such electronic voting is at any time permitted under any applicable Utah law, rule or regulation, in any instance where voting on a matter is permitted or required, such electronic voting may be carried out without a meeting consistent with applicable procedures for Owner voting without a meeting as set forth in the Bylaws.

#### **7.4 Bylaws of Association**

**7.4.1 Adoption of Bylaws.** Bylaws for the administration of the Association and the Project and for other purposes not inconsistent with the Acts or with the intent of this Declaration, have been or shall be adopted by the Association. A copy of such Bylaws is attached to and made part of this Declaration as Exhibit "D".

**7.4.2 Bylaws Provisions.** The Bylaws may contain supplementary provisions, not inconsistent with this Declaration, regarding the operation, management and administration of the Project. The Bylaws shall establish requirements for establishing a quorum, ordering of meetings, and details regarding the giving of notice as may be required for the proper administration of the Association and the Project.

**7.5 Attorney in Fact.** Each Owner, by the mere act of becoming an Owner or contract purchaser of a Lot, irrevocably appoints the Association as such Owner's attorney-in-fact, with full power of substitution, to take such action as reasonably necessary to promptly perform the duties of the Association, including but not limited to the duties to manage, operate, maintain, repair and improve the Project, to negotiate with insurance carriers upon any damage or destruction to the Project or any portion thereof, and to secure insurance proceeds.

### **ARTICLE 8 – BOARD OF DIRECTORS**

**8.1 Board Purpose.** Administrative, management, and enforcement authority of the Association is vested in the Board of Directors, which shall be elected by, from, and among the Owners pursuant to the Bylaws. The Board, for the benefit of the Association and the Owners, shall administer, manage and enforce the provisions of the Governing Documents and shall have all powers and authority permitted to the Board under the Acts and the Governing Documents. The Board shall elect officers from among the Board members pursuant to the Bylaws. The Board may delegate all or any portion of the Board's authority to a Manager, or in such other manner as may be permitted under the Governing Documents.

**8.2 Board Approvals.** Any actions requiring Board approval under the Governing Documents including, without limitation, any actions the Board is permitted to take or approve without prior approval of the Owners (such as, for example, the imposition of certain Special Assessments per Section 13.3 of this Declaration) must be adopted and approved by a majority vote of the Board (*i.e.* more than half of the Board members).

### **8.3 Board Authority**

8.3.1 The Board shall acquire and shall pay for out of the Common Expense Fund any goods and services required for the proper functioning of the Association and the Project, including but not limited to the following:

(a) Utilities. The cost of any utilities that may be required for the Common Areas and/or benefit of the entire Project.

(b) Insurance. Policies of insurance or bonds providing coverage for fire and other hazard, liability for personal injury and property damage, fidelity of Association officers and Association agents or employees, and Director's and officer's liability or errors and omissions, as such policies are more fully described and required in this Declaration and in the Bylaws.

(c) Management Services. The services of persons or firms as required to properly manage and operate the affairs of the Association and/or the Project to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Areas, whether or not such personnel are employed directly by the Board or are furnished or employed by the Manager.

(d) Professional Services. Legal and accounting services necessary or proper in the management and operation of the Association's affairs, administration of the Project, or the interpretation, modification, or enforcement of the Governing Documents.

(e) Maintenance of Common Area /Common Improvements. Maintenance, repair and/or replacement of any portion of the Common Areas, or any Common Improvements, as the Board shall determine as necessary and proper.

(f) Snow Removal. Contracting for, scheduling, arranging, and paying for the removal of snow from certain portions of the Project as may be permitted or required under the Governing Documents.

(g) Materials, Supplies and Labor. Materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure by law, or which in the Board's reasonable opinion shall be necessary or proper for the operation of the Common Areas or for the enforcement of the Governing Documents; provided that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for or imposed upon any particular Units or their Owners, the cost thereof may be charged to or

recovered from the Owner(s) of such Units via Special Assessment as reasonably determined by a majority vote of the Board.

(h) Unit Maintenance Services. Maintenance and repair of any Unit, including its appurtenances, improvements, equipment or appliances if (i) such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Areas or preserve the appearance and value of the Project, and (ii) the Owner(s) of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to such Owner(s); provided that the Board shall levy a Special Assessment against the Unit of such Owner(s) for the cost of such maintenance or repair.

(i) Personal & Real Property. Acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interest therein, and dispose of the same by sale or otherwise. The Board shall not, however, in any case acquire real property or personal property (other than for purposes of restoring, repairing or replacing portions of the Common Areas) valued in excess of Five Thousand Dollars (\$5,000) by lease or purchase without the approval of a Majority of the Owners.

(j) Lien Discharge. Pay any amount necessary to discharge any lien or encumbrance levied against the Project or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the Project or against the Common Areas, rather than merely against the interest therein of any particular Owner(s). Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs and expenses incurred by the Board by reason of such lien or liens shall be assessed against the Owners and the Unit responsible to the extent of their responsibility.

8.3.2 Not for Profit. No provision of the Governing Documents shall be construed to give the Board the authority to conduct an active business for profit on behalf of all or any of the Owners.

8.3.3 Right to Contract. The Board shall have the exclusive right to contract for all goods and services, payment of which is to be made from the Common Expense Fund. The Board may delegate such powers to a Manager subject to the terms and conditions of the Governing Documents.

8.3.4 Board Access. The Board and its agents or designees, may enter and access any Common Area at any time, and may enter and access any Unit or any Limited Common Area in accordance with Section 10.6.

**8.4 Delegation of Board Authority**. The Board may delegate management responsibilities to a Manager pursuant to a written contract between the Manager and the Board on behalf of the Association. The Manager shall not be an employee of the Association and must be retained as an independent contractor. The termination provision of any such contract between the Association and the Manager must not include a termination penalty or any advance notice of any more than sixty (60) calendar days, and no such contract shall be for a cumulative term (including the initial term and renewal terms) of more than three (3) calendar years. The

Manager may employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract must be terminable by the Association with or without cause upon no less than thirty (30) calendar days written notice provided by the Board.

**8.5 Board Adoption of Rules and Regulations.** As set forth under Section 57-8a-217 of the Community Act, the Board shall have the authority to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the Rules and Regulations. Unless otherwise specifically permitted or granted by the Declarant or until the Declarant's authority to unilaterally establish, oversee and manage an Architectural Committee as set forth under Article 9 has expired, the Board shall not have any authority to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce any design criteria related to the Project. As permitted under Section 57-8a-217(6) of the Community Act, during the entire Period of Declarant's Control, the Declarant shall be exempt from any Rules or Regulations and shall also be exempt from the Board's or the Association's rulemaking procedures.

## **ARTICLE 9 – ARCHITECTURAL COMMITTEE**

It is the intent and purpose of this Declarations to establish, impose and maintain the exterior quality and appearance of the Project through uniform architectural, design and constructions standards on any and all improvements located within the Project including, in particular, the Buildings in which any Units are located. In order to accomplish this goal, the Declarant shall have the right to unilaterally establish, oversee and manage an Architectural Committee with the full and absolute power and authority to oversee and enforce such uniform architectural, design and constructions standards. If Declarant elects to form such an Architectural Committee, no improvement of any kind may be temporarily or permanently constructed, erected, or installed in any portion of the Project without the prior written consent of such Architectural Committee. If Declarant elects to form such an Architectural Committee, the Declarant shall establish policies and procedures related to, among other matters, submission and review of architectural plans, payment of review fees, variances, and any other matters deemed relevant to the architectural, design and construction review and oversight process. Once the Architectural Committee is formed, Declarant may unilaterally elect to dissolve the Architectural Committee. Unless prohibited by applicable law, the Declarant's rights under this Article 9 will continue until construction on the final Phase of the Project has been completed.

## **ARTICLE 10 – PROJECT OPERATION AND MAINTENANCE**

### **10.1 Owner Maintenance, Repair or Replacement of Units.**

10.1.1 General Maintenance. The provisions of this Section 10.1 shall apply to each Unit as well as the Lot upon which such Unit has been constructed. Except as otherwise specifically set forth in this Declaration, each Owner shall, at such Owner's sole expense, have the duty to maintain, repair and replace any and all portions of his or her Unit, including any damage not covered by insurance. By example, and without limitation of the previous sentence,

each Owner shall, at such Owner's sole expense, maintain, repair and replace all of the following (including any damage to such items that is not covered by an insurance claim):

- (a) all interior and exterior doors, including thresholds and door jams,
- (b) all paneling, tiles, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls;
- (c) all drywall, wallboard, or similarly functioning materials within the Unit;
- (d) all framing, insulation, and other materials associated with interior walls;
- (e) all windows, window sills, window frames, and skylights, including the interior and exterior cleaning of such windows and any door glass (the Association may elect to arrange and pay for the cleaning of exterior windows as a Common Expense or may require the Owners to pay a particular person or company to clean on a schedule determined by the Association);
- (f) all sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or Internet services, to the extent that they are located within the Unit or serve only that Unit;
- (g) all plywood decking and similar materials on interior floors;
- (h) any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting particular to that Unit's patio, courtyard, balcony or deck, but not including exterior lighting attached to a Unit for the purpose of lighting Common Area), fans, plumbing fixtures (other than pipes located outside of a Unit), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, ducting, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration; and
- (i) concrete pads within garages and Units (not including Building foundations).

Each Owner shall also be responsible for keeping the Unit and any patio, courtyard, balcony, deck, Driveway or window well that is appurtenant to such Unit in a clean, sanitary and uncluttered condition, free of pests and rodents. The Board may set forth in the Rules and Regulations any limits, restrictions, or guidelines on what may or may not be left, stored, or installed on any patio, courtyard, balcony, deck or Driveway, which may include a prohibition on leaving, installing, or storing certain items or any items in such places.

Each Unit shall be maintained so as not to detract from the health, safety or uniform appearance of the Project and so as not to adversely impact the value or use of any other Unit. Each Owner shall keep his or her Unit clean, safe, and in a sanitary condition. The Board may, by rule, adopt, promulgate and enforce further requirements for the repair and maintenance of a Unit required for each Owner, in accordance with the terms of this Declaration and/or the Bylaws.

Owners are strictly prohibited from performing any repair, replacement or maintenance of any portion of the Project that may, in any manner whatsoever, impact or alter the exterior appearance of any portion of any Building without obtaining the prior written permission of the Board, which permission may be granted or denied in the Board's sole discretion. The

replacement, repair or maintenance referenced in the prior sentence includes, by example and without limitation, the maintenance, repair and/or replacement of any exterior walls, roofs, doors, windows, or any other exterior portion or surface of the Project.

10.1.2 Maintenance of Unit Interior Surfaces and Fixtures. Without limiting the generality of Subsection 10.1.1, each Owner shall have the right and the duty at his or her sole cost and expense to maintain, repair, paint, paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, walls, floors, window frames, door frames, and trim located within his or her Unit and shall not permit or commit waste of such Unit or the Common Areas. Each Owner and his or her agent has the right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. However, no Owner shall interfere with or cause damage to the structural integrity of any Building or interfere with the use and enjoyment of the Common Areas or any of the other Units. This Subsection 10.1.2 shall not be construed to limit the powers or obligations of the Board hereunder. Except as otherwise specifically provided under this Declaration, or required by law, all costs associated with the maintenance and repair of any Unit, whether performed by or at the direction of the Association or the Board or the Owner shall be the sole responsibility of the Owner(s) of such Unit.

10.1.3 Major Unit Interior Modifications – Approval & Deposit. An Owner may not make any improvement or alteration to his or her Unit that: (a) constitutes a structural change, such as moving, removing, adding, or altering any walls, doorways, and the like, or (b) affects any Common Area, Limited Common Area, or any other Unit, without first submitting detailed plans therefor to the Board and obtaining the Board's written approval of such plans and changes, which approval may be granted or denied in the Board's sole discretion. In the event such plans and changes are approved by the Board, the Owner shall, in advance of such work, deliver to the Association a security deposit in an amount to be reasonably determined by the Board. All local codes shall be adhered to and all applicable permits must be obtained by the Owner prior to commencement of any such work. All construction activities, including cleanup, access by workers, acceptable work hours, etc., must be performed in accordance with standards and regulations set forth by the Association.

10.1.4 Installation of Improvement, Mechanical Systems or Fixtures. An Owner may not, without the prior written consent of the Board, install or erect any improvement, mechanical system or fixture that either: (a) protrudes beyond the boundaries of his or her Unit or Limited Common Area; or (b) is located outside his or her Unit (even if located within the Limited Common Area that is appurtenant to such Unit).

10.1.5 Certain Work Prohibited. Notwithstanding any other provisions of the Governing Documents, no Owner shall do any work or make any alterations or changes that would jeopardize the soundness or safety of any portion of the Project, reduce its value or impair any easement or hereditament, without in every such case obtaining the unanimous written consent of all other Owners.

10.1.6 Project Exterior Appearance. In order to preserve the uniform exterior quality and appearance of the Project, no changes whatsoever shall be commenced, erected, maintained, made or done by any Owner to the exterior of any Unit or to any Limited Common Area (e.g. Driveways, parking spaces, patios, courtyards, decks, balconies, window wells, etc.)

without the Board's prior written approval. The Board shall have sole discretion to establish, regulate and determine the exterior appearance of the Buildings. The Board may also restrict, prescribe or regulate the screen or glass exterior doors of each Unit including, for example and without limitation, the type, color and hardware of any such screen or glass exterior doors and the maintenance thereof. No aluminum foil, newspapers, or any other similar materials may be used to cover the interior or exterior side of any windows of any Unit. Awnings or sunshades are not allowed on the exterior of any Building, unless the color, style, construction material, installation method, and uniformity of appearance have been approved by the Board in advance and in writing.

**10.2 Association Maintenance, Repair or Replacement of Units.** In order to preserve the uniform exterior quality and appearance of the Project, as well as the soundness and safety of any Building in which Units are located, the Association shall, at the Association's expense, be responsible for maintaining, repairing and/or replacing the following portions or components of each Unit:

(a) The entirety of the Unit's roof, including any components thereof, such as beams, rafters, insulation, underlayments, flashing, shingles, soffit, fascia, corbels, gables, eaves, gutters, roof vents, etc. (not including, however, the drywall or any wallpaper, paint, trim, or other finished ceiling materials that may be part of any portion of the Unit's ceiling that is attached to or located immediately below the Unit's roof);

(b) The structural portion or components of the Unit's exterior walls, including plates, connectors, headers, beams, studs and insulation (not including, however, the structural portion or components of any interior walls);

(c) The exterior surface and construction of the Unit's exterior walls (*i.e.* any walls that face outside), and all components that are part of such exterior surface and construction (such as, for example and without limitation, underlayments, siding, paint, trim, natural or cultured stone, and any other finished exterior wall material) except as otherwise specifically assigned in this Declaration to the Owner for maintenance and repair;

(d) Any components of the Unit's fireplace located on, within or above the roof, such as, for example and without limitation, the chase cover, mortar crown, or chimney cap (not including, however, any portion or components of the fireplace located below the structural components of the roof); and

(e) Any Building foundations (not including the concrete pads located within a Unit).

If any of the above portions or components of any Unit are damaged, destroyed, or require maintenance, repair or replacement due to the negligent or willful acts or omissions of any Owner (or such Owner's tenants, family members, guests or invitees) the Owner shall be responsible for any costs incurred by the Association in connection with the maintenance, repair or replacement of any such portion of the Unit, and such costs shall automatically and immediately be an Assessment against such Owner.

Aside from the maintenance, repair or replacement of those portions and components of a Unit set forth above, the Association shall not be responsible for the maintenance, repair or replacement of any other portion or component of the Unit, including, for example and without



limitation: (1) any framing or structural components of any ceilings or floors, (2) any framing, joists, beams, rafters, or any other structural elements or components, and (3) any decorative or non-structural elements or components (e.g. insulation, drywall or paint) of any interior Unit wall.

### **10.3 Use, Maintenance, Repair or Replacement of Limited Common Area**

10.3.1 Limited Common Areas – Generally. The use, condition and appearance of all Limited Common Areas located throughout the entire Project must at all times comply with this Declaration. The Board may, at any time, adopt Rules and Regulations in order to establish, clarify, promulgate and/or enforce further requirements or restrictions regarding such use, condition and appearance of Limited Common Areas.

10.3.2 General Care and Maintenance by Owners. Unless otherwise specifically set forth in the Governing Documents, the general care and maintenance of any Limited Common Area shall be the sole responsibility of the Owner(s) of the Unit(s) for which the use of such Limited Common Area is appurtenant or has been limited, set aside or reserved. Owners may not, however, modify, paint or otherwise decorate, or in any way alter any portion of their respective Limited Common Areas without first obtaining the Board's prior written approval.

10.3.3 Limitations on Alterations by Association. During the entire Period of Declarant's Control, neither the Association nor the Board shall, without the prior written consent of the Declarant, make any changes or alterations whatsoever to any of the Limited Common Areas other than such repairs, replacements, or similar efforts as may be necessary to properly maintain such Limited Common Areas as originally designed, created or constructed by the Declarant.

10.3.4 Maintenance, Repair or Replacement by Association. In order to preserve the uniform exterior quality and appearance of the Project, as well as the soundness and safety of certain aspects of the Project, the Association shall be responsible for major maintenance, and for any repair or replacement of any portions or components of the Limited Common Areas.

The Board shall determine the most efficient and equitable means of allocating to the Owners the cost of such Limited Common Area maintenance, repair and/or replacement. If the Association incurs any costs to maintain, repair and/or replace all or any portion of Limited Common Areas that are appurtenant, limited, set aside or reserved to one or less than all of the Units, the Board shall assess only the Owners of those Units for such costs. If, however, the Association intends to conduct the same or similar maintenance, repair or replacement of similar Limited Common Area components throughout the entire Project the Board shall assess all of the Owners for such costs.

10.3.5 Negligent or Willful Acts or Omissions by Owner. Notwithstanding the language of Subsection 10.3.4, if any particular Limited Common Area is damaged, destroyed, or requires maintenance, repair or replacement due to the negligent or willful acts or omissions of any Owner (or such Owner's tenants, family members, guests or invitees) the Owner shall be responsible for the cost of the maintenance, repair or replacement of such Limited Common Area, and such costs shall automatically and immediately be an Assessment against such Owner.

Likewise, each Owner will be personally liable, will be financially liable to the Association, and may (in addition to any assessments for the cost of maintenance, repair or replacement of the Limited Common Area) be fined by the Association for any damage (beyond normal or reasonable wear and tear) caused to the Limited Common Area due to the actions or inactions of an Owner (or such Owner's tenants, family members, guests or invitees) in connection with such Limited Common Area.

**10.3.6 Property Damage / Personal Injury.** Each Owner shall also be held liable for any damage or injury caused to any personal or real property, or to any individual, as a result of such Owner's (or such Owner's tenants, family members, guests, or invitees) failure to properly use, care for and/or maintain any Limited Common Area(s) as required by this Section 10.3 and/or as may be further required pursuant to any other provisions of the Governing Documents.

**10.3.7 Shelters/Enclosures.** Owners are strictly prohibited from placing, erecting or constructing any temporary or permanent shelters or enclosures on, in or around any patio, courtyard, balcony, deck, window well, Driveway, parking space or similar Limited Common Area without first obtaining the prior written approval of the Board. All costs associated with, or arising out of the existence of, such shelters or enclosures including, without limitation, maintenance, installation, removal, repair, cleaning, damage (whether to any Common Area or to any Unit), insurance, or any other expenses or liabilities, regardless of whether there is fault or negligence, shall be the sole responsibility of the Owner of the Unit serviced by the shelter or enclosure. Any enclosed patio, courtyard, balcony, deck, window well, Driveway, parking space or similar Limited Common Area shall retain its original status as Limited Common Area, and shall not be deemed as part of any Unit or an interest in real property by virtue of its being enclosed. The Board may, from time to time, adopt, promulgate and enforce rules further regulating, clarifying or otherwise expanding the provisions of this Subsection 10.3.7.

**10.3.8 Ice/Snow Removal.** Each Owner must at all times keep his or her patio, courtyard, deck and/or balcony clear of ice and snow. Such ice and snow must be removed in a safe and prudent manner so as to avoid injury to any individuals, or damage to any personal or real property. If such ice or snow removal results in damage to any portion of any Common Area or Limited Common Area (for example, but without limitation, patio, courtyard, deck or balcony surface damage caused by ice chipping) the Association may repair such damage and impose on the Owner deemed by the Board as responsible for such damage an Assessment and/or fine equal to a portion or the entire cost of such repair, as solely determined by the Board. An Owner will be held responsible and liable for injury to any individuals, or damage to any personal or real property, caused by the ice or snow removal activities of any third party (*i.e.* the Owner's tenant or guest, or any ice or snow removal contractor or service). If the Association and/or Manager determines that an Owner has failed to properly keep his or her patio, deck and/or balcony clear of ice or snow, the Association and/or Manager may (but shall not be obligated to) cause the removal of such ice or snow, and the Owner will be charged for the entire cost of such removal.

The Association shall contract, arrange and pay for the removal of snow from the following portions of the Project: (A) private streets or roadways located within the Project, (B) parking areas that are an integral part of such private streets or roadways, (C) sidewalks and walkways located within the Project that provide access to certain Common Improvements that

can be reasonably and safely used by Owners despite the accumulation of snow (*i.e.* the Project's clubhouse), (D) sidewalks and walkways located within the Project that provide access to Units, and (E) Driveways.

The Association shall not be responsible for removing, or paying for the cost of removing, snow from any Limited Common Areas other than Driveways. Owners shall be solely responsible for the removal of snow from any other Limited Common Areas such as, for example and without limitation, patios, courtyards, decks, and balconies.

The provisions of this Section 10.3.8 are intended to apply only to the Association's reasonable obligations and efforts to remove snow from certain portions of the Project. The Association may, but shall not be obligated to, make reasonable efforts to remove ice from certain portions of the Project as determined by the Board and/or the Manager.

If the Association and/or Manager fails, for any reason or no reason, to cause the removal of ice or snow from any portion of the Project, neither the Association nor the Manager shall be held responsible or liable for any bodily injury, damage to any personal or real property, or any other damages that may be directly or indirectly caused or allegedly caused by such ice or snow.

The Board shall adopt and enforce specific rules and policies regarding snowfall removal, provided that such rules and policies are consistent with this Subsection 10.3.8.

**10.3.9 Attachment to Structural Elements.** Owners are strictly prohibited from constructing, erecting or attaching any item, device or equipment to any structural elements of any Limited Common Area including, without limitation, any walls or railings that surround, encompass or comprise any patio, courtyard, deck or balcony. Owners must refrain from allowing any items (including, by example and without limitation, towels, clothing or hot tub covers) to hang from or dangle over the walls or railings of any patio, deck and/or balcony.

**10.4 Disputes Regarding Maintenance, Repair or Replacement of Lots, Units or Limited Common Area.** In the event of any dispute regarding the extent to which the Owner(s) or the Association are responsible for maintaining, repairing and/or replacing any portion or component of any Lot(s), Unit(s) and/or Limited Common Area(s), or to the extent that such maintenance, repair and/or replacement responsibilities are not clearly addressed in this Declaration, the Association may, pursuant to a majority vote of the Board, make such a determination. Such determination shall be set forth in a Board resolution which shall be distributed and delivered to all Owners and shall be binding against all Owners.

The Association may assume an Owner's maintenance, repair and/or replacement responsibilities as to any Lot, Unit and/or Limited Common Area if, in the opinion of a majority of the Board, such Owner is unwilling or unable to adequately perform such maintenance, repair and/or replacement. Prior to assuming any such maintenance, repair and/or replacement, the Board shall provide written notice to the Owner of the Association's intention to perform such maintenance, repair and/or replacement, and if, in the Board's opinion, such Owner has not commenced and diligently pursued remedial action within fourteen (14) days after such written notice has been received by the Owner, the Association may proceed with such maintenance, repair and/or replacement.

Notwithstanding the preceding paragraph, the Board may authorize the Association to immediately commence such maintenance, repair and/or replacement if the Board determines that such immediate remediation is necessary in order to mitigate or prevent any new or further damage to any other portion of the Project and/or to prevent personal injury or death. The Owner shall immediately reimburse the Association for any and all expenses incurred by the Association in connection with such maintenance, repair and/or replacement, and such expenses shall automatically and immediately be an Assessment against such Owner.

## **10.5 Use, Maintenance, Repair or Replacement of Common Area**

10.5.1 Common Areas – Generally. The use, condition and appearance of all Common Areas located throughout the entire Project must at all times comply with this Declaration. The Board may, at any time, adopt Rules and Regulations in order to establish, clarify, promulgate and/or enforce further requirements or restrictions regarding such use, condition and appearance of Common Areas.

10.5.2 Alterations to the Common Area. During the entire Period of Declarant's Control, the Declarant may make changes to the design and construction of the Common Improvements or any Common Improvements without providing any advance notice to, and without obtaining the approval or permission of, the Board, the Association or any Owners.

10.5.3 Limitations on Alterations by Association. During the entire Period of Declarant's Control, neither the Association nor the Board shall, without the prior written consent of the Declarant, make any changes or alterations whatsoever to any of the Common Areas or Common Improvements other than such repairs, replacements, or similar efforts as may be necessary to properly maintain such Common Areas or Common Improvements as originally designed, created or constructed by the Declarant.

10.5.4 Maintenance, Repair or Replacement by Association. The Association shall be solely responsible for any and all maintenance, repair and/or replacement of any portions or components of the Common Areas, including any Common Improvements.

10.5.5 Negligent or Willful Acts or Omissions by Owner. Notwithstanding the language of Subsection 10.5.4, if any portion of the Common Area, including any Common Improvement, is damaged, destroyed, or requires maintenance, repair or replacement due to the negligent or willful acts or omissions of any Owner (or such Owner's tenants, family members, guests, or invitees) the Owner shall be responsible for the cost of the maintenance, repair or replacement of such Common Area and/or Common Improvement, and such costs shall automatically and immediately be an Assessment against such Owner. Likewise, each Owner will be personally liable, will be financially liable to the Association, and may (in addition to any assessments for the cost of maintenance, repair or replacement of the Common Areas or Common Improvements) be assessed and/or fined by the Association for any damage (beyond normal or reasonable wear and tear) caused to the Common Areas or Common Improvements due to such Owner's actions or inactions in connection with such Common Areas or Common Improvements.

**10.5.6 Property Damage / Personal Injury.** Each Owner shall also be held liable for any damage or injury caused to any personal or real property, or to any individual, as a result of such damage to the Common Areas or Common Improvements caused by such Owner (or such Owner's tenants, family members, guests, or invitees).

**10.6 Access to Lots/Units and Limited Common Areas.** As set forth under Section 57-8a-224 of the Community Act, the Board and its agents or designees (including the Manager) may, only after reasonable notice has been delivered to the Owner or occupant of a particular Lot or Limited Common Area, access such Lot or Limited Common Area: (A) from time to time during reasonable hours, as may be necessary for the maintenance, repair, or replacement of any Common Areas or Common Improvements; or (B) for the purpose of making emergency repairs.

Any such entry made for the purpose of non-emergency maintenance, repair, or replacement of any Common Areas or Common Improvements shall be made with as little inconvenience to the Owner or occupant of such Lot or Limited Common Area as reasonably practicable, and any damage caused to such Lot or Limited Common Area (or to any Common Area or Common Improvements) shall be repaired by the Association and paid for out of the Common Expense Fund.

In the event any such entry into a Lot or Limited Common Area is made for the purpose of emergency repairs, any damage caused to such Lot or Limited Common Area (or to any Common Area or Common Improvements) shall be repaired by the Association and paid for out of the Common Expense Fund, unless such entry was made for the purpose of emergency repairs which resulted from the actions or inactions of the Owner or any occupant of a particular Lot or Limited Common Area, in which case the cost of repairing any damage to any Lots or Limited Common Areas (or damage to any Common Area or Common Improvements) shall be specially and specifically assessed to the Lot of the Owner or occupant whose actions or inactions caused the need for such emergency repairs. Likewise, if any repairs or maintenance were necessitated by or for the Lot or Limited Common Area entered, or were requested by the Owner or occupant of such Lot or Limited Common Area, the costs thereof shall be specially and specifically assessed to such Lot (or to the Lot to which such Limited Common Area is attached or appurtenant).

As used in this Section 10.6, the term "reasonable notice" means: (i) written notice that is hand-delivered to the Lot (or the Lot to which the Limited Common Area is attached or appurtenant) no less than 24 hours prior to the proposed entry; (ii) in the case of emergency repairs, notice that is reasonable under the circumstances; or (iii) any other applicable definition of "reasonable notice" as may be set forth under the Community Act.

As used in this Section 10.6, the term "emergency repairs" means any repairs that, if not made in a timely manner, will likely result in immediate and substantial damage to any Common Area, Common Improvements, or any Lot(s). 24-hour advance notice is not required in such emergency situations.

No Owner or occupant of any Lot or Limited Common Area shall unreasonably prevent, prohibit or delay access to such Lot or Limited Common Area by the Board, or by the Board's agents or designees, or by the Manager, in connection with any of the purposes described under this Section 10.6.

The Board and its agents or designees (including the Manager) may also enter a Lot or Limited Common Area in which, or as to which, any violation of the Governing Documents exists and correct, abate or remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist, as further set forth under Article 11 of this Declaration. Provided that the structure, thing, or condition requiring such correction, abatement or removal is not reasonably perceived by the Board or Manager to pose a threat to the safety of people, domestic animals or property, the Board or Manager will make every reasonable effort to provide the defaulting Owner or occupant of the Lot or Limited Common Area with no less than seventy-two (72) hours written notice prior to entering such Lot or Limited Common Area.

**ARTICLE 11 – RESTRICTIONS ON USE**

**11.1 Residential Use.** The Units shall be used for single-family residential purposes only, on an ownership, rental or lease basis; and for the common social, recreational or other reasonable uses normally incident to such purposes. Such use as a single-family residence shall be deemed to include accessory use as a professional office to the extent permitted by applicable zoning ordinances and to the extent customarily incidental to primary use as a residence.

**11.2 Vehicle Parking.** Driveways, parking spaces, and any other parking areas located within the Project may only be used for the parking of vehicles that are operative and have been properly registered with a governmental motor vehicles department or division. Motor homes, campers, trailers, boats, and other similar vehicles, items or equipment may not be parked or kept in such Driveways, parking spaces, or other parking areas unless specifically permitted under the Rules and Regulations as adopted by the Board. The Board may require removal of any vehicle or equipment that is inoperative or is not properly registered, or any unsightly vehicle or equipment, or any other equipment or item that is improperly stored in any Driveway, parking space, or other parking area. If such vehicle, equipment or item is not removed, the Board may cause removal at the risk and expense of the owner thereof. The use of all Driveways, parking spaces, or any other parking areas within the Project may be further regulated by Rules and Regulations that may be adopted by the Board from time to time.

Recreational vehicles including, for example and without limitation, snowmobiles, off-road motor vehicles such as dirt bikes or ATVs may not be operated on any portion of the Project except as necessary for the loading or unloading of such vehicles.

**11.3 Repair Activities.** No repair of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be performed within the Project.

**11.4 Common Drive and Walks.** Common drives, walks, corridors and stairways shall be used exclusively for normal transit and/or pedestrian traffic and no obstructions shall be placed thereon or therein without the Board’s prior written consent.

**11.5 Retail or Commercial Activities.** Retail or commercial activities are prohibited on any portion of the Common Areas, including on or in any Common Improvements including the clubhouse. The determination of whether or not a particular activity is retail or commercial in nature shall be made by a Majority of the Owners. Any such determination by a Majority of the

Owner shall, at all times, be subject to any applicable Weber County ordinances or zoning related to retail or commercial activities within the Project.

The restriction on retail or commercial activities set forth in this Section 11.5 shall not apply to the Manager's activities related to management of the Project as directed by the Board including, without limitation, the Manager's occupancy and use of any portion of the clubhouse provided that such clubhouse occupancy or use has been approved by the Association in advance and in writing.

**11.6 Exterior Fires / Barbeques.** There shall be no exterior fires anywhere within the Project, except in receptacles located in the Common Area that have been specifically designed for such purpose; provided, however, that propane, natural gas and electric barbeque grills are permitted in Limited Common Areas, provided they are properly maintained and comply with the latest Underwriter Laboratories safety requirements. **The use of any other type of barbeque including, for example and without limitation, any barbeque that utilizes charcoal, wood, pellets or any other flammable substance is strictly prohibited on any portion of the Project, except the designated grill area in the Common Area. The use of any barbeques of any kind inside of a Unit is strictly prohibited. No Owner shall allow the condition of his or her Unit to be such as to constitute a fire hazard.**

**11.7 Signs.** No sign of any kind shall be displayed to the public view, on or from any Unit or Common Area or Limited Common Area, without the prior written consent of the Board. The Board may adopt and enforce specific rules regarding the posting of certain types of signs throughout the Project.

**11.8 Lighting.** Exterior lighting fixtures, as well as any walkway and landscaping lights, are prohibited on any portion of the Project unless such lighting has been approved by the Board in advance and in writing. Such exterior lighting includes any lighting fixtures or devices that may be temporarily or permanently installed or located on any exterior portion of any Building or on any Common Area (including any Limited Common Area). Whenever possible, efforts should be made to insure that lighting located within or upon the interior or exterior of any Building (including within any Unit or any Limited Common Area) is not offensive to other Owners or to the owners of nearby or surrounding property.

**11.9 Patios, Courtyards, Decks and Balconies.** The patios, courtyards, decks and balconies of each Unit shall be maintained in a safe and neat manner. The patios, courtyards, decks and balconies of each Unit are generally intended for keeping and using items that are commonly kept and used in such areas, such as patio furniture and gas or electric barbeques. Accordingly, Owners (and the tenants, family members, guests or any other occupants of any Unit) shall not use such areas for the general storage of items or for the storage of excessive or unsightly personal property or similar items. Owners (and the tenants, family members, guests or any other occupants of any Unit) must also refrain from allowing any items (including, for example and without limitation, rugs, towels or clothing) to hang from or dangle over the walls or railings of any patio, courtyard, deck and/or balcony. This restriction does not apply to the proper display of the American flag.

**11.10 Hot Tubs.** None of the decks, balconies or flooring of any Units located within the Project have been designed, engineered, or constructed to support any hot tub of any kind or size. As such, no hot tub of any kind or size may be temporarily or permanently placed or installed on any portion of any such deck or balcony or inside of any Unit. Likewise, no hot tub of any kind or size may be temporarily or permanently placed or installed on any portion of any courtyard located within the Project. This prohibition against the placement or installation of any hot tub inside of any Unit shall not apply to any bathtub whirlpool, or similar fixture or equipment that would normally be installed in a residential bathroom.

Hot tubs may be placed or installed on the ground-level patio that serves as Limited Common Area for a particular Unit, provided that (a) such hot tub has been properly installed; (b) the electrical system servicing such hot tub has been properly installed by a licensed, bonded and insured electrician, and (c) no portion of the hot tub (including any pipes, wires, conduits or other utility lines or installations related to the use or operation of the hot tub) protrude or extend beyond the boundaries of the patio area.

Each Owner shall indemnify, defend, and hold harmless the Association and the Declarant, including their respective officers, directors, managers, owners, investors, employees and agents (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, suits, actions, losses, costs, damages, expenses, and liabilities of whatever kind or nature (including but not limited to reasonable attorney fees, litigation, court costs, and amounts paid in settlement or in discharge of judgments) howsoever caused, whether directly or indirectly resulting from, or in any way arising out of, or otherwise related to such Owner's (including their invitees, employees, agents, occupants, or tenants) construction, design, placement, use and/or maintenance of a hot tub on or in any portion of that Owner's Unit or Limited Common Area. Without in any way limiting the scope of the previous sentence, in the event an Owner's hot tub results in any form of damage to any portion of the Project (including, by example and without limitation, structural damage to any portion of any Building) that Owner shall be solely liable for any and all costs associated with the assessment and/or repair of such damage. The liability described in the previous sentence shall apply to any Owner of a Unit and/or appurtenant Limited Common Area upon which a hot tub is located regardless of whether such hot tub was installed by a previous owner of such Unit or by the Declarant or any developer or builder of the Project. Any Owner who installs and/or maintains a hot tub in any portion of such Owner's Unit or appurtenant Limited Common Area shall be solely responsible for the upkeep and maintenance of the hot tub, and shall indemnify, defend and hold the Indemnified Parties harmless from and against any such costs.

**11.11 Floor Load.** There shall be no floor load in excess of the weight for which the Unit was designed as determined by the developer and builder of the Unit unless special arrangements are made, and an engineering determination of floor load capacity is obtained by the Owner and approved in writing by the Board. It shall be the Owner's responsibility to determine if any particular item exceeds the floor load capacity for a Unit.



## 11.12 Animals

11.12.1 General. Owners may only keep domestic animals in their Units. Owners are prohibited from keeping any wild or dangerous animals in their Units. In no event shall any Owner be permitted to raise, breed, keep or maintain any animals for any commercial purposes. No livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas or on any other portion of the Project.

11.12.2 Animals in Common Areas. No animal shall be permitted in any Common Areas unless carried in a carrier or properly controlled on a leash. All animal waste shall be promptly removed from the Common Areas (including Limited Common Areas) and be fully cleaned-up by the animal's owner.

11.12.3 Additional Board Rules. The Board may adopt additional rules restricting the maintenance and keeping of animals within the Project and their enforcement, including, without limitation, the assessment of fines to Owners who violate such rules.

**11.13 Nuisances and Offensive Activity.** No noxious, offensive, or illegal activity shall be carried on in any Unit or Common Area (including Limited Common Area), nor shall anything be done therein which may be or become an annoyance or nuisance to any other Owner (or to any guest, tenant or other occupant of any Unit) or which may cause damage to any Common Area (including any Limited Common Area).

**11.14 Smoking.** For purposes of this Declaration, the smoking of tobacco products is deemed to be a nuisance. Smoking of tobacco products in any form by any Owner (or by any tenant, guest, invitee or occupant of any Unit) in or on any portion of any interior or exterior Common Area, including, for example and without limitation, the swimming pool area, clubhouse, lawns or parking areas, and any Limited Common Areas (such as, for example and without limitation, patios and decks appurtenant to a Unit) is strictly prohibited. Smoking of tobacco products in any form by any Owner (or by any tenant, guest, invitee or occupant of any Unit) inside any Unit shall be subject to rules, regulations or restrictions as may be adopted by the Board. In adopting any rules concerning smoking inside Units, the Board may consider, among other things, the unpleasant odor and harmful health effects of second-hand or drifting smoke, any added costs to the Association associated with smoking inside Units (including maintenance and insurance costs), and the difficulty and general ineffectiveness of attempting to block drifting smoke between Units through the use of filters and exhaust fans, sealing cracks and crevices and installing other impermeable barriers. Neither an Owner complaining of smoke or the Board or the Association responding to such complaint shall be required in order to require that the individual smoking close his or her windows or doors or to otherwise take steps necessary to prevent drifting smoke from entering into another Unit or the Limited Common Area associated with that Unit. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit or its Limited Common Area, which may require, if other attempts to stop it are unsuccessful, the termination of smoking. As used in this Section 11.14, the term "smoking" or "smoking of tobacco products" means and refers to inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, e-cigarette or any other tobacco product or device.

**11.15 Effect on Insurance.** Nothing shall be done or kept in any Unit or in the Common Area that may increase the rate of insurance on the Common Areas or any Common Improvements or any Units without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his or her Unit or in the Common Areas or Limited Common Areas which will result in the cancellation of insurance on any Unit or any part of the Project, or which would violate any applicable governmental laws, ordinances, rules or regulations.

**11.16 Communication Devices.** The installation or use, on or in any portion of the Project, of any broadcasting, receiving, satellite and/or wireless signal dishes, antennas or similar devices (collectively, “**Communication Devices**”) that are not permitted and/or regulated by the Federal Communications Commission (“**FCC**”) is prohibited. Communication Devices that are one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, and/or receive or transmit any wireless signals, may be installed only to the extent and in locations clearly allowed under local, state or federal law, and no cables used for signal reception shall be allowed in or through any visible portion of any Common Area (including any Limited Common Area).

11.16.1 Common Areas. Owners are strictly prohibited from constructing, erecting or attaching any Communication Device(s) to any structural elements of any Common Area (including any Limited Common Area) including, without limitation, any walls or railings that surround, encompass or comprise such Common Areas. Any Communication Devices that are in any way placed or used in any Limited Common Area (e.g. tripod-mounted satellite dish) must be positioned, maintained and used in a safe and attractive manner and location. No Owner may install any Communication Device on the exterior, roof, or restricted areas of any Building. No Communication Device may extend beyond the boundaries of any Limited Common Area, or extend or hang beyond the walls or railings surrounding any Common Area (including any Limited Common Area). Owners may not drill holes in or through the exterior walls, doors or window frames, or the roof of any Building in order to install any Communication Device or run cable from the Communication Device into any Unit without the Board’s prior written permission.

11.16.2 Liability and Insurance. Owners are responsible for any injury or damage to persons or property caused by their Communication Device(s). Owners must purchase and maintain liability insurance for the use of any Communication Device, which insurance must name the Association as an additional insured. Owners shall provide the Board with proof of such insurance upon request.

11.16.3 FCC Rules. All Communication Device installations must be performed in complete compliance with all applicable governmental laws, rules and regulations. If permits are required, Owner will obtain all such permits prior to installation. The provisions of this Section 11.16 are intended to comply with applicable FCC rules, as may be amended from time to time. All requirements of such FCC rules are hereby incorporated herein. In the event any portion of this Section 11.16 is held to conflict with any applicable laws, rules or regulations, those portions shall be deemed stricken and all other portions of this Section 11.16 regarding Communication Device installation, maintenance, use and insurance will remain in full force and effect.

11.16.4 Waiver. No requirements or restrictions of this Section 11.16 may be verbally waived or changed by the Board. Any such waiver or change will be effective only when placed in a writing specifically stating the nature of the waiver that has been approved by a majority vote of the Board. If any Owner receives the benefit of any waiver or change of the provisions of this Section 11.16, it shall be that Owner's responsibility and obligation to keep and safeguard the written waiver or change and to produce it upon any future request of the Board.

**11.17 Leases and Short-term Rentals.** Subject to laws, rules, or regulations that may be adopted by Weber County, there are no restrictions on the right of any Owner to lease, rent or otherwise grant occupancy rights to a Unit. Each Owner acknowledges and agrees that the Units may be rented on a daily, weekly, monthly, or other periodic basis, and that vacation and other short-term rentals are permitted.

Owners who rent their Unit must assume complete responsibility for the actions and behavior of their tenants and the guests of such tenants. Owners shall provide their tenants with a copy of the Governing Documents to ensure compliance. Any violation of any provision of the Governing Documents by any tenant, guest of tenant or any other occupant of the Unit may result in a fine being levied against the Unit, the payment of which shall be the sole responsibility of the Owner of that Unit.

**11.18 Rules and Fines.** The Board may, by rule or regulation, adopt, clarify, promulgate and/or enforce further requirements or restrictions regarding the use of any portion of the Project in order to ensure compliance with the general guidelines of this Article 11 and other provisions of the Governing Documents. The Board must place such Rules and Regulations in writing, and must furnish or make available to the Owners a complete copy of such Rules and Regulations.

Violations of any provisions of this Article 11, the Rules and Regulations or any other provisions of the Governing Documents may result in the imposition of a fine or the suspension of such Owner's right to have access to or use the Clubhouse, Office/Lobby Building, pool, tennis courts, laundry facility or other amenities. Each Owner is accountable and responsible for the behavior of his or her tenants, family members, guests, invitees and/or any other occupants of such Owner's Unit. Fines levied against such tenants, family members, guests, invitees and/or any other occupants are the responsibility of the Owner.

#### 11.18.1 Procedures for Assessment of Fines

The Board shall assess or impose fines in the following manner:

- (a) Before assessing a fine, the Board must first give the Owner a written warning that:
  - (i) describes the violation;
  - (ii) states the rule or provision of the Governing Documents that the Owner's conduct violates or has violated;
  - (iii) states that the Board may, in accordance with the provisions of Section 57-8a-208 of the Community Act, assess fines against the Owner if a continuing violation is not cured or if the Owner commits similar violations at any time within one (1) year after the day on which the Board gives the Owner the written warning or assesses a fine against the Owner; and

(iv) if the violation is a continuing violation, states a time that is not less than forty-eight (48) hours after the day on which the Board gives the Owner the written warning by which the Owner must cure the violation.

(b) The Board may assess a fine against an Owner if:

(i) at any time within one year after the day on which the Board gives the Owner a written warning described under Subsection 11.18.1(a), the Owner commits another violation of the same rule or provision identified in the written warning; or

(ii) for a continuing violation, the Owner does not cure the violation within the time period that is stated in the written warning described under Subsection 11.18.1(a).

(c) After the Board assesses a fine against any Owner under this Section 11.18, the Board may, without further warning, assess an additional fine against the Owner each time the Owner:

(i) commits a violation of the same rule or provision at any time within one (1) year after the day on which the Board assesses a fine for a violation of the same rule or provision; or

(ii) allows a violation to continue for ten (10) days or longer after the day on which the Board assesses the fine.

#### 11.18.2 Limitations Regarding Fines

(a) The aggregate amount of fines assessed against any Owner for violations of the same rule or provision of the Governing Documents may not exceed \$500 in any one calendar month.

(b) Any fine assessed by the Board shall:

(i) be made only for a violation of a rule, covenant, condition, or restriction that is set forth in the Governing Documents;

(ii) be in the amount provided for in the Governing Documents and in accordance with Subsection 11.18.2(a); and

(iii) accrue interest and late fees as provided in the Governing Documents.

#### 11.18.3 Informal Hearing

(a) Any Owner who is assessed a fine under this Section 11.18 may request an informal hearing before the Board to dispute the fine no later than thirty (30) days after the day on which the Owner receives notice that the fine is assessed.

(b) At any hearing described under this Subsection 11.18.3, the Board shall:

(i) provide the Owner with a reasonable opportunity to present the Owner's position to the Board; and

(ii) allow the Owner, any member of the Board, or any other person involved in the hearing to participate in the hearing by means of electronic communication.

(c) As used in this Section 11.18, the phrase “means of electronic communication” means an electronic system that allows individuals to communicate orally in real time. Such means of electronic communication includes (i) web conferencing, (ii) video conferencing; and (iii) telephone conferencing.

(d) If an Owner timely requests an informal hearing under this Subsection 11.18.3, no interest or late fees may accrue until after the Board conducts the hearing and the Owner receives a final decision.

#### 11.18.4 Appeal

(a) An Owner may appeal any fine assessed under this Subsection 11.18 by initiating a civil action no later than one hundred eighty (180) days after:

(i) if the Owner timely requests an informal hearing under Subsection 11.18.3, the day on which the Owner receives a final decision from the Board; or

(ii) if the Owner does not timely request an informal hearing under Subsection 11.18.3, the day on which the time to request an informal hearing under Subsection 11.18.3 expires.

#### 11.18.5 Delegation of Board Authority

(a) Subject to Subsection 11.18.5(b), the Board may delegate the Board’s rights and responsibilities under this Section 11.18 to the Manager.

(b) The Board may not delegate the Board’s rights or responsibilities described in Subsection 11.18.3(b).

#### 11.18.6 Fees, Costs and Expenses

The Association shall be entitled to recover reasonable attorney fees, costs and expenses incurred in the enforcement of the Governing Documents, including the enforcement and collection of fines.

#### 11.18.7 Consistency with Community Act Requirements

The procedures set forth under this Section 11.18 are intended to be consistent with the requirements of Section 57-8a-208 of the Community Act as of the date this Declaration is recorded in the Recorder’s Office. The Association and the Board must at all times comply with any amendments to the Community Act that may govern the manner in which fines are required to be assessed, imposed and/or collected.

## ARTICLE 12 – BUDGET AND EXPENSES

### 12.1 Association Budget and Estimated Expenses

12.1.1 Annual Budget. No later than thirty (30) calendar days prior to the Association's annual meeting, the Board (or the Manager as may be directed by the Board) shall prepare and deliver to the Owners a proposed budget (the "**Annual Budget**") which shall set forth an itemization of all expenditures for the fiscal year (commencing on January 1<sup>st</sup> and ending December 31<sup>st</sup>) in which the annual meeting is required to be held pursuant to the Bylaws. The Annual Budget shall be based upon estimated cash requirements by the Board to provide for the payment of all expenses growing out of or connected with the administration, operation and maintenance of the Project during such fiscal year. The Annual Budget shall itemize the estimated costs for any and all Common Expenses, anticipated receipts (if any), any deficit or surplus from prior operating periods, and shall also include the Reserve Fund Line Item for such fiscal year as described under Section 12.2 of this Declaration. The Annual Budget shall serve as the supporting document for the Annual Assessment for the fiscal year to which the Annual Budget applies, and as a major guideline under which the Project shall be operated and managed during such fiscal year.

12.1.2 Annual Budget Shortfall. If the sum estimated and budgeted for the Annual Budget at any time proves inadequate for any reason the Board may impose a Special Assessment pursuant to Subsection 13.3.1, below. By way of example, and not limitation, such a shortfall in the Annual Budget may be caused by the failure of any individual Owner (or group of Owners) to pay their Annual or Special Assessment(s), or could result from any unanticipated increase in Common Expenses caused by, for example, increased snow removal costs due to rising fuel costs or unusually heavy snowfall.

12.1.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year that begins on January 1<sup>st</sup> of each calendar year and ends on the subsequent December 31<sup>st</sup> of that same year. Not less than thirty (30) days prior to the annual Owners' meeting, the Board (or the Manager, if so requested by the Board) shall prepare and furnish to the Owners an operating budget (the "**Annual Budget**") which shall set forth an itemization of expenditures for the upcoming fiscal year. The Annual Budget also may, but is not required to, include a Reserve Fund budget that shows the total amounts that are intended to be deposited into the Reserve Fund during the upcoming fiscal year, as well as the total amounts that are intended to be disbursed from the Reserve Fund during such upcoming fiscal year, including the manner in which such disbursements are intended to be used. Any such Reserve Fund budget must be reasonably consistent with the determinations of the most recent reserve analysis. The Board may furnish the Annual Budget to the Owners by posting a copy of the Annual Budget on the Association's website.

The Annual Budget shall be based upon the Board's estimates for the payment of all expenses connected with the administration, operation and maintenance of the Project during such fiscal year. The Annual Budget shall itemize by line item or category the estimated Common Expenses, anticipated receipts (if any), any deficit or surplus from prior operating periods, and shall also include the Reserve Fund Line Item for such fiscal year as described under Section 12.2 of this Declaration. The Annual Budget shall serve as the supporting

document for the Annual Assessments for the fiscal year to which the Annual Budget applies, and as a major guideline under which the Project shall be operated and managed during such fiscal year.

The proposed Annual Budget and Annual Assessments shall become effective as of the date of the annual Owners' meeting (and shall retroactively apply to the beginning of the fiscal year for which the Annual Budget was prepared) unless the Annual Budget is specifically disapproved by a vote of at least a Majority of the Owners either at the annual Owners' meeting or at a special meeting that is held and completed not later than forty-five (45) days following the date of the annual Owners' meeting.

Unless the Annual Budget is specifically disapproved by a Majority of the Owners the Annual Budget and Annual Assessments shall be deemed approved. Notwithstanding the foregoing, however, if the Annual Budget and Annual Assessments are disapproved by a Majority of the Owners, or the Board fails for any reason to establish the Annual Budget and Annual Assessments for a particular fiscal year, until such time as a new Annual Budget and new schedule of Annual Assessments has been established, the Annual Budget and the Annual Assessments in effect for the previous fiscal year shall continue for the succeeding fiscal year.

The Annual Budget, and each line item therein, is intended as a management tool for the Board to meet the Common Expenses and cash needs of the Association for the applicable fiscal year. The actual amount of any given line item or category may exceed or be less than the amount that is set forth in the Annual Budget. Nothing herein or in the Annual Budget shall prevent the Board, in its discretion, from reallocating funds from one line item or category in the Annual Budget to another line item or category in order to meet actual expenses as they are incurred. Any such reallocation shall not require the Board to give prior notice to the Owners or obtain the approval of the Owners.

**12.2 Reserve Fund Line Item.** The purpose of this Section 12.2 is to comply with Section 57-8a-211 of the Community Act, as may be periodically amended.

**12.2.1 Determination of Reserve Fund Line Item.** In calculating, formulating or determining its Annual Budget, the Association must include a "**Reserve Fund Line Item**" which shall be used to fund the Reserve Fund. The Reserve Fund Line Item shall be in: (A) an amount the Board determines, based upon the reserve analysis, to be prudent; or (B) a higher amount if the Board reasonably determines that such higher amount is required in order to properly maintain or replenish the Reserve Fund as a result of, for example and without limitation, an unexpected depletion of the Reserve Fund due to the repair, replacement, or restoration of Common Areas and/or Common Improvements that were not anticipated or accounted for as part of the Association's most recent reserve analysis.

**12.2.2 Veto of Reserve Fund Line Item.** No later than forty-five (45) calendar days after the day on which the Association adopts the Annual Budget, the Reserve Fund Line Item may be vetoed by the Owners (at a special meeting called by the Owners for the purpose of voting whether to veto the Reserve Fund Line Item) collectively holding at least fifty-one percent (51%) of the Percentage Interest.

If the Owners veto the Reserve Fund Line Item as provided under this Subsection 12.2.2, and a Reserve Fund Line Item exists in a previously approved Annual Budget that was not vetoed, the Association shall fund the Reserve Account in accordance with the Reserve Fund Line Item from the previously approved Annual Budget.

**12.2.3 Owner Legal Action.** If the Association fails to comply with the requirements of Section 57-8a-211 of the Community Act and/or any provisions of this Declaration pertaining to the Reserve Fund Line Item, and the Association fails to remedy such noncompliance within the time period specified under Section 57-8a-211 of the Community Act, any Owner may file an action in state court for damages or remedies pursuant to Section 57-8a-211 of the Community Act.

**12.3 Common Expense Fund.** With the exception of those amounts that may be set aside and deposited into the Reserve Fund, or any amounts the Board may elect to deposit into a similar separate special fund (*i.e.* special capital improvement fund, or any fund the Board may establish in order to cover maintenance of specific Common Improvements, etc.), the total amount of any and all Assessments paid by the Owners shall be deposited into the Common Expense Fund.

#### **12.4 Reserve Analysis**

**12.4.1 Reserve Analysis Frequency.** As required by the Community Act, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) calendar years; and subsequently review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) calendar years.

**12.4.2 Reserve Analysis Purpose.** As set forth under Section 57-8a-211 of the Community Act, the purpose of the reserve analysis is to determine: (a) the need for a Reserve Fund to accumulate money to cover the cost of repairing, replacing, or restoring Common Areas and/or Common Improvements that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, if the cost cannot reasonably be funded from the Annual Budget (including the Common Expense Fund) or other funds of the Association; and (b) the appropriate amount of the Reserve Fund.

**12.4.3 Reserve Analysis Contents.** The contents of the reserve analysis, and the manner in which the reserve analysis is reported to the Owners, must comply with the requirements of the Community Act, as may be periodically amended. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

#### **12.5 Reserve Fund**

**12.5.1 Purpose of Reserve Fund.** In addition to the purposes for which a Reserve Fund is to be established as described under Subsection 12.4.2, or any other provisions of this Declaration, the Reserve Fund may also be used to pay for any unexpected Common Expenses and capital improvements, provided that the costs for such unexpected Common Expenses and capital improvements cannot reasonably be funded through the Annual Budget, or from the Common Expense Fund or other funds of the Association.



12.5.2 Funding of Reserve Fund. The Reserve Fund shall be funded via the Reserve Fund Line Item described under Section 12.2 of this Declaration. The Reserve Fund may also be funded via Special Assessment(s) as set forth under Subsection 13.3.3.

12.5.3 Use of Reserve Fund. As set forth under the Community Act, the Board may not use money in the Reserve Fund (i) for daily maintenance or administrative expenses, unless a Majority of the Owners vote to approve the use of Reserve Fund money for such purpose; or (ii) for any purpose other than those purposes for which the Reserve Fund was established.

12.5.4 Annual Presentation and Discussion of Reserve Fund. As required under the Community Act, the Association shall, at each annual meeting of the Owners or at a special meeting of the Owners called for the purpose of addressing the Reserve Fund: (i) present the reserve analysis; and (ii) provide an opportunity for the Owners to discuss reserves and vote on whether to fund the Reserve Fund and, if so, how to fund it and in what amount. The Association shall prepare and keep minutes of each such meeting held and indicate in the minutes any decision relating to funding the Reserve Fund.

**12.6 Funds to be Maintained Separately.** The Common Expense Fund and the Reserve Fund shall be kept in separate accounts, shall be established and deposited with a federally-insured bank or credit union, and shall be deposited into a checking, savings or certificate of deposit account. In the event the Board elects to establish and maintain any separate fund (*i.e.* special capital improvement fund or fund to cover maintenance of specific Common Improvements, etc.), a separate account shall be established for each such fund and deposited with a federally insured bank or credit union.

**12.7 Recordkeeping.** As required under the Acts, the Board shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred. Such records shall be available for examination by any Owner at convenient hours of weekdays no later than fourteen (14) calendar days after the Owner makes a written request to examine such records.

## ARTICLE 13 – ASSESSMENTS

### 13.1 Owner Payment of Assessments

13.1.1 Assessments. Each Owner shall pay Assessments subject to and in accordance with the procedures set forth in this Article 13 or any other applicable provisions of the Governing Documents. As used in this Declaration, the term “**Assessments**” shall include Annual Assessments, Special Assessments and any other assessments as may be permitted under the Community Act or the Governing Documents.

13.1.2 Purpose of Assessments. Any and all Assessments provided for under this Declaration shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners, including the maintenance of any real and personal property owned by the Association, and regulating the Project, all as may be more specifically authorized from time to time by the Board.

13.1.3 Obligation to Pay Assessments. Each Assessment shall be joint and several personal debts and obligations of the Owner(s) and contract purchaser(s) of Lots for which the same are assessed as of the time the Assessment is made and shall be collectible as such. Each Owner, by acceptance of a deed or as a party to any other type of conveyance of any Lot, vests in the Association or its agents the right and power to (a) bring all actions against him or her personally for the collection of any debts arising out of or related to any Assessments, or any other charges related to such Assessments; or (b) foreclose any lien arising out of or related to any Assessments, or any other charges related to such Assessments, in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

13.1.4 No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including, without limitation, non-use of Common Areas, non-use of any Common Improvements, and/or the abandonment of his or her Unit.

13.1.5 Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association, the Board or the Manager to take some action or perform some function required to be taken or performed by the Association, the Board or the Manager pursuant to the Governing Documents, or for any inconvenience to any Owner arising from or related to any maintenance or repairs occurring anywhere within the Project, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

13.1.6 Imposition of Assessments. The dollar amount of, and the purpose for, any Assessment shall be determined pursuant to the procedures set forth in the Acts and/or the Governing Documents. However, the Board has the sole authority and discretion to determine how and when any Assessment will be imposed upon, paid by and/or collected from the Owners.

13.1.7 Application of Payments. All payments received by the Association from Owners shall be applied in the following order: (i) Additional Charges, (ii) past due Assessments, (iii) currently due Assessments; and (iv) any remaining charges.

13.1.8 Account Status. The Association shall provide Owners with a timely accounting of the status of their accounts. Such accountings will be considered accurate unless challenged within ninety (90) calendar days of the posting of any item. After 90 calendar days, the costs incurred by the Association to review any item will be the responsibility of the individual Owner.

13.1.9 Statement of Assessments Due. Upon written request by any Owner, the Board shall furnish to such Owner a statement of Assessments due, if any, on his or her Lot. The Association may require the advance payment of a processing charge not to exceed \$25.00 for the issuance of such statement. This written statement of Assessments due shall be conclusive in favor of any person who relies on such statement in good faith.

13.1.10 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which, insofar as it adversely affects the Association's lien for unpaid Assessments, each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

13.1.11 Declarant Exempt. Notwithstanding any language in the Governing Documents to the contrary, unless otherwise prohibited by the Acts or any applicable governmental law, rule or regulation, the Declarant shall not be obligated to pay Annual Assessments on any Lots owned by the Declarant unless and until: (A) the Units constructed on such Lots have been completed as solely evidenced by the County's issuance of a Certificate of Occupancy; or (B) Declarant elects in writing to pay the Annual Assessments, whichever first occurs. However, the Declarant shall not be exempt from the payment of any Special Assessments that may be imposed by the Association, the Board or that may be otherwise required under the Governing Documents.

## 13.2 Annual Assessments

13.2.1 Use of Annual Assessments. Annual Assessments shall be levied by the Board against each Lot and its Owner in order to pay the Common Expenses.

13.2.2 Based on Percentage. All Annual Assessments shall be assessed to each Lot and the Owners thereof in an amount equal to the Percentage Interest for such Lot.

13.2.3 Notice of Annual Assessments and Time for Payment. The Board shall notify each Owner in writing as to the amount of the proposed Annual Assessment against such Owner's Lot for the upcoming fiscal year no later than thirty (30) calendar days prior to January 1<sup>st</sup> of such upcoming fiscal year. Each Annual Assessment shall be payable in twelve (12) equal monthly installments, with each such installment due on the first day of each calendar month during the fiscal year to which the Annual Assessment relates.

The monthly installment of the proposed Annual Assessment shall become due and payable on the first day of January of the fiscal year to which the proposed Annual Assessment relates (the "**Intended Fiscal Year**") and shall continue to be due and payable on the first day of each subsequent calendar month unless or until the Annual Budget upon which the proposed Annual Assessment was based is disapproved by the Owners as described under Subsection 12.1.3. If such Annual Budget is disapproved, each Owner shall thereafter pay the monthly installment that was paid by such Owner under the Annual Budget of the previous fiscal year, and shall continue to pay such amount on the first day of each calendar month until such time as the Annual Budget for the Intended Fiscal Year has been approved. The Board shall determine the manner in which any discrepancies in monthly installments due and payable by each Owner for any Intended Fiscal Year (caused by delayed approval of the Annual Budget for that Intended Fiscal Year) will be resolved.

The failure of the Board to deliver timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor a release of any Owner from the obligation to pay such Annual Assessment or any other Assessment; however the date when the payment shall become due in such case shall be deferred to a date fifteen (15) calendar days after notice of such Assessment shall have been given to the Owner.

**13.3 Special Assessments.** In addition to the Annual Assessments authorized by Section 13.2, the Board may, on behalf of the Association, periodically impose special assessments (“**Special Assessments**”) pursuant to this Section 13.3.

**13.3.1 Annual Budget Shortfall.** If the sum estimated and budgeted for the Annual Budget at any time proves inadequate for any reason the Board may impose a Special Assessment which shall be assessed to each Lot and the Owner(s) thereof in an amount equal to the Percentage Interest for such Lot.

Any such Special Assessment deemed by the Board as necessary to remedy an Annual Budget shortfall, and imposed by the Board without the prior approval of the Owners, shall not exceed ten percent (10%) of the Annual Assessment for the same fiscal year in which the Special Assessment has been imposed. Owners shall be given no less than thirty (30) calendar days written notice of any such Special Assessment caused by an Annual Budget shortfall.

In the event the Board determines an Annual Budget shortfall may only be adequately remedied by a Special Assessment that exceeds ten percent (10%) of the Annual Assessment for the same fiscal year in which the Special Assessment is to be imposed, such a Special Assessment shall require an affirmative vote or written consent of a Majority of the Owners. In the event the Board is unable to obtain such an affirmative vote or written consent of a Majority of the Owners, the Board may cover the Annual Budget shortfall by using all or any portion of the Reserve Fund.

**13.3.2 No Board Majority.** If the Board is unable to obtain a majority vote of the Board members (as required under Section 8.2) to approve any Special Assessment that the Board is otherwise authorized to approve without the Owners’ prior approval, the Board shall present such Special Assessment to a vote of the Owners, and the Special Assessment must be approved by a Majority of the Owners.

**13.3.3 Reserve Fund Shortfall.** In the event of any shortfall in the Reserve Fund, the Board may impose a Special Assessment to remedy such shortfall, provided the Board has first obtained an affirmative vote from a Majority of the Owners. Such Special Assessment shall be assessed to each Lot and the Owner(s) thereof in an amount equal to the Percentage Interest for such Lot.

**13.3.4 No Authority to Incur Expenses.** This Section 13.3 shall not be construed as an independent source of authority for the Association or the Board to incur expenses, but shall only be construed to prescribe the manner of assessing for any Annual Budget shortfall or Reserve Fund shortfall.

**13.3.5 Notice and Payment.** Special Assessments shall be payable on such date(s) and over such time periods as the Board may determine. The Board, in its sole discretion, may allow any Special Assessment to be paid in installments. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. However, no payment of any Special Assessment, or any portion of any Special Assessment, shall be due less than thirty (30) calendar days after such notice shall have been given. The failure of the Board to deliver prompt notice of any Special Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor a release of any Owner from the obligation to pay such Special Assessment or any other Assessment.

**13.4 Collection of Assessments / Failure to Pay.** Each Owner shall be obligated to pay his or her Assessments to the Association on or before the due date as set forth under the Governing Documents or otherwise determined by the Board.

**13.4.1 Delinquent Assessments.** Any Assessment not paid when due shall be immediately deemed as delinquent, and a lien securing the obligation to pay such Assessment shall automatically attach to the Lot of the Owner(s) failing to timely pay such Assessment, including the appurtenant Limited Common Area and the exclusive use thereof, regardless of whether a written notice is recorded.

**13.4.2 Late Fees and Accruing Interest.** The Association's policies regarding late fees and/or accruing interest in connection with delinquent Assessment payments shall be determined by the Board and shall be set forth in the Rules and Regulations. Such policies shall be consistent with applicable laws, rules or regulations regarding the imposition of late fees and/or interest on delinquent Assessment payments.

**13.4.3 Suspension of Right to Vote.** At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if that Owner is delinquent in the complete payment of any Assessments, and has failed to cure or make satisfactory arrangements to cure the default after the Board has provided written notice pursuant to Subsection 13.4.5.

**13.4.4 Suspension of Right to Use Certain Amenities.** At the discretion of the Board, an Owner's right to use certain Common Improvements (such as, for example, the Association's clubhouse, swimming pool, etc.) may be suspended if that Owner is delinquent in the complete payment of any Assessments, and has failed to cure or make satisfactory arrangements to cure the default after the Board has provided written notice pursuant to Subsection 13.4.5. Suspension of any Owner's right to use certain Common Improvements will be extended to the tenants, guests or any other occupants of such Owner's Unit.

**13.4.5 Notice of Suspension.** Before suspending any Owner's right to vote, or before suspending any Owner's right to access or use certain Common Improvements, the Board shall give written notice to such Owner. The notice shall state: (A) voting rights and/or right to access or use certain Common Improvements will be suspended if payment of the Assessment is not received within three (3) business days; (B) the amount of the Assessment(s) due, including any late fees, interest, and costs of collection; and (C) that the Owner has a right to request a hearing

by submitting a written request to the Board within thirty (30) calendar days from the date the notice is received. If a hearing is requested, the Owner's right to vote or access or use certain Common Improvements may not be suspended until after the hearing has been conducted and a final decision has been reached by the Board.

13.4.6 Security Deposit. Any Owner who has been late in delivering payment of his or her Assessments more than twice during any given twelve (12) month period may be required by the Board to deliver to the Association and maintain a security deposit not in excess of three (3) months of estimated Assessments, which may be collected in the same manner as other Assessments. Such deposit shall be held in a separate fund, credited to such Owner, and such deposit monies may be used by the Board whenever such Owner is more than ten (10) calendar days delinquent in paying his or her Annual Assessment or any other Assessment.

### 13.5 Lien / Foreclosure

13.5.1 Lien. The Association shall have a lien on the interest of the Owner(s) of the Lot for (A) any delinquent Assessment, (B) fees, charges, and costs associated with collecting any delinquent Assessment, including court costs and reasonable attorney fees, late charges, interest, and any other amount the Association is entitled to recover under the Governing Documents, the Acts, or an administrative or judicial decision, and (C) any fine the Association may impose against the Owner of such Lot, provided that (i) the time for appeal described in Subsection 11.18.4 has expired and the Lot Owner did not file an appeal; or (ii) the Owner timely filed an appeal under Subsection 11.18.4 and the district court issued a final order upholding a fine imposed under Section 11.18.

The provisions of this Subsection 13.5.1, and any other provisions of this Declaration related to the imposition, collection or enforcement of liens, are intended to comply with applicable provisions of the Community Act, as well as Utah Code Section 38-12-102 and any other laws, rules or regulations related to liens. The Association and the Board shall at all times comply with any amendments to the Community Act or any other applicable provisions of the Utah Code that may govern the manner in which liens are imposed, collected and/or enforced.

The recording of this Declaration constitutes record notice and perfection of the lien described in this Subsection 13.5.1. A lien under this Subsection is not subject to Utah Code Annotated Title 78B, Chapter 5, Part 5, Utah Exemptions Act, as may be amended or supplemented. If an Assessment is payable in installments, the lien described in this Subsection is for the full amount of the Assessment from the time the first installment is due, unless the Association otherwise provides in the notice of Assessment. A lien under this Subsection has priority over each other lien and encumbrance on a Lot except:

- (1) a lien or encumbrance recorded before this Declaration was recorded;
- (2) a first or second security interest on the Lot secured by a deed of trust or mortgage that is recorded before a recorded notice of lien by or on behalf of the Association; or
- (3) a lien for real estate taxes or other governmental assessments or charges against the Lot.

13.5.2 Foreclosure of Lien and/or Collection Action. If the delinquent Assessments remain unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclose the lien. Suit to recover a money judgment for the unpaid Assessments shall be maintainable without foreclosure or waiving the lien securing the same.

13.5.3 Foreclosure of Lien as Mortgage or Trust Deed. In order to enforce a lien for any delinquent Assessment, or any of the other fees, charges, costs or fines described under Subsection 13.5.1, the Association may cause a Lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by Utah Code Annotated §57-1-24 through §57-1-27 or any other applicable law, or foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a Mortgage. For purposes of a nonjudicial or judicial foreclosure, the Association is considered to be the beneficiary under a trust deed and the Owner of the Lot being foreclosed is considered to be the trustor under a trust deed. An Owner's acceptance of the Owner's interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the trustee designated as provided in this Section for the purpose of securing payment of all amounts due under this Declaration and the Acts. In any such judicial or nonjudicial foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of any such judicial or nonjudicial foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power in behalf of the Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Lot in the name of the Association.

13.5.4 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to Utah Code Sections 57-1-20 and 57-8-45 to the attorney of the Association, provided that he or she is a member of the Utah State Bar, as Trustee, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of this Declaration.

Notwithstanding the above paragraph, if the Board elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided that he or she is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended or supplemented. In addition, each Owner hereby transfers in trust to said Trustee all of his or her right, title and interest in and to the Lot for the purpose of securing his or her performance of the obligations set forth herein.

13.5.5 Notice of Foreclosure. At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice to the Owner of the Lot that is the intended subject of the nonjudicial foreclosure. The notice shall (A) notify the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Lot to enforce the Association's lien for an unpaid Assessment; (B) notify the Owner of the Owner's right to

demand judicial foreclosure in the place of nonjudicial foreclosure; (C) be sent to the Owner by certified mail, return receipt requested; and (D) be in substantially the following form (or other form as the Community Act may recommend or require):

**NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE**, Ridge Townhomes Association, a Utah nonprofit corporation, the Association for the project in which your Unit is located, intends to foreclose upon your Unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your Unit and to collect the amount of an unpaid assessment against your Unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my Unit," or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is [insert the current address of the Association for receipt of a demand].

**13.5.6 Rental Value.** From the time of commencement of any action to foreclose a lien against a Unit for nonpayment of delinquent Assessments, the owner or purchaser of such Unit shall pay to the Association the reasonable rental value of the Unit to be fixed by the Board, and the plaintiff in any such foreclosure shall be entitled to the appointment of a receiver to collect the same, who may, if said rental is not paid, obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of dwelling unit, rent the Unit or permit its rental to others, and apply rents first to costs of the receivership and attorney's fees thereof, then to costs of refurbishing the Unit, then to costs, fees and charges, of the foreclosure action, then to the payment of the delinquent Assessment charges.

**13.5.7 One-Action Rule Inapplicable.** As provided under the Acts, the one-action-rule provided in Utah Code Annotated Subsection 78B-6-901(1) shall not apply to the Association's judicial or non-judicial foreclosure of a lien for Common Expenses and/or any Assessment.

**13.6 Future Lease Payments.** As set forth under Section 57-8a-310 of the Community Act, if the Owner of a Unit who is leasing the Unit fails to pay an Assessment for more than sixty (60) calendar days after the Assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid.



13.6.1 Notice to the Owner. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant. The notice shall: (A) provide notice to the tenant that full payment of the remaining lease payments, beginning with the next monthly payment unless the Assessment is received within fifteen (15) days from the date of the notice, must be paid directly to the Association at the following address: (address to which payment should be mailed, payment must go to the attorney if the account has been turned over for collection); (B) state the amount of the Assessment due, including any interest or late payment fee; and (C) state that any costs of collection, and other Assessments that become due, may be added to the total amount due.

13.6.2 Notice to the Tenant. If the Owner fails to pay the Assessment due by the date specified in the notice described in Subsection 13.6.1, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association. The Manager or Board shall mail a copy of the notice to the Owner. The notice shall state: (A) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the intent of the Board of Directors to collect all lease payments due to the Association; (B) that until notification by the Association that the Assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (C) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement.

13.6.3 All funds paid to the Association pursuant to this Section shall be deposited in a separate account and disbursed to the Association until the Assessment due is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association.

13.6.4 Within five (5) business days after payment in full of the Assessment, including any interest, late payment fee, and costs of collection, the Manager or Board shall notify the tenant in writing that future lease payments are no longer due to the Association. The Association shall mail a copy of the notification to the Owner.

13.6.5 If, as described under this Section 13.6, the Association receives lease payments for a particular Unit that are otherwise due and payable to the Owner of that Unit, the Association shall not assume any obligations, responsibilities or liabilities as the "landlord" of the Unit. The Owner shall continue to assume any and all of the Owner's obligations, responsibilities or liabilities as the Owner/landlord of the Unit.

**13.7 Reassessment of Delinquent Assessments.** In the event that all or part of any Assessment (including any Annual Assessment or Special Assessment) or any other expenses of the Board cannot be promptly collected from the Owners or any other persons or entities liable for the payment of such Assessments or expenses pursuant to the Acts or the Governing Documents, the Board shall have the right and authority to apply and reassess and reallocate such uncollected Assessments or expenses to all Owners as a Common Expense, without prejudice to the Board's right and authority to the collection of such uncollected Assessments or expenses from the Owners or any other persons or entities liable for their payment.

**13.8 Remedies Cumulative.** The remedies provided to the Association under this Article 13 are cumulative and the Association may pursue any such remedies concurrently, as well as any other remedies which may be available under law although not expressed herein.

#### **ARTICLE 14 – COMPLIANCE AND ENFORCEMENT**

**14.1 Enforcement.** Each Owner shall comply with the provisions of the Governing Documents, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to the Governing Documents. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board on behalf of the Owners, or by the aggrieved Owner on his or her own. Reasonable fines may be levied and collected as an Assessment for violations of the Governing Documents. A schedule of fines may be adopted by the Board specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

The Association shall be entitled to an award of its attorneys' fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action.

**14.2 Remedies.** Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such Governing Documents, shall give the Board acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in the Governing Documents, or under law, to do, any or all of the following after giving notice:

(a) Subject to the provisions of this Declaration, to enter the Unit which or as to which such violation exists and to summarily correct, abate or remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board, a copy of which shall be delivered to each Owner, mailed to the mailing address of the Unit or mailed to the mailing address designated by the Owner in writing to the Association;

(d) To terminate the right of access to and use of certain Common Improvements (including, for example and without limitation, recreational and service facilities of the Association) until correction of the violation has occurred (provided, however, that a defaulting Owner may not be prohibited from using his or her Driveway, parking space, or any other parking area located within the Project);

(e) To suspend the voting rights of any Owner, after notice and an opportunity to request a hearing, for any infraction of any of the published Rules and Regulations of the Association or the Governing Documents, including failure to timely pay an Assessment; and/or

(f) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any Rules or Regulations adopted pursuant thereto.

**14.3 Action by Owners.** Subject to any limitations that may be imposed under this Declaration, the Bylaws or applicable Utah law, an aggrieved Owner may bring an action against any other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**14.4 No Waiver of Strict Performance.** The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of the Governing Documents, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any Assessment from an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in a writing that has been signed by the Board.

## **ARTICLE 15 – INSURANCE**

**15.1 Association Insurance Coverage.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required by applicable law or this Declaration. Different policies may be obtained from different insurance carriers, and standalone policies may be purchased instead of or in addition to other policies.

15.1.1 Property Insurance. The Association shall at all times maintain in force blanket property insurance or guaranteed replacement cost insurance meeting the following requirements:

(a) Hazard Insurance.

(1) **Blanket Policy of Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and any building service equipment.

(i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited

Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

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

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

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

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

(b) Owner Responsibility for Payment of Property Insurance Deductible.

Consistent with Part 4 of the Community Act, if a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name an Owner:

(i) the Association's policy provides primary insurance coverage; and

(ii) notwithstanding Subsection 15.1.1(b)(i) and subject to Subsection 15.1.1(b)(iii):

- (A) the Owner is responsible for the deductible of the Association; and
- (B) building property coverage, often referred to as coverage A, of the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(iii) As used in this Section 15.1:

- (A) "**Covered Loss**" means a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy.
- (B) "**Unit Damage**" means damage to a Unit or to any Limited Common Area appurtenant to a Unit.
- (C) "**Unit Damage Percentage**" means the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage.

(iv) Any Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association's property insurance policy.

(v) If an Owner does not pay the amount required under Subsection 15.1.1(b)(iv) within thirty (30) days after substantial completion of the repairs to the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an Assessment against the Owner and/or Unit for that amount.

(c) Flood Insurance. If the Project is or comes to be situated in a locale identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, the Association shall obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the Buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the Association, but not less than the following: The lesser of: (i) the maximum coverage available under the National Flood Insurance Program (NFIP) for all Buildings and other insurable property within the Project to the extent that such Buildings and other insurable property are within an area having special flood hazards; or (ii) 100% of "current replacement cost" of all such Buildings and other insurable property within such area. Such policy shall be in a form that meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator. At the option of the Association, funds for any deductibles may be included in the Association's Reserve Fund, and, if included, shall be so designated.

(d) Earthquake Insurance. The Association may purchase earthquake insurance if the Board deems such coverage as appropriate; provided, however, that the Board must first obtain approval of such decision from a Majority of the Owners pursuant to a written ballot that has been delivered to all Owners.

(e) Association Obligations Regarding Property Insurance Deductibles.

(i) Association's Obligation to Segregate Property Insurance Deductible. The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000. This requirement shall not apply to any earthquake or flood insurance. At the option of the Association, funds for such deductibles may be included in the Association's Reserve Fund and, if included, shall be so designated.

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

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

15.1.2 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

15.1.3 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall maintain in force coverage against dishonest acts on the part of the Manager (and the Manager's employees), and Association trustees, employees, officers, Board members, and volunteers responsible for handling funds belonging to the Association or administered by the Board or the Association. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers. The bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one and one-half times (150%) of the Project's estimated annual Common Expenses and reserves. The insurance shall contain waivers by the issuers of the insurance of all defenses based upon the

exclusion of persons serving without compensation from the definition of “employees,” or similar terms or expressions. The premiums on all insurance required herein, except those maintained by the Manager, shall be paid by the Association as a Common Expense. The insurance shall provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) calendar days prior written notice to the Association or the Insurance Trustee. Such bonds shall also provide that the FNMA servicer, if FNMA is a holder of Mortgages on Units within the Project, on behalf of FNMA, also, receive such notice of cancellation or modification.

15.1.4 Insurance Coverage for Forgery, Alteration and Computer Crime. The Association shall also maintain in force coverage against forgery and alteration and computer crime insurance with a limit to be reasonably determined by the Board. The discovery period for all claims under such insurance policy shall be when the wrongful acts covered by such insurance policy are discovered by the Association unless otherwise disclosed and approved by the Board.

15.1.5 Directors and Officers Insurance. The Association shall obtain Directors’ and Officers’ liability insurance protecting the Board, the officers and their spouses, and the Association against claims of wrongful acts or prior acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for the Manager and any employees of the Manager.

15.1.6 Worker’s Compensation. The Association shall maintain worker’s compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.

15.1.7 Personal Property Insurance. The Association may, as reasonably determined by the Board, elect to maintain insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

15.1.8 Certificate of Insurance. An insurer that issues a property insurance policy under this Section, or the insurer’s authorized agent, shall issue a certificate or memorandum of insurance to the Association, an Owner, and a holder of a security interest, upon the Association’s, an Owner’s or the holder’s written request.

15.1.9 Name of the Insured. The named insured under each policy maintained by the Association pursuant to this Article 15 shall be in form and substance essentially as follows: “Ridge Townhomes Association, a Utah nonprofit corporation, for the use and benefit of the individual Owners.”

15.1.10 Association's Right to Negotiate Claims and Losses and Receive Property Insurance Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, the Owners, and any lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair and restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair and replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or any applicable law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves shall be deemed a Common Expense.

15.1.11 Insurance Trustees; Power of Attorney. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. The Board may hire and appoint an Insurance Trustee in the Board's discretion or upon a written request executed by Owners holding at least 50% of the Percentage Interest. Each Owner hereby appoints such Insurance Trustee as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. This power-of-attorney is coupled with an interest, shall be irrevocable and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

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

15.1.13 Waiver of Subrogation Against Owners and the Association. Pursuant to Section 57-8a-404(3) of the Community Act, all property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Unit Owner, and any person(s) residing with a Unit Owner if an Owner resides in the Unit.

15.1.14 Cancellation or Nonrenewal Subject to Procedures. A cancellation or nonrenewal of a property insurance policy under this Section 15.1 is subject to the procedures stated in Utah Code Annotated § 31A-21-303.



15.1.15 Waiver of Liability. The Association and any Board that acquires from an insurer the property insurance required in this Section is not liable to Owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.

15.1.16 Right of Action. Pursuant to Subsection 57-8a-405(16) of the Community Act, nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for such loss. The previous sentence does not affect Subsection 15.1.13 of this Declaration in any manner whatsoever.

15.1.17 Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

15.1.18 Review of Insurance. The Board shall annually review (or cause a review) of the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

15.1.19 Additional Land. The provisions of this Section 15.1 shall only apply to the Project and shall not apply to any portion of the Additional Land that has not been added to the Project. The Association shall have no responsibility to provide any insurance coverage whatsoever for any portion of the Additional Land.

## ARTICLE 16 – EASEMENTS

**16.1 In General.** It is intended that in addition to rights under the Acts, each Unit has an easement in and through each other Unit and the Common Areas and Limited Common Areas for all support elements and utility, wiring, heat/air conditioning and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation and maintenance of the Project. Without limiting the generality of the foregoing, each Unit and all Common Areas (including Limited Common Areas) are specifically subject to an easement for the benefit of each of the other Units in the Building for all ductwork for the any Units with flues or chimneys. In addition, each Unit and all the Common Areas (including Limited Common Areas) are specifically subject to easements as may be required for intercom and electrical entry systems, for electrical wiring and plumbing, for heating/air conditioning lines and equipment, if any, for each Unit, and for any master antenna, satellite or cable system for use by more than one Owner. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common facilities reserved by law.

**16.2 Association Functions.** There is hereby reserved to the Association, or the Association's duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as set forth in the Governing Documents.

## ARTICLE 17 – DESTRUCTION, CONDEMNATION, AND OBSOLESCENCE

The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

**17.1 Definitions.** For the purposes of this Article 17, each of the following terms shall have the meaning indicated:

(a) “**Available Funds**” shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

(b) “**Estimated Cost of Restoration**” shall mean the estimated costs of restoring the Project to its former condition.

(c) “**Partial Condemnation**” shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(d) “**Partial Destruction**” shall mean any other damage or destruction to the Project or any part thereof.

(e) “**Partial Obsolescence**” shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(f) “**Substantial Condemnation**” shall exist whenever a complete taking of the Project or a partial taking of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Cost of Restoration over the funds available is twenty-five percent (25%) or more of the estimated restored value of the Project.

(g) “**Substantial Destruction**” shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the Estimated Cost of Restoration over the funds available is twenty-five percent (25%) or more of the estimated restored value of the Project.

(h) “**Substantial Obsolescence**” shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the Estimated Cost of Restoration over the funds available is twenty-five percent (25%) or more of the estimated restored value of the Project.

(i) “**Restoration**” shall mean restoring the Project to its former condition.

(j) “**Restored Value**” shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

**17.2 Determination by Board.** Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board shall make a determination as to whether the excess of Estimated Cost of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board may retain and rely upon one or more qualified appraisers or other professionals.

**17.3 Restoration of the Project.** Restoration of the Project shall be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Percentage Interest, and is further consented to by Mortgagees holding at least fifty-one percent (51%) of the Percentage Interest of Units which are subject to Mortgages held by Eligible Mortgagees.

**17.4 Notices of Destruction or Obsolescence.** Within thirty (30) calendar days after the Board has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

**17.5 Excess Insurance.** In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board or Association (collectively, the “**Excess Insurance Funds**”) exceed the cost of Restoration when Restoration is undertaken, the Excess Insurance Funds may be deposited into the Reserve Fund pursuant to a majority vote of the Board. In the event a majority of the Board fails to approve the deposit of the Excess Insurance Funds into the Reserve Fund, such Excess Insurance Funds shall be paid and distributed to the Owners in proportion to their respective Percentage Interest. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

**17.6 Inadequate Insurance.** If the cost of Restoration exceeds available funds, the Board may elect to levy a Special Assessment in accordance with Article 13 to pay for the deficiency.

**17.7 Reallocation in Event of Partial Restoration.** In the event that all or any portion of one or more Units will not be the subject of Restoration or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the Percentage Interest shall be immediately reallocated to the remaining Units.

**17.8 Authority of Board to Represent Owners in Condemnation or to Restore or Sell.** The Board, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas.

**17.9 Settlement Proceeds.** The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their interests may appear.

**17.10 Restoration Power.** The Board, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

**17.11 Termination of Legal Status.** Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages held by Eligible Mortgagees.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the Project shall be agreed to by Eligible Mortgagees that represent at least sixty-seven percent (67%) of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgagee (except, where appropriate, the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veteran Affairs (VA)) fails to submit a response to any written proposal for an amendment within thirty (30) calendar days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

## **ARTICLE 18 – CONSENT IN LIEU OF VOTE**

Subject to Subsection 16-6a-707 of the Utah Revised Nonprofit Corporation Act (as such Subsection may be amended from time to time) in any instance in which a vote of the Owners is required in order to authorize or approve any transaction, action, or event, such requirement may be fully satisfied by obtaining, with or without a meeting, written consent to such transaction, action, or event from Owners who collectively hold not less than the minimum voting power that would be necessary to authorize or authorize or approve the transaction, action, or event at a meeting at which all Owners entitled to vote on the matter were present and voted.

**18.1 Sixty-Day Limit.** All necessary written consents must be obtained prior to the expiration of sixty (60) calendar days from the time the first written consent is obtained.

**18.2 Revocation of Written Consent.** Any Owner giving such written consent may revoke his or her consent by a signed writing that: (a) describes the transaction, action, or event; (b) states that the Owner's prior consent is revoked; and (c) is received by the Association prior to the effectiveness or commencement of the transaction, action, or event.

**18.3 Change In Ownership.** Any change in ownership of a Unit which occurs after consent has been obtained from the Owner(s) having an interest therein shall not be considered or taken into account for any purpose.

**18.4 Notice.** If a transaction, action, or event is approved by such written consent of Owners without a meeting, written notice of the approval must be given to all Owners at least ten (10) calendar days before consummation of the transaction, action, or event authorized by such written consent of Owners.

**18.5 Statutory Requirements or Restrictions.** The provisions of this Article 18 are subject to any further requirements or restrictions that may be set forth in any applicable provisions of the Utah Revised Nonprofit Corporation Act (as may be amended from time to time).

## **ARTICLE 19 – LIMITATION OF LIABILITY**

**19.1 Liability for Utility Failure, etc.** Except to the extent covered by insurance obtained by the Board pursuant to this Declaration, neither the Association nor the Board shall be liable for: any failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, snow, ice, dust or sand which may lead or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place; or for any inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of common expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

**19.2 No Personal Liability.** So long as a Board member, or Association committee member, or Association officer has acted in good faith, without malicious, willful, or intentional misconduct, upon the basis of such information as may be possessed by such person, then no such person shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to this Declaration.

**19.3 Indemnification of Board Members.** Each Board member or Association committee member, or Association officer shall be indemnified by the Owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of holding or having held such a position, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred except in such cases wherein such person is adjudged (by a court of competent jurisdiction) guilty of malicious, willful, or intentional misconduct in the performance of his or her duties; provided, that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

## ARTICLE 20 – MORTGAGEE PROTECTION

**20.1 Priority of Mortgages.** Notwithstanding all other provisions hereof and as provided in the Acts, the liens created under this Declaration upon any Unit for Assessments shall be subject to the rights of the secured party in the case of any indebtedness secured by mortgages or deeds of trust which were made in good faith and for value upon the Unit. Where any Mortgagee of any Unit or other purchaser of a Unit obtains possession of or title to a Unit as a result of mortgage foreclosure or deed of trust sale, such possessor or holder of title and his successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit which become due prior to such possession or taking of title, but will be liable for the Common Expenses and Assessments accruing after such possession or taking of title. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Owners including such possessor, title holder, and successor and assigns.

**20.2 Partitions and Subdivision.** The Association shall not partition or subdivide any Unit, or any Common Area (including any Limited Common Area), nor accept any proposal so to do, without the prior approval of all institutional first mortgagees or institutional first deed of trust beneficiaries of the Unit being subdivided or partitioned.

**20.3 Change in Percentages.** The Association shall not change the Percentage Interest without the prior approval of all institutional first mortgagees or institutional first deed of trust beneficiaries of the Units for which the Percentage Interests would be changed.

**20.4 Copies of Notices.** In the event the Association gives to any Owner of a Unit any notice that such Owner for more than thirty (30) calendar days failed to meet any obligation under the Governing Documents, it shall also give a copy of such notice to any institutional first mortgagee or institutional first deed of trust beneficiary which has requested to be so notified.

**20.5 Effect of Declaration Amendments.** No amendment of this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon Mortgagees with respect to any unsatisfied mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such mortgage.

**20.6 Insurance.** Where the Mortgagee of a Unit has filed a written request with the Board, the Board shall:

20.6.1 Furnish the Mortgagee with a copy of any insurance policy or evidence thereof which is intended to cover the Unit on which such Mortgagee has a lien;

20.6.2 Require any insurance carrier to give such Mortgagee at least ten (10) business days written notice before cancelling any insurance with respect to such property on which Mortgagee has a lien;

20.6.3 Not make any settlement of any insurance claims for loss or damage to any such Unit exceeding \$2,500 without the approval of such Mortgagee; provided that the withholding of such approval shall not be unreasonable or in conflict with the provisions of this Article 20.

20.6.4 Give the Mortgagee written notice of any loss or taking affecting Common Areas, if such loss or taking exceeds \$10,000.

**20.7 Inspection of Books.** Institutional first mortgagees and institutional deed of trust beneficiaries shall be entitled to inspect the books and records of the Association during reasonable hours of weekdays provide that such Institutional first mortgagees and institutional deed of trust beneficiaries have provided the Board with written notice no later than five (5) business days prior to such inspection.

**20.8 Mortgagee Approval.** Unless a Mortgagee provides the Association with written notice of its objection, if any, to a proposed amendment or action requiring the approval of a Mortgagee within sixty (60) calendar days following the receipt of notice of such proposed amendment or action, the Mortgagee will be conclusively deemed to have consented to or approved the proposed amendment or action.

## ARTICLE 21 EXPANSION OF PROJECT

**21.1 Expansion of Project.** At any time within a period of seven (7) years from the date this Declaration is recorded, the Declarant may add any or all of the Additional Land and cause the same to become a part of the Project by recording a subdivision plat describing the portion of the Additional Land and the Lots created on it, and a Supplemental Declaration hereto stating that it is the intention of the Declarant to add any portion of the Additional Land to the Project, and to have that land be subject to this Declaration.

**21.2 No Obligation to Expand.** The Declarant reserves the right to add some or all of the Additional Land to the Project, but is under no obligation to do so. The Additional Land, if not added to the Project, may be developed in a manner that is different from that described in this Declaration. Declarant also reserves the right to, without the consent of the Association or any Owners, reduce the Project and/or remove any of the unrecorded Phases any portion of the Additional Land that may have been or may be encumbered by this Declaration.

**21.3 Expansion in Phases.** The Declarant may exercise its right to expand the Project in one or more phases or stages, and the addition of some of the expansion area does not obligate the Declarant to add the balance of the land to the Project.

## ARTICLE 22 – AMENDMENT OR SUPPLEMENTS TO DECLARATION

Amendments to this Declaration shall be made by an instrument in writing entitled “Amendment to Declaration” which sets forth the entire amendment. Any supplements to this Declaration shall be made by an instrument in writing entitled “Supplemental Declaration” which sets forth any supplemental provisions.

This Declaration may be supplemented or amended as follows:

**22.1 Supplement, Amendment or Revocation Prior to First Sale.** Except as may otherwise be provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, the Declarant may unconditionally and unilaterally supplement, amend and/or revoke this Declaration and any amendments thereto via the Declarant’s execution and recordation of an instrument supplementing, amending or revoking the same.

**22.2 Supplements or Amendments by Declarant After First Sale.** Except as may be provided elsewhere in this Declaration, after the conveyance of the first Unit to an Owner other than a Declarant, the Declarant may (without obtaining the approval of Owners, the Association, or existing Mortgagees) unilaterally supplement or amend this Declaration in the exercise of its rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, after the conveyance of the first Unit to an Owner other than a Declarant and continuing until the end of Period of Declarant’s Control, the Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association, or existing Mortgagees) to supplement or amend this Declaration, provided that such supplement or amendment is required solely to: (A) comply with applicable law or to correct any error or inconsistency of the Declaration and if such supplement or amendment does not adversely affect the rights of any Owner or Mortgagee, (B) add any portion of the Additional Land to the Project, (C) designate a new or different person, entity or agency for service of process pursuant to Section 23.3, or (D) comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). If such supplement or amendment bears recitation that it is recorded due to such technical error, annexation of Additional Land into the Project, designation of a new person, entity or agency for service of process, or the requirements of any of the foregoing agencies, such supplement or amendment shall not require the approval of any Owners or Mortgagees.

**22.3 Consent of Owners.** After the expiration of the Period of Declarant’s Control, and except as otherwise specifically provided for in this Declaration, any proposed supplement or amendment to this Declaration must be approved by a majority of the Board prior to its adoption by the Owners. Supplements or amendments to this Declaration may be adopted at a meeting of the Owners if all Owners have been duly notified in writing of such meeting and Owners holding sixty-seven percent (67%) of the voting rights vote in favor of such supplement or amendment,



or by written ballot in lieu of a meeting if all Owners have been duly notified in writing and Owners holding sixty-seven percent (67%) of the voting rights consent in writing to such supplement or amendment.

**22.4 Protection of Declarant's Rights.** Any supplement or amendment to this Declaration shall not terminate or decrease any unexpired development right or Period of Declarant's Control unless the Declarant clearly and explicitly approves or consents in writing.

**22.5 Execution and Recordation of Supplements or Amendments.** After the Period of Declarant's Control, any supplement or amendment to this Declaration must bear the signature of the President of the Association and shall be attested by the Secretary, who shall state whether the supplement or amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Any such supplements or amendments once properly adopted shall be effective upon recording in the Recorder's Office and any other appropriate governmental offices. Any decision changing the Percentage Interest shall require the unanimous consent of the Owners and their Mortgagees. It is specifically covenanted and understood that any supplement or amendment to this Declaration properly adopted will be completely effective to supplement or amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration unless otherwise specifically provided in the section being supplemented or amended or the supplement or amendment itself.

## ARTICLE 23 – MISCELLANEOUS

**23.1 Master Declaration / Revised Master Declaration.** Based upon the Declarant's reasonable investigation and due diligence, the Declarant has concluded that the provisions of the Master Declaration and the Revised Master Declaration have never been applied to nor enforced against the Property. Accordingly, the Declarant hereby declares, to the maximum extent permitted by law, that the provisions of the Master Declaration and the Revised Master Declaration do not have, never have had, and never will have, any authority or influence over the Property or any part of the Additional Land whatsoever.

**23.2 Master Declarant / Master Board.** Based upon the Declarant's reasonable investigation and due diligence, the Declarant has also concluded that neither the Master Declarant nor the Master Board has ever exercised any influence or authority whatsoever over the Property. Accordingly, the Declarant hereby declares, to the maximum extent permitted by law, that neither the Master Declarant nor the Master Board does not have, never has had, and never will have any influence or authority over the Property or any part of the Additional Land whatsoever.

**23.3 Service of Process.** Service of process upon the Association for any purposes provided in the Acts may be made upon the offices of the Manager of the Association or upon the President of the Association. The Board or the Declarant may at any time designate a new or different person, entity or agency for such purposes by filing an amendment to this Declaration limited to the sole purpose of making such change, and such amendment need only be signed and acknowledged by the then President of the Association or an authorized representative of the Declarant.

## 23.4 Notices for All Purposes

23.4.1 Delivery of Notice. Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered three (3) business days after a copy has been deposited in the United States mail, postage prepaid for first class mail delivery, addressed to the person entitled to such notice at the most recent address given by such person to the Board, in writing, for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the Owner or Owners of any Unit shall be sufficient if mailed to the Unit of such person or persons if no other mailing address has been given to the Board by any of the persons so entitled. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Board shall be given to the President or Secretary.

23.4.2 Mortgagee Notice. Upon written request therefor a Mortgagee, or deed of trust beneficiary of any Unit shall be entitled to be sent a copy of any notices respecting the Unit covered by his security instrument until the request is withdrawn or the security right discharged. Notices will only be sent to those on record of the Association as requesting such notifications. The Association is not responsible or required to search for entities that may be entitled to receive notification.

**23.5 Partial or Complete Termination of Period of Declarant's Control.** Notwithstanding any language in any Governing Documents that may be construed to the contrary with respect to the Declarant's ability to voluntarily terminate the Period of Declarant's Control, the Declarant may (in its sole and absolute discretion) voluntarily terminate the Period of Declarant's Control in whole or in part, with respect to all or any portion of any Common Area, any Limited Common Area, any portion of Additional Land, or with respect to any issue, matter or subject whatsoever. Declarant's decision to voluntarily partially or completely terminate the Period of Declarant's Control with respect to all or any portion of any Common Area, any Limited Common Area, any portion of Additional Land, or with respect to any issue, matter or subject shall in no event affect, modify, or act to waive Declarant's authority under the Period of Declarant's Control except with respect to such Common Area, Limited Common Area, portion of Additional Land, or such issue, matter or subject.

## 23.6 Declarant's Sales Program

23.6.1 Generally. Notwithstanding any language in the Governing Documents to the contrary, and unless otherwise clearly prohibited under the Community Act or any other applicable law, rule or regulation, until the date upon which Declarant has sold all Units owned by Declarant or the Expansion Deadline (whichever occurs first) the provisions of this Section 23.6 shall remain in full force and effect. Neither the Owners, the Association, nor the Board shall interfere with the completion of any improvements of the Project or the sale of Declarant's Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of any Units that are owned by Declarant.

23.6.2 Sales Office and Model Units. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any time. Such office and/or models may be one or more of the Units owned by the Declarant, one or more separate structures or facilities placed on the Property or the Additional Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing.

23.6.3 Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Project.

23.6.4 Common Area Use. Declarant shall have the right to use the Common Areas of the Project including but not limited to the right to use the clubhouse as a sales office and in any other ways deemed by Declarant as reasonably necessary to facilitate sales.

23.6.5 Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices. Declarant shall also have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility that was placed on the Project for the purpose of aiding Declarant's sales effort.

**23.7 Easements Reserved by Declarant.** Declarant hereby reserves to itself and its assigns, and for the benefit of the Association and all the Owners, the following described perpetual non-exclusive easements over all portions of the Project:

(A) Construction and Marketing Easements and Related Rights.

(i) The right to, from time to time, construct, install, inspect, maintain, repair and replace any utilities or infrastructure to serve the Project including, without limitation, electricity, water, sewer, phone, communications cables, and storm water and drainage systems which may include detention and retention ponds for the Project and any land that may become part of the Project;

(ii) The right to, from time to time, construct, maintain and repair earth walls, slopes, retaining walls and other supports; and

(iii) Subject to the provisions of Subsection 23.6, the right to, from time to time, construct and maintain offices, prefabricated structures, booths or other structures for administrative, sales and promotional purposes relating to the Project during its development and marketing.

(B) Landscaping and Drainage Easements.

(i) The right to, from time to time, re-vegetate, landscape, beautify or maintain any portions of the Project to the extent deemed by Declarant or the Association as reasonably necessary to mitigate any undesirable visual impact of the Project; and

(ii) The right to, from time to time and to the extent permitted by Utah law, preserve, improve, maintain, restore and re-vegetate natural and man-made storm drainage or storm water

detention features, and to convey or hold water in such features in order to adequately control surface water and/or control erosion.

**23.8 Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering any Units or Buildings in the Project title to which is vested in the Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to the Declarant (in its capacity as Declarant) herein.

**23.9 Transfer of Management.** Notwithstanding any language in the Governing Documents to the contrary, Declarant may, at any time during the Period of Declarant's Control, elect to transfer management of the Project to a Board elected by the Owners, but may also, at any time, relinquish and reclaim its reserved right to select the members of the Board.

**23.10 Security Disclaimer.** The Declarant and/or the Association may, but shall not be obligated to, maintain or support certain activities or personnel within the Project designed to promote Project safety. Neither the Declarant, the Association nor the Board shall in any way be considered insurers or guarantors of security within the Project, however; and neither the Declarant, the Association, nor the Board shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and their tenants, family members, guests, invitees and any other occupants of any Unit, acknowledge and understand that neither the Declarant, the Association nor the Board have made any representations or warranties; nor have such Owners or their tenants, family members, guests, invitees or any other occupants of any Unit relied upon any representations or warranties, express or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

**23.11 Owner Joint and Several Responsibility.** If any Unit is owned by more than one Owner ("Multi-Owner Unit"), the Owners of such Multi-Owner Unit shall be "jointly and severally" responsible and liable for the performance and fulfillment of any Owner responsibilities, obligations and/or liabilities associated with such Multi-Owner Unit as set forth under the Governing Documents. By example, and without limitation of the previous sentence, if the Association were to impose a fine or Special Assessment against a Multi-Owner Unit, the Association may proceed to collect payment of such fine or Special Assessment from (A) any one Owner, (B) all Owners, or (C) less than all of the Owners of such Multi-Owner Unit.

**23.12 Mechanics Liens.** Liens for materials, labor or money against any Owner or the Association are to be indexed in the public records under the name of the Unit and the Unit's Owner(s). With regard to a lien on multiple Units for materials, labor or money provided to the Association or affecting the Common Areas, an Owner may pay his or her pro rata share of the amount of any lien and that shall be sufficient to release the lien as to his Unit. Any person, entity or organization that elects to provide materials or perform labor at the Project shall do so subject to the terms, covenants, and conditions of this Section 23.12.

**23.13 Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, if the remainder complies with the Acts or as covenants affect the common plan.

**23.14 Effective Date.** This Declaration shall take effect upon recording.

**23.15 Liberal Construction.** The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Project consistent with applicable Utah law. It is intended and covenanted also that, insofar as it affects the Governing Documents and the Project, the provisions of the Acts referenced herein shall be liberally construed to effectuate the intent of the Governing Documents insofar as reasonably possible. In the event any provision of the Governing Documents is deemed as inconsistent with or illegal under any provision of the Acts (or any other applicable Utah law, rule or regulation) then the applicable provision(s) of the Acts (or any other applicable Utah law, rule or regulation) shall govern.

**23.16 Consistent with Acts.** The terms such as, but not limited to, "Owner", "Unit", "Association", "Building", "Common Areas", "Common Expenses", and "Limited Common Areas", used herein are intended to have the same meaning given in the Acts unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

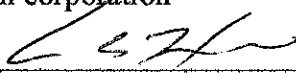
**23.17 Covenant Running with Land.** It is intended that this Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, supplementing and interpreting the Acts, and operating independently of the Acts should the Acts be, in any respect, inapplicable.

**23.18 "Person", etc.** When interpreting this Declaration, the term "person" may include natural persons, partnerships, corporations, associations, and personal representatives. The singular may include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires.

**23.19 Captions and Exhibits.** Captions given to the various Articles, Sections and Subsections herein are for convenience only and are not intended to modify or affect the meaning of the substantive provisions hereof. The various exhibits referred to herein by reference are hereby incorporated herein as though fully set forth where such reference is made.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officers on the 17 day of JULY, 2015.

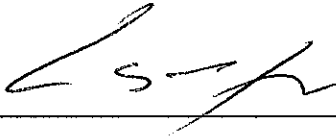
Ridge Utah Development Corporation,  
a Utah corporation

By: 

Name: ERIC HOUSEHOLDER


Title: OFFICER

WITNESS the hand of said grantor, this 17th day of July 2015

  
\_\_\_\_\_ OFFICER

STATE OF UTAH )  
COUNTY OF WEBER

On this 17<sup>th</sup> day of July 2015, Eric Householder , Officer for The Ridge Utah Development Corporation personally appeared before me.

  
\_\_\_\_\_ Notary Public

My Commission Expires:

Residing at:

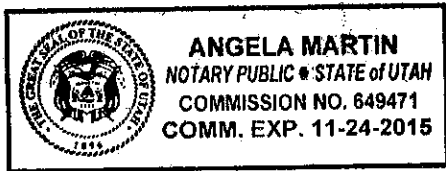


Exhibit A  
to  
Declaration of Covenants, Conditions and Restrictions  
for The Ridge Townhomes

Legal Description of Property

A PART OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP SEVEN NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER AND RUNNING THENCE SOUTH 89°09'42" EAST 737.23 FEET ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 68°46'53" EAST 378.92 FEET; THENCE SOUTH 42°52'39" WEST 97.68 FEET; THENCE NORTH 47°07'15" WEST 53.67 FEET; THENCE ALONG THE ARC OF A 480.00 FOOT RADIUS CURVE TO THE LEFT 458.34 FEET, HAVING A CENTRAL ANGLE OF 54°42'39", CHORD BEARS NORTH 74°28'35" WEST 441.13 FEET; THENCE SOUTH 78°10'06" WEST 52.02 FEET; THENCE SOUTH 11°49'54" EAST 80.24 FEET; THENCE SOUTH 72°07'00" EAST 22.27 FEET; THENCE NORTH 17°53'00" EAST 13.00 FEET; THENCE SOUTH 70°03'52" EAST 70.68 FEET; THENCE SOUTH 28°07'50" EAST 26.77 FEET; THENCE SOUTH 54°20'13" EAST 71.40 FEET; THENCE SOUTH 03°17'18" EAST 32.67 FEET; THENCE SOUTH 55°54'27" WEST 32.08 FEET; THENCE SOUTH 22°36'25" WEST 73.04 FEET; THENCE NORTH 67°24'03" WEST 498.42 FEET; THENCE NORTH 89°08'16" WEST 175.22 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE ALONG SAID WEST LINE NORTH 00°16'32" EAST 161.79 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.701 ACRES.

Exhibit B  
to  
Declaration of Covenants, Conditions and Restrictions  
for The Ridge Townhomes

Legal Description of Additional Land

A PART OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE NORTHEASTERLY CORNER OF THE RIDGE TOWNHOMES PHASE 1 – 1<sup>ST</sup> AMENDMENT BEING LOCATED SOUTH 89°09'42" EAST 737.23 FEET ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER AND SOUTH 68°46'53" EAST 378.92 FEET FROM THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; RUNNING THENCE SOUTH 85°41'53" EAST 501.78 FEET; THENCE SOUTH 89°07'48" EAST 256.48 FEET; THENCE ALONG THE ARC OF A 40.00 FOOT RADIUS CURVE TO THE LEFT 54.77 FEET, HAVING CENTRAL ANGLE OF 78°27'32", CHORD BEARS SOUTH 00°32'31" WEST 50.59 FEET; THENCE SOUTH 00°00'00" EAST 179.51 FEET; THENCE ALONG THE ARC OF A 270.00 FOOT RADIUS CURVE TO THE RIGHT 340.15 FEET, HAVING A CENTRAL ANGLE OF 72°10'58", CHORD BEARS SOUTH 36°05'32" WEST 318.10 FEET; THENCE SOUTH 72°11'05" WEST 197.69 FEET; THENCE ALONG THE ARC OF A 255.00 FOOT RADIUS CURVE TO THE LEFT 126.01 FEET, HAVING A CENTRAL ANGLE OF 28°18'46", CHORD BEARS SOUTH 58°01'40" WEST 124.73 FEET; THENCE NORTH 36°56'23" WEST 232.69 FEET; THENCE NORTH 65°54'36" WEST 539.55 FEET; THENCE NORTH 67°23'35" WEST 106.53 FEET TO THE BOUNDARY LINE OF SAID THE RIDGE TOWNHOMES PHASE 1 – 1<sup>ST</sup> AMENDMENT; THENCE ALONG THE BOUNDARY OF SAID THE RIDGE TOWNHOMES PHASE 1 – 1<sup>ST</sup> AMENDMENT THE FOLLOWING THIRTEEN (13) COURSES: (1) NORTH 22°36'25" EAST 73.04 FEET; (2) NORTH 55°54'27" EAST 32.08 FEET; (3) NORTH 03°17'18" WEST 32.67 FEET; (4) NORTH 54°20'13" WEST 71.40 FEET; (5) NORTH 28°07'50" WEST 26.77 FEET; (6) NORTH 70°03'52" WEST 70.68 FEET; (7) SOUTH 17°53'00" WEST 13.00 FEET; (8) NORTH 72°07'00" WEST 22.27 FEET; (9) NORTH 11°49'54" WEST 80.24 FEET; (10) NORTH 78°10'06" EAST 52.02 FEET; (11) ALONG THE ARC OF A 480.00 FOOT RADIUS CURVE TO THE RIGHT 458.35 FEET, HAVING A CENTRAL ANGLE OF 54°42'39", CHORD BEARS SOUTH 74°28'35" EAST 441.13 FEET; (12) SOUTH 47°07'15" EAST 53.67 FEET; (13) NORTH 42°52'39" EAST 97.68 FEET TO THE POINT OF BEGINNING. CONTAINING 13.15 ACRES.



Exhibit C  
to  
Declaration of Covenants, Conditions and Restrictions  
for The Ridge Townhomes

Diagram of Unit Floor Plans

See the following page



Exhibit DBYLAWS  
OF  
RIDGE TOWNHOMES ASSOCIATIONARTICLE 1  
PLAN OF UNIT OWNERSHIP

1.1 Name and Location. These are the Bylaws of Ridge Townhomes Association, a Utah nonprofit corporation (the “**Association**”). The Ridge Townhomes is a Planned Residential Unit Development (“**PRUD**”) and community project that has been subjected to that certain Declaration of Covenants, Conditions, Restrictions and Reservations for The Ridge Townhomes, as may be amended from time to time, to which these Bylaws are attached as Exhibit “D”.

1.2 Principal Office. The principal office of the Association shall be located at such office as may be designated by the Board from time to time.

1.3 Purposes. The Association has been formed to serve as a means by which the Owners may collectively take action with regard to the administration, management and operation of the Project.

1.4 Applicability of Bylaws. The Association, all Owners and all persons using the Project (including any occupants of the Units) shall be subject to these Bylaws and to all rules and regulations which may be adopted by the Board on behalf of the Association pursuant to the Declaration and these Bylaws.

1.5 Composition of Association. The Association shall be composed of all Owners and the Association, itself, to the extent the Association owns any Unit or Units within the Project.

1.6 Incorporation of Association.

(a) The Association shall be incorporated under the Utah Revised Nonprofit Corporation Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated Association.

(b) In the event the incorporated Association shall at any time be dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, which vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any such successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the incorporated Association as if they had been made to constitute the governing documents of the unincorporated association.

1.7 Definitions. The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE 2  
MEMBERSHIP; MEETING OF ASSOCIATION MEMBERS

2.1 Membership. The Association shall have two classes of Membership: Class "A" and Class "B". The Class "A" Members shall be the Owners. The sole Class "B" Member shall be the Declarant.

The Class "B" membership shall terminate upon the earlier of: (a) two years after expiration of the Period of Declarant's Control or (b) when, in Declarant's sole discretion, Declarant declares the Class "B" membership as terminated as evidenced by an instrument that has been recorded in the Recorder's Office.

The continuation of Class "B" membership after the Period of Declarant's Control has expired shall not, in any manner whatsoever, cause the Declarant to retain any rights, duties, obligations, powers or authority that were granted or imposed upon the Declarant during the Period of Declarant's Control pursuant to the Governing Documents. During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" membership has terminated, the Declarant shall merely be entitled to appoint one Director as more particularly described under Section 3.1 of these Bylaws.

2.2 Place of Meeting. The Association shall hold meetings at a location that is suitable and convenient to the Members as may be designated by the Board from time to time.

2.3 Annual Meetings. There shall be an annual meeting of the Members on or about the first Saturday of February at 6:00 p.m. at the Project or at such other reasonable place and time (although not more than sixty (60) calendar days before or after such date) as may be designated by written notice of the Board delivered to the Members and all Eligible Mortgagees, no less than thirty (30) calendar days prior to the date fixed for such meeting.

At or prior to such annual meeting, the Board shall furnish, or cause to be furnished, to each Owner for their review: (i) a copy of the proposed Annual Budget for the new fiscal year, and the estimated allocation of such proposed Annual Budget to each Owner; and (ii) a statement of the Common Expenses, and an itemization of receipts and disbursements for the previous and new fiscal year, together with the allocation thereof to each Owner; and (iii) a copy of any documents related to any matters described in the annual meeting notice as matters to be discussed and/or approved at such meeting (for example, and without limitation, Association contracts or agreements).

At the annual meeting, there shall be presented a review of the Common Expenses, itemizing receipts and disbursements for the preceding fiscal year, and the allocation thereof to each Members, the estimated Common Expenses for the new fiscal year, and a final proposed Annual Budget based upon such estimated Common Expenses.

Within ten (10) business days after the annual meeting, a copy of the proposed Annual Budget shall be delivered to any Members who were not present at the annual meeting.

2.4 Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters which require the approval of all or some of the Members, or for any other reasonable purpose. Such meetings may be called by written notice of the President of the Association upon the decision of the President, or pursuant to a written request signed by a majority of the Board, or by written request by Members cumulatively holding at least thirty-three percent (33%) of the total Percentage Interest, which notice shall be delivered according to Section 2.5 below. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.5 Notice of Meetings. The Board may provide Members notice of each meeting either via U.S. mail or via certain electronic methods as specifically set forth under this Section 2.5.

2.5.1 Contents of Notice. Each notice shall include the following information: (a) The place, day and hour of the meeting; (b) A description of any matter or matters that must be approved by the Members at such meeting; and (c) In the case of a special meeting, the purpose of such meeting.

2.5.2 Mailed Notice. If notice of any meeting is delivered via mail, such notice shall be mailed via United States Postal Service, postage prepaid for first-class delivery, no later than thirty (30) calendar days, but no more than sixty (60) calendar days, prior to such meeting to each Member entitled to vote at such meeting. Such mailed notice shall be deemed as delivered when deposited in the U.S. mail addressed to the Member at the Member's registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Unit address shall be deemed to be that Member's registered address for purposes of notice in this Subsection 2.5.2.

2.5.3 Electronic Notice. Notice of any meeting may be delivered to Members via email or the Association's website. However, any Member may, by written demand, require that the Association provide notice to such Member via U.S. mail only.

2.6 Members of Record. Upon purchasing a Unit in the Project, each Member shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Unit has been vested in such Member, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to receive notice of, or to vote at, any meeting of the Members, the Board may designate a record date, which shall be no later than thirty (30) calendar days, nor more than sixty (60) calendar days, prior to the meeting for determining Members entitled to receive notice of, or to vote at, the meeting. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed as the record date for determining Members entitled to receive notice of, or to vote at, the meeting. The persons or entities appearing in the records of the Association on such record date as the Members of record of Units in the Project shall be deemed to be the Members of record entitled to receive notice of, and vote at, the meeting of the Members.

2.7 Voting Rights. The total voting power of all Members shall be equal to the total number of any Units in the Project that (a) are owned by an Owner other than the Declarant, or (b) have been completed as evidenced by the County's issuance of a Certificate of Occupancy and have been made subject to the terms and conditions of this Declaration. The total "voting right" available to the Member of any one Unit shall be equal to the Percentage Interest for that Unit. The Board shall be entitled to cast a vote on behalf of any Unit which has been acquired by or on behalf of the Association. Any such vote must be cast on behalf of the Unit consistent with a majority vote of the Board. The Board shall not be entitled to cast a vote on behalf of any Unit which has been acquired by or on behalf of the Association with regard to any election of any Director.

2.8 Proxies, Absentee Ballots and Rights of Mortgagees.

2.8.1 Proxies. Any vote may be cast by proxy. A proxy given by an Member to any person who represents the Member at meetings of the Association shall be in writing, dated and signed by such Member and shall be filed with the Secretary no less than three (3) calendar days prior to the meeting at which such proxy is intended to be utilized. No proxy shall be valid after the meeting for which it was solicited (but a proxy shall be valid for any vote regarding adjournment of the meeting for which it was solicited), unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. A Member may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.15 below. Every proxy shall automatically cease upon sale of the Unit. A proxy must be for the entire voting right of a Unit with no divisions accepted.

2.8.2 Absentee Ballots. Any vote may be cast by absentee ballot.

2.8.3 Mortgage Rights. Any Owner may pledge or assign that Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Owner is entitled hereunder and to exercise the Owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Board. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

2.9 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in-person or by proxy or by absentee ballot at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided that the person shall satisfy the Secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity.

(b) Joint Owners. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner

shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

#### 2.10 Quorum of Members.

(a) At any regular annual meeting of the Association, the Members that are represented for any purpose at the annual meeting shall constitute a quorum. For any other meeting of the Association, including special meetings or action taken without a meeting, Members cumulatively holding at least fifty percent (50%) of the total Percentage Interest of the Association's voting rights, whether present in-person or by proxy or by absentee ballot, shall constitute a quorum.

(b) The subsequent ratification by a Member of the action taken at a meeting shall constitute the presence of that person for the purpose of determining a quorum. Once a quorum is present to organize a meeting it cannot be broken by the subsequent withdrawal of a Member or Members.

(c) Unless otherwise provided or prohibited under any provision of the Acts, the Declaration or these Bylaws, if any meeting of Members (including the regular annual meeting) cannot be organized or conducted due to a lack of quorum, the Members who are present, either in-person or by proxy (but not by absentee ballot), may reconvene the meeting no sooner than thirty (30) minutes from the time of the originally scheduled meeting and the quorum requirement at such adjourned meeting shall be one-half (1/2) of the quorum requirement of the original meeting.

The provisions of this Subsection 2.10(c) shall not supersede any vote or decision that requires the approval or disapproval of a "Majority of the Owners" as set forth under the Governing Documents. In other words, if the Declaration provides that a particular matter requires the approval of a "Majority of the Owners", that matter must be approved by Owners holding at least Fifty Percent (50%) of the total Percentage Interest; such matter cannot be approved merely by a majority of the Owners who attend a particular meeting, even if a "quorum" has been established to organize or conduct that meeting.

2.11 Binding Vote. The vote of the holders of more than fifty percent (50%) of the total Percentage Interest of voting rights present (whether in-person, by proxy, or by absentee ballot) at a meeting at which a quorum is constituted shall be binding upon all Members for all purposes except where a higher percentage vote or a higher number of votes is required by law, the Declaration, or these Bylaws.

2.12 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies and the method of ascertaining Members present shall be deemed waived if no objection is made either at the meeting or within thirty (30) calendar days following the date of the meeting.

2.13 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of any Director(s); (g) Unfinished business; (h) New business; and (i) Adjournment.

2.14 Meeting Procedure. Meetings shall be conducted according to appropriate parliamentary procedure pursuant to rules of order as adopted by a resolution that has been approved by a majority vote of the Board. When a dispute arises as to conduct of meetings of Members, the Association agrees to follow rules of order as established in the latest edition of "Robert's Rules of Order."

2.15 Action by Written Ballot in Lieu of a Meeting.

2.15.1 Action by Written Ballot. At the discretion of the Board, any action, except removal of Directors, that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter no later than thirty (30) calendar days prior to the date on which the ballots must be received by the Association in order to be counted.

2.15.2 Form and Effect of Ballot. The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. Any Member who has the right to vote at an annual meeting, but cannot personally attend such meeting, shall be permitted to submit his or her vote via facsimile or a scanned and emailed copy of that Member's ballot. Once a written ballot has been submitted (whether in-person or via facsimile or scanned and emailed ballot) such ballot may not be revoked or withdrawn.

2.15.3 Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

- (1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.
- (2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection 2.15.4: (a) The date on which the Association has received a sufficient number of approving ballots to pass the proposal; (b) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or (c) A date certain on which all ballots must be returned to be counted.

2.15.4 Secrecy Procedure. The Board may elect to conduct a vote pursuant to this Subsection by a secrecy procedure whereby a written ballot is accompanied by: (1) A secrecy envelope; (2) A return identification envelope to be signed by the Member; and (3) Instructions for marking and returning the ballot.



2.15.5 Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board within seventy-two (72) hours of the deadline for the return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

- (1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed as approved when the date for return of ballots has passed, a quorum of Members has voted and the required percentage of approving votes has been received. Otherwise the proposal shall be deemed as rejected.
- (2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of Members must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.
- (3) Except as provided in Subsection 2.15.5(4), votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.
- (4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

2.15.6 Member Notification of Ballot Results. The Board shall notify each Member no later than fifteen (15) calendar days after the ballots have been counted, by mail, e-mail or via the Association's website, of the results of the ballot meeting, or that a quorum of ballots was not returned (if a quorum was in fact required).

### ARTICLE 3 BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE

3.1 Declarant Appointment and Removal. During the entire Period of Declarant's Control the Declarant shall be entitled to appoint each and every Director. During such Period of Declarant's Control the Declarant may voluntarily choose to appoint an Owner to one (1) Director position on the Board, or may voluntarily allow the Owners to elect an Owner to fill such position on the Board.

During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" membership has terminated, the Declarant shall be entitled to appoint one (1) Director who may or may not be an Owner. During such period of time the Declarant may voluntarily choose to appoint an Owner to such Director position, or may voluntarily allow the Owners to elect an Owner to fill such position on the Board.

Any Director position that is or may be filled by the Declarant, regardless of whether or not that Director is an Owner and regardless of whether or not Declarant elected or appointed such Director, shall serve at the pleasure of the Declarant and may therefore be removed from the Board by a unilateral decision of the Declarant at any time, with or without cause.

### 3.2 Number and Qualifications.

(a) The affairs of the Association shall be governed by a Board of Directors composed of three (3) Directors. The term of office may be one (1) or two (2) calendar years, and the expiration of such terms may, to the extent practical or possible, be offset or staggered such that the normal number of vacancies in any given calendar year will not be a majority of the positions on the Board.

(b) Except for any Director who was appointed to the Board by the Declarant, beginning with the first election that occurs after every Unit within the entire Project (including any Unit that has been built on the Additional Land) has been conveyed to an Owner, each Director that is elected to the Board must be an Owner or the co-owner of a Unit. However, at no time may multiple Owners of the same Unit simultaneously serve as Directors. An officer or employee of a corporation, a partner of a partnership, a trustee of a trust, a personal representative of an estate or an employee of a trust or estate, may serve on the Board if the corporation, partnership, trust or estate owns a Unit.

### 3.3 Removal of Board Members.

(a) As set forth under Section 3.1, during the entire Period of Declarant's Control the Declarant shall be entitled to unilaterally appoint and remove each and every Director. Accordingly, only the Declarant may remove any Director who was appointed to the Board by the Declarant.

(b) At any annual or special meeting, other than a meeting by written ballot conducted pursuant to Section 2.15, any Director, other than any Declarant appointee, may be removed, with or without cause, by Owners holding more than fifty percent (50%) of the total Percentage Interest who are present, whether in-person or by proxy or by absentee ballot, at a duly constituted meeting at which a quorum is present. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Director whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

(c) The Board may remove any Director, other than any Declarant appointee, for cause by the vote of a majority of all Directors then in office. Reasons for removal for cause may include: delinquency in Assessment payments for sixty (60) calendar days or more; suing, or being sued by the Association or the Board or any Director or Member of the Association; and absence from three (3) consecutive regular meetings of the Board. The vacancy shall be filled as provided in Section 3.3 of these Bylaws.

3.3 Vacancies. Any Board vacancy caused by the removal or resignation of any Director who was appointed by the Declarant shall only be filled by an appointee of the Declarant.

Any Board vacancy caused by the Board's decision to remove a Director, or caused by the resignation of a Director who was not appointed by the Declarant, shall be filled for the balance of the term of such Board vacancy by the affirmative vote of a simple majority of the remaining Directors even though they may constitute less than a quorum. If the remaining Directors are unable to achieve a simple majority to fill the Board, that vacancy shall be filled by a vote of the Owners pursuant to the Association's process for electing Directors.

Any Board vacancy caused by the removal of a Director by a vote of the Owners shall be filled by a vote of the Owners pursuant to the Association's process for electing Directors.

No later than thirty (30) days following the expiration of the Period of Declarant's Control, the Owners shall hold an election in order to replace any positions on the Board that the Declarant is no longer entitled to fill.

No later than thirty (30) days following termination of the Class "B" membership, the Owners shall hold an election in order to replace the position on the Board that the Declarant is no longer entitled to fill.

Any person appointed or elected to fill a mid-term vacancy of the Board shall complete the remaining term of the vacated Board position.

3.4 Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for reasonable actual expenses incurred in the performance of his or her duties.

3.5 Action Taken Without A Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take a regular or special meeting by obtaining the written approval of all the Directors in accordance with Utah Code Section 16-6a-813, as may be amended from time to time. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

#### ARTICLE 4 APPOINTMENT, NOMINATION AND ELECTION OF DIRECTORS

4.1 Expiration of Period of Declarant's Control. The provisions of this Article 4 shall apply only after the Period of Declarant's Control has expired.

4.2 Nomination.

(a) Method of Nominations. Nomination for election to the Board may be made by a Nominating Committee. Prospective Directors must be nominated from among the Owners. Any such prospective Director must provide the Nominating Committee notice of his or her intent to run no later than five (5) calendar days prior to the meeting in which elections will

occur. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies.

(b) Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board; and two (2) or more Members of the Association.

4.3 Election. At the election for Directors, the Owners or their proxies shall cast one (1) vote towards the entire list of Director nominees. If just one Director position must be filled, the nominated Owner receiving the largest amount of votes (with each Owner's vote being given the same weight as that Owner's Percentage Interest) shall be elected. If two (or more) Director positions must be filled, then the two (or more) nominees receiving the largest amount of votes shall be elected. The results of each Director election shall be posted at the Association's clubhouse and on the Association's website.

Directors may be elected by mail-in ballot (in lieu of a meeting of the Owners). Mail-in ballots must be sent to all Owners entitled to participate in the election. Provided a ballot has been mailed to all such Owners entitled to vote, the properly completed ballots that are received by the Association shall be sufficient to determine the outcome of the election.

4.4 Class "B" Membership Following Period of Declarant's Control. During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" membership has terminated, the nomination and election procedures set forth under this Article 4 shall be subject to the Declarant's right to hold or appoint one (1) position on the Board as required under Section 3.1 of these Bylaws.

## ARTICLE 5 MEETINGS OF THE BOARD OF DIRECTORS

### 5.1 Organizational Meeting.

(a) Location, Date and Time. The first meeting of a newly-elected Board shall be held within fourteen (14) calendar days of election at such place, date and time as shall be fixed by the Directors at the meeting at which the Directors were elected. Notice of such first meeting shall be given to each member of the newly-elected Board.

(b) Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing President, or in the absence of such person, the outgoing Secretary, regardless of whether the outgoing President or Secretary is as member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Board shall be held no less than six (6) times during each fiscal year, with each such meeting being held no less than once every other calendar month, at such place and hour as may be fixed from time to time by resolution of the Board. Should the Board meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all Directors.

5.3 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) calendar days notice to each Director by mail, including electronic mail if approved by the Board, telephone, or facsimile. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure.

(a) Meetings of the Board shall be conducted by the President.

(b) A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error is reflected in the meeting minutes or appears on the face of the Board resolution (if any) memorializing the Board's decision.

5.5 Open Meetings; Executive Sessions.

(a) Open Meetings. Except as provided in Subsection (b) of this Section 5.5, all meetings of the Board shall be open to Owners. An Owner may participate in discussions regarding a particular matter on the Board's agenda during the portion of the meeting designated for such discussion. The Board shall have the authority to exclude from a Board meeting any Owner who disrupts the proceedings of the meeting.

(b) Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session: (1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters; (2) Personnel matters, including salary negotiations and employee discipline; (3) The negotiation of contracts with third parties; (4) Collection of unpaid Assessments; and (5) Other matters of a sensitive, private, or privileged nature.

(c) Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the President or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by communication or by the use of a means of communication that allows all Directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Waiver of Notice. Any Director may, at anytime, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice by the Director, except where the Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all

Directors are present at any meeting of the Board, no notice to Directors shall be required and any business may be transacted at the meeting.

This Section 5.7 is intended to be consistent with the requirements of Section 16-6a-815 of the Utah Nonprofit Corporation Act. In the event Section 16-6a-815, as may be periodically amended, provides "waiver of notice" requirements that in any way differ from those contained in this Section 5.7, then the requirements of Section 16-6a-815 shall control.

5.8 Quorum and Acts. At all meetings of the Board a majority of the existing Directors shall constitute a quorum for the transaction of business and the acts of the majority of the Directors present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. Any unfinished business upon such adjournment of a Board meeting may only be transacted at a subsequent regular or special meeting of the Board that has been properly held by giving notice and conducting such meeting as required by these Bylaws.

## ARTICLE 6 POWERS, RIGHTS, AND DUTIES OF THE BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers authorized by the Declaration, these Bylaws or by resolution of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, and subject to Section 6.3 of these Bylaws, the Board shall have the power to:

(a) Adopt and publish rules and regulations governing the use of Common Areas, including any improvements, facilities and amenities located thereon, and the personal conduct of the Owners and their tenants or guests thereon, and to establish penalties for the infraction thereof.

(b) Suspend the voting rights and right to use of any recreational facilities located on any Common Area by any Owner member during any period in which such Owner shall be in default in the payment of any Assessment levied by the Association.

(c) Engage the services of a manager or managing company, accountants, attorneys or other professionals, employees or agents and to pay to said persons a reasonable compensation therefore.

(d) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board.

(e) Supervise all officers, agents, managers and employees of the Association, and to see that their duties are properly performed.

- (f) Operate, maintain, repair, improve and replace the Common Areas.
- (g) Determine and pay the Common Expenses.
- (h) Assess and collect the proportionate share of Common Expenses from the Owners.
- (i) Enter into contracts, deeds, leases or other written instruments or document for and in behalf of the Association and to authorize the execution and delivery thereof by the appropriate officers.
- (j) Open bank accounts on behalf of the Association and designate the signatures for such bank accounts pursuant to a resolution adopted by the Board.
- (k) Purchase, hold, sell, convey, mortgage or lease any interest in real property for and in behalf of the Association subject to the restrictions, limitations and provisions of the Declaration, so long as the Board has obtained the prior written approval of at least two-thirds (2/3) of the first Mortgagees.
- (l) Bring, prosecute and settle litigation for itself, the Association and Project, provided it shall make no settlement which results in a liability against the Board, the Association, or the Project in excess of \$5,000 without prior written approval of a Majority of the Owners.
- (m) Obtain insurance for the Association with respect to the Units and the Common Areas and Common Improvements, as well as Worker's Compensation Insurance.
- (n) Repair or restore the Project (or any portion of the Project) following damage or destruction, or a permanent taking by the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation, not resulting in the removal of the Project from the provisions of the Acts.
- (o) Purchase or lease, and sell or otherwise acquire or dispose of, on behalf of the Association, items of personal property necessary to convenient in management of the business and affairs of the Association and the Board and in the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.
- (p) Keep adequate books and financial records so that the Board can reasonably and regularly assess the financial status and strength of the Project. Such books and records may include, by example and without limitation, financial reports normally presented by the Manager to the Board, such as budget-to-actual reports for each fiscal quarter and fiscal year, quarterly reports of Owners who are delinquent in their payment of Assessments or any Additional Charges, fiscal quarterly and fiscal annual statements of Association's bank account balances, Association reserves reports, and Special Assessment reports (as applicable), and any other relevant financial reports.

(q) Borrow funds and enter into promissory notes, provided that any such action has been approved in writing by a Majority of the Owners.

(r) Sell portions of the Common Areas, provided that any such action has been approved in writing by at least seventy-five percent (75%) of the Owners.

(s) Maintain a corporate seal.

(t) Approve and sign checks and issue payment vouchers.

(u) Pay off or otherwise satisfy any liens against any portion of the Project.

(v) Do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

### 6.3 Requirements Regarding Association Contracts.

(a) Minimum Required Bids. The Board shall not execute any contract or agreement on behalf of the Association (i) for any goods or services that exceed \$5,000 or (ii) that has a term of more than one year, unless the Board has first made a reasonable attempt to obtain at least two (2) bids from vendors or contractors qualified to provide such goods or services. The requirements of this Subsection 6.3(a) shall not apply (A) if the Board is unable to identify or locate more than one (1) such qualified vendor or contractor that is able or willing to provide the goods or services being sought; or (B) in the event of emergency maintenance or repairs as described under Subsection 6.3(c) below.

(b) Minimum Required Signatures. No member of the Board of Directors (including the President or Vice-President) may unilaterally obligate or bind the Board or the Association regarding the acknowledgement of, performance of, or payment under any contract, agreement or any other document whatsoever. Any such contract, agreement or document must be signed by at least two (2) members of the Board of Directors.

(c) Emergency Maintenance or Repairs. The Manager is prohibited from signing any contract, agreement or other document whatsoever on behalf of the Board or the Association. However, the language of this Subsection 6.3(c) shall not prevent the Manager from performing emergency maintenance or repairs, or from engaging or retaining the maintenance or repair services of any third party, as deemed necessary by the Manager in order to prevent or mitigate any harm or injury to any portion of the Project, any Owners, any tenant, guest or other occupant of any Unit, or any other individuals or property that may be located on the Project.

(d) Period of Declarant's Control. The provisions of this Section 6.3 shall not apply during the Period of Declarant's Control.



ARTICLE 7  
OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) Designation. The officers of the Association shall include a President, Secretary and a Treasurer. The Board members may also designate the office of Vice-President, Assistant Treasurer and Assistant Secretary.

(b) Qualifications. The President, Vice-President (if any), Secretary and Treasurer shall each be a member of the Board, but the other officers need not be Board members. Any Board member may be an officer of the Association.

(c) Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices specified in Subsection 7.1(a).

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

7.2 Election and Vacancies.

(a) Generally. The officers of the Association shall be elected from the Board, and shall be elected by the Board at the organizational meeting of each new Board held in accordance with Section 5.1 or at any Board meeting thereafter, to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term at any meeting of the Board.

(b) Period of Declarant's Control. During the entire Period of Declarant's Control, the Declarant shall name, appoint and/or remove any and all officers of the Association. Such officers must be named or appointed from the Directors that have been appointed to the Board by the Declarant.

(c) Class "B" Membership Following Period of Declarant's Control. During the period of time that begins on the date the Period of Declarant's Control has expired, and continuing until the date the Class "B" membership has terminated, the Declarant shall not have the right to name, appoint and/or remove any officers of the Association. During that period of time, however, the Director who was appointed to the Board by the Declarant pursuant to Section 3.1 may be elected to an officer position pursuant to an election of the members of the Board.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed from the Board, either with or without cause. However, as set forth under Section 3.1, during the entire Period of Declarant's Control the Declarant shall be entitled to unilaterally appoint and remove some or all members of the Board as provided herein. Accordingly, the Declarant may veto any vote of the Board to remove any officer of any other Director from the Board.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of a Majority of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. The duties of the officers are as follows:

(a) President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of President of an association.

(b) Vice-President. The Vice-President (if any) shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books and papers as the Board may direct, and in general, perform all of the duties normally incident to the office of Secretary.

(d) Treasurer. The Treasurer shall have responsibility for the Association's funds and securities not otherwise held by the Manager, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The Treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

## ARTICLE 8 INDEMNIFICATION OF OFFICERS AND BOARD MEMBERS

Each officer and Director of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by law against expenses and liabilities reasonably incurred by him or her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Director or officer of the Association. The foregoing right to indemnification shall be exclusive of any other rights to which the Director or officer or person may be entitled by law or agreement or vote of the members or otherwise.

ARTICLE 9  
RECORDS AND AUDITS

The Association shall maintain within the State of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board.

9.1 General Records.

(a) The Board or Manager, if any, shall keep records of the actions of the Board and Manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

(b) The Board or Manager, if any, shall maintain records containing the rules, regulations, and policies adopted by the Association and Board.

(c) The Board or Manager, if any, shall maintain a list of Owners. The list of Owners may specify whether or not the Owner is an Owner in good standing.

(d) The Association shall retain within the State of Utah all records of the Association for not less than the period of time specified and required under applicable law.

9.2 Records of Receipts and Expenditures. The Board or Manager, if any, shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Project, itemizing the maintenance and repair expenses of the Common Areas or Association property and any other expenses incurred.

9.3 Assessment Roll. The Assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.4 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all Mortgagees of Units who have requested the same in writing no later than ninety (90) calendar days following the end of each fiscal year.

(b) No less than once every three (3) fiscal years, the Board shall, at the expense of the Association, obtain an audit or other financial review of the Association's books and records, and shall either cause a copy of the results of such audit or other financial review to be available for review by the Owners, or shall post the results of such audit or other financial review on the Association's website. The Board may not conduct the audit or other financial review itself, and must retain the services of a qualified independent financial entity.

9.5 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.6 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Unit pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) the Declaration, Bylaws and any amendments in effect or supplements thereto, and Rules and Regulations of the Association; (2) the most recent financial statement prepared pursuant to Section 9.4; and (3) the current Annual Budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an Owner, shall furnish the requested information required to be maintained under Subsection 9.5(b), subject to a reasonable fee for furnishing copies of any documents, information or records described in this Section 9.5. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Section 9.5. The fee may include reasonable personnel costs incurred to furnish the information.

9.6 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in Subsections (a) and (b) of this Section 9.6, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.

(f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws.

(g) Files of individual Owners, other than those of a requesting Owner or requesting Mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

9.7 Notice of Sale or Mortgage. Immediately upon the sale or Mortgage of any Unit, the Owner shall promptly inform the Secretary or Manager of the name and address of the purchaser, vendee or Mortgagee.

## ARTICLE 10 AMENDMENTS

10.1 Adoption. Amendments to these Bylaws may be approved by the Association at a duly constituted meeting or meeting by written ballot in lieu of a meeting conducted pursuant to these Bylaws. Approval by at least sixty-seven percent (67%) of the total Percentage Interest of those votes that are actually cast is required for any amendment to be adopted. The approval of sixty-seven percent (67%) of the total Percentage Interest of all Owners shall be required for any amendment or change to the material provisions of the Bylaws pertaining to voting rights.

10.2 Execution and Recording. An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws, acknowledged and recorded with the Recorder's Office.

10.3 Challenge to Validity. No action to challenge the validity of an adopted amendment may be brought more than one (1) calendar year after the amendment is recorded.

## ARTICLE 11 MISCELLANEOUS

11.1 Notices.

(a) Association. All notices to the Association or the Board shall be sent care of the Manager or, if there is no Manager, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

(b) Owners.

(1) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board, or if no address has been designated, then to the Owner's Unit.

(2) If a Unit is jointly owned or the Unit has been sold under a land sale contract, notice shall be sent to a single address, of which the Secretary has been notified in writing by such parties. If no address has been given to the Secretary in writing, then mailing to the Unit shall be sufficient.

11.2 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

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

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

11.5 Adoption of Bylaws. These Bylaws have been created for the Association by the Declarant and will be formally adopted by the Board of Directors on behalf of the Association at the Board's organizational meeting.