

AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
MANAGEMENT POLICIES

FOR

TIMBER LAKES ESTATES

IN

WASATCH COUNTY, UTAH

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND MANAGEMENT POLICIES  
FOR  
TIMBER LAKES ESTATES**

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Management Policies for Timber Lakes Estates (the “Declaration”) is made by the Timber Lakes Property Owners Association, a Utah non-profit corporation (the “Association”) and effective as of the date this instrument is recorded with the county recorder for Wasatch County, Utah

**RECITALS**

A. The DECLARATION OF PROTECTIVE COVENANTS FOR TIMBER LAKES, A REAL ESTATE SUBDIVISION was recorded on September 27, 1981, in the Wasatch County Recorder’s office as Entry No. 95721, in Book 76, beginning at Page 247 (the “First Declaration”), encumbering Plats No. 1, 2, and 3, which were recorded in the Wasatch County Recorder’s Office on November 6, 1970, August 25, 1971, and August 25, 1971, respectively.

B. The DECLARATION OF PROTECTIVE COVENANTS FOR TIMBER LAKES, A REAL ESTATE SUBDIVISION was recorded on December 28, 1971, in the Wasatch County Recorder’s office as Entry No. 96211, in Book 78, beginning at Page 196 (the “Second Declaration”), encumbering Plat No. 4 and 5, both recorded in the Wasatch County Recorder’s Office on December 6, 1971.

C. The DECLARATION OF PROTECTIVE COVENANTS FOR TIMBER LAKES, A REAL ESTATE SUBDIVISION was recorded on September 14, 1972, in the Wasatch County Recorder’s Office, as Entry No. 97899, in Book 84, beginning at Page 239 (the “Third Declaration”), encumbering Plats No. 6 and 7, which were recorded on May 12, 1972, and Plat 8, which was recorded on May 19, 1972.

D. The DECLARATION OF PROTECTIVE COVENANTS FOR TIMBER LAKES, A REAL ESTATE SUBDIVISION was recorded on December 28, 1971, in the Wasatch County Recorder’s office as Entry No. 98060, in Book 84, beginning at Page 336 (the “Fourth Declaration”), encumbering Plats No. 9, 10, 11, 12, 13 and 14, all recorded in the Wasatch County Recorder’s Office on September 15, 1972.

E. The DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND MANAGEMENT POLICIES FOR TIMBER LAKE ESTATES, was recorded on July 29, 1980, in the Wasatch County Recorder’s Office as Entry No. 120374, in Book 134, beginning at Page 275 (the “Fifth Declaration”), reciting that Plats 1-14 had been previously made part of Timber Lakes Estates, amending and restating the First, Second, Third and Fourth Declarations, and incorporating Plat 16 in Timber Lakes Estates.

F. The DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND MANAGEMENT POLICIES FOR TIMBER LAKE ESTATES, was recorded on August 27, 1987, in the Wasatch County Recorder’s Office as Entry No. 143347, at Book 193, beginning on Page 834 (the “Sixth Declaration”), reciting that Plats 1-14 and 16 had been made part of Timber Lakes Estates, and incorporating Plat 18 into Timber Lakes Estates.

G. The DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND MANAGEMENT POLICIES FOR TIMBER LAKE ESTATES was recorded on September 14, 1987, in the Wasatch County Recorder’s Office as Entry No. 143531, in Book 194,

beginning at Page 329 (the “Seventh Declaration”), reciting that Plats 1-14, 16 and 18 had been previously made part of Timber Lakes Estates, amending and restating the First, Second, Third, and Fourth Declarations, and incorporating Plat 18A in Timber Lakes Estates.

H. The DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND MANAGEMENT POLICIES FOR TIMBER LAKES ESTATES was recorded on August 28, 1989, in the Wasatch County Recorder’s Office as Entry No. 149716, at Book 211, beginning at Page 489 (the Eighth Declaration”), reciting that Plat 1-14, 16, 18 and 18A had been made part of Timber Lakes Estates, and incorporating Plat 19 into Timber Lakes Estates.

I. The DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND MANAGEMENT POLICIES FOR TIMBER LAKES ESTATES was recorded on December 13, 1990, in the Wasatch County Recorder’s Office as Entry No. 154335, at Book 224, beginning at Page 435 (the Ninth Declaration”) (the First Declaration, Second Declaration, Third Declaration, Fourth Declaration, Fifth Declaration, Sixth Declaration, Seventh Declaration, Eighth Declaration and Ninth Declaration, collectively, the “Original Declaration”), reciting that the real property described as the Timber Lakes Estates, as shown on the records of the Wasatch County Recorder, been made part of Timber Lakes Estates, and incorporating Plats 20 and 21 into Timber Lakes Estates.

J. The DEER CREEK AT TIMBER LAKES – PLAT 22 (“Plat 22”) was recorded on July 27, 2007, in the Wasatch County Recorder’s Office as Entry No. 323782, at Book 946, beginning at 403, but it does not appear that a corresponding amendment to the Original Declaration was recorded.

K. This Declaration affects the forgoing real property located in Wasatch County, Utah, described with particularity on Exhibit A, attached hereto and incorporated herein by reference (the “Property”), including, without limitations, all of Plats 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 16A, 18, 18A, 19, 20, 21 and 22 of Timber Lakes Estates.

L. The Association now desires to amend the Original Declaration to resolve the ambiguity related to Lot combinations, and clarify and governance structure and standards and procedures for the development, expansion, administration, maintenance, and preservation of TIMBER LAKES ESTATES as a planned unit community

M. The Association shall own, operate and maintain various common areas, common elements, and community improvements and shall administer and enforce the Governing Documents consistent with the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act. The Terms and Conditions established herein are for the mutual benefit and burden of the Association and all current and future Owners, Occupants, Lenders and other acquiring any interest in the Development and/or the Property.

N. This Declaration replaces and supersedes the Original Declaration and shall run with the land and shall govern the development and use of the Property and shall be binding upon current or future Owners of any portion of the Property, his/her heirs, successors, and assigns, and any other Person that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Property. By taking title to any property in the Development, each Owner joins in and accepts the intent, purpose, and objectives of this Declaration and agrees to be bound by it and acknowledges the benefits received from its existence and accepts the burdens that accompany these benefits.

O. Capitalized terms in this Declaration are defined in Article 1 herein or in other sections of this Declaration.

NOW, THEREFORE, for the reasons recited above and subject to the Terms and Conditions set forth below, the Association hereby adopts this Declaration.

**ARTICLE 1**  
**DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean and refer to the Community Association Act codified beginning at § 57-8a-101, Utah Code Annotated (“Utah Code Ann.”).
- 1.2 “Allocated Interest” shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Lots subject to provisions in Sections 6.2(d) and 20.6 herein. Each Lot is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents, with the exception of Lots 0272T and 0273T. Lots 0272T and 0273T each have three votes and pay three assessments.
- 1.3 “Architectural Guidelines” shall mean and refer to the Timber Lakes Estates Architectural Guidelines adopted by the Association as a Rule.
- 1.4 “Architectural Review Committee” shall mean and refer to the “mean and refer to the committee established by the Association’s Board of Directors to review plans and enforce restrictions related to improvements constructed within the Development.
- 1.5 “Area of Personal Responsibility” shall mean and refer to the areas which the Owner is responsible to maintain, repair, and replace.
- 1.6 “Articles” shall mean and refer to the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.7 “Assessment” shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.8 “Association” shall mean and refer to the TIMBER LAKES PROPERTY OWNERS ASSOCIATION, the membership of which shall include each Owner in the Development. The Association shall be incorporated as a nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.9 “Board of Directors” or “Board shall mean and refer to the entity with primary authority to manage the affairs of the Association which may also be referred to as a Management Committee or Board of Trustees.
- 1.10 “Bylaws” shall mean and refer to the bylaws of the Association attached as Exhibit B and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.11 “Common Area and Facilities” or “Common Area” unless otherwise more specifically provided in this Declaration, shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the County, and, specifically, shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plat, (b) property dedicated for the use and enjoyment of the Owners or the Owners on a Plat, including any area designated as open space, lakes, creeks, or trails, unless such lake, creek or trail (unless such property is not owned or maintained by the Association); (d) Entry Monuments and Gates; (e) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the Common Areas; (f) any fence or wall on common property; (g) any road, street, lane, alley or cul-de-sacs within the Development not dedicated to the County; (h) the area around any lake in the Development (that is not part of a Lot) to the extent that such lake is either owned by, or maintained by, the Association, (i) any easements or rights of way owned by the Association, maintained by the Association, or which exists for the benefit of the Owners, including, without limitation, any easement

related to property owned by the Church of Jesus Christ of Latter Day Saints or any related entity, and (j) all other parts of the Development necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, not dedicated to the County or the public. The Common Area and Facilities shall be owned by the Association. The Association may own property that is not Common Area and Facilities.

1.12 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and Facilities which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants and employees; (c) extermination, security, landscape maintenance and other related services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous costs incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.13 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Development or, at a minimum, the standards initially established by the Association and/or described in the Declaration, Architectural Guidelines, Rules, and Board of Directors’ resolutions. The Community-Wide Standards may or may not be set forth in writing.

1.14 “County” shall mean and refer to Wasatch County, Utah.

1.15 “Dwelling” shall mean and refer to a dwelling, home, or other living unit intended for residential occupancy.

1.16 “Entry Monuments” shall mean and refer to any and all entry monument and markers and adjacent landscaped area which are or may be constructed at the entrance to the Development.

1.17 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, the Articles, and any other written instrument by which Association may exercise power or manage, maintain, or otherwise affect the Development.

1.18 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Lot.

1.19 “Lot” shall mean and refer to an individual lot created on the Plat on which a Single-Family dwelling is or will be constructed and is included within the definition of Lot below. More than one Lot is referred to herein as “Lots.”

1.20 “Maintenance Agreement” that any maintenance agreement between the Association and the County for the maintenance of any road within the Development, recorded with the County Recorder for Wasatch County, as may be amended.

1.21 “Manager” shall mean and refer to the Person or Persons engaged by the Board to manage the Development.

1.22 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling or on a Lot within the Development, including, without limitation, family members or tenants of an Owner or an Occupant.

1.23 “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the County Recorder of Wasatch County, Utah. “Owners” shall mean and refer to more than one Owner.

1.24 “Person” shall mean and refer to a natural individual, corporation, estate, limited liability company, partnership, trust, government, governmental subdivision or agency, or any other legal entity.

1.25 “Plat” shall mean and refer to the record of survey maps and plats of the Development and development phases recorded with the County Recorder for Wasatch County, Utah including all of Plats 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 16A, 18, 18A, 19, 20, 21 and 22 of the Development and all recorded amendments and supplements thereto.

1.26 “Development” shall mean and refer to the Timber Lakes Estates development and all structures and improvements thereon including the Lots, Dwellings and the Common Area and Facilities. The Development shall include any additional land made subject to the Declaration at such time the Supplement to Declaration and plat map for the additional land is recorded.

1.27 “Property” shall mean and refer to the real property legally described in Exhibit A.

1.28 “Rules” or “Policies and Procedures” shall mean and refer to the rules and regulations adopted by the Association.

1.29 “Single-Family” shall mean and refer to any *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and any ward under legal guardianship, and an additional person or persons as a caretaker or as domestic help, or (c) a group of two or more unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

1.30 “Subdivision” shall mean and refer to the Timber Lakes Estates development, including all Lots, Dwellings, Common Areas and Facilities, and other property within the Development as shown on the Plat covering the entire Property, including Plat 22.

1.31 “Subdivision Improvements” shall mean and refer to any and all subdivision improvements to be installed outside of the boundaries of Lots and/or within easements as identified on the Plats that are necessary to provide public road access and utility service to the Lots, and including other construction required to comply with any conditions of the County or other governmental agencies to the approval of the Subdivision or any Plat thereof.

1.32 “Supplement to Declaration” shall mean and refer to any amendment or supplement to the Declaration to annex additional land into the Development and subject such additional land to the covenants, conditions and restrictions contained in the Declaration.

1.33 “Terms and Conditions” shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

1.34 “Water Company” shall mean and refer to the Timber Lakes Water Special Service District.

**ARTICLE 2**  
**THE DEVELOPMENT**

2.1 Binding Effect of Governing Documents. The Association hereby declares the Property is part of the Development, and that the Development and all of the Lots shall be held, transferred, mortgaged, encumbered, occupied, used and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns.

2.2 Nature of the Development. The Development is a planned development which is fully platted but only partially built out as of the date of this Declaration. The Development is not a cooperative and is not a condominium.

2.3 Development Name. The Development is named "Timber Lakes Estates." Notwithstanding, the name used by the Association for the Development may be different than the name identified in this Declaration and on the Plat.

2.4 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association.

**ARTICLE 3**  
**DESCRIPTION OF THE UNITS, LIMITED COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS**

3.1 The Lot

(a) The distinct Lot number that identifies the Lot on the Plat may or may not be consistent with the mailing address of the Lot.

(b) Subject to further specification herein, each Lot generally consists of all structures on or within the boundary of the Lot, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures.

(c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot, shall be part of the Lot, to the extent they serve or service only the Lot.

(d) Combined Lots: Any two or more Lots that have been combined into one single Lot as evidenced by a properly recorded amended or supplemental plat, or by a properly recorded boundary line adjustment, which has been accepted by Wasatch County, shall be considered one single Lot for all purposes, except as follows: any two or more Lots that have been combined into one single Lot as provided herein prior to the recording of this Declaration shall be considered one Lot for all purposes, including voting and assessment, but any two or more Lots that are combined into one single Lot subsequent to the recording of this Declaration shall maintain the voting and assessment obligation of all of the Lots which have been combined. For example, if three Lots are combined into one Lot after the recording of this Declaration, the resulting Lot shall still be required to pay three assessments and shall have the voting rights of the three Lots which were combined.

3.2 Common Area.

a. Common Area includes all land, parcels, areas, waterways, roads, lanes, alleys, cul-de-sacs, gates, entry monuments, signs, roadway easements, mailboxes, office, other easements, trails, structures, fences, and improvements that are: (1) designated as Common Area, Open Space, creeks, trails, or Common Area and Facilities on the Plat, (2) reserved to Lot Owners or

a group of Lot Owners, (3) the responsibility of the Association to maintain, improve, build or repair, (4) owned by the Association, or (5) land or other property which the Association is obligated to maintain, construct, or repair pursuant to the Maintenance Agreement.

3.3 Allocated Interest of Each Lot in the Association. Subject to 3.1(d), the Owners shall be entitled to vote their respective Allocated Interests for all matters related to the Association that Owners are permitted or required to vote or approve. All Lots constructed within the Development shall have an equal Allocated Interest such that each Lot shall have one vote which may be exercised by the Lot's Owner or Owners. Any difference in square footage, location, size, value, or other aspect of any Lot shall not be a reason to alter or change any Allocated Interest. Multiple Lots combined into one Lot subsequent to the recording of this Declaration shall have Allocated Interest of all of the Lots which were combined. Multiple Lots combined into one Lot prior to the recording of this Declaration shall have one Allocated Interest, regardless of the number of Lots which were combined.

3.4 Plat. The Plat, and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Development and the Association. Consistent with the Act, the Plat and the Declaration shall control equally and interpreted, where possible, to harmonize and give effect to both. Notwithstanding, in the event of a conflict between the Plat and this Declaration, the more specific provision shall control.

#### **ARTICLE 4** **ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

4.1 Organization of Association. The Association shall serve as the organizational body for all Owners.

4.2 Modifying or Changing the Name of the Development. The name of the Development may be modified or changed pursuant to a lawful amendment to this Declaration.

4.3 Legal Organization. The Association shall be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Declaration and Bylaws.

4.4 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Each Lot shall have only one vote, regardless of the number of Owners.



4.5 Availability of Documents. The Association shall make available to the Owners documents of the Association in accordance with Utah Law and consistent with the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act or any successor statute. Notwithstanding anything to the contrary in this Section 4.5, the Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Board, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Association, including, without limitation, bank account numbers or social security numbers.

4.6 Board of Directors. The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. The Board shall consist of nine (9) members. Except as otherwise provided in this Declaration, Bylaws, or the Articles, the Board, in all instances, shall act on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in the Declaration, Bylaws, or Articles or by applicable law, no Owner or group of Owners other than the Board may direct the actions of the Association.

4.7 Board Members.

(a) Qualification.

(i) To be eligible to serve on the Board, an individual must be an Owner (or the spouse of an Owner), over eighteen (18) years of age, and current on Assessments.

(ii) If the record Owner of a Lot is an entity, an individual who is an officer, principal, shareholder, partner, member, manager, or trustee, of such Owner shall be eligible to serve on the Board, provided such individual is over eighteen (18) years of age and the Owner is current on Assessments.

(b) Reasonable Ongoing Requirements for Board Members. The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws or the Rules may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members. Any Bylaw or Rule requirements adopted pursuant to this section shall not be applicable retroactively and shall not apply to any Board Members on the Board during the three-year term of the Board Member being served when they are adopted.

4.8 Limitation on Authority of Owners, Board of Directors Members, Officers, and the Board.

(a) Except as provided herein, in the Bylaws, in the Rules, or in the Architectural Guidelines, the Board, any individual Owner, and any individual Board Member or Officer shall have no authority to and may not act on behalf of the Association or the Board to:

(i) amend or terminate any Governing Document;

(ii) elect or remove members of the Board;

(iii) establish or change the qualifications, powers and duties, requirements, or terms of Board Members or the Board; or

(iv) authorize or agree to any deviation or exception from the Terms and Conditions.

4.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to

any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Lot in the Development to verify that anything that the Association does, does not do, or authorizes related to the Development or the Association is in compliance with the terms of the Governing Documents. No individual board member has the authority or power to bind the Board without following the requirements of this Declaration, and any reliance upon such authority contrary to the terms the Governing Documents is invalid, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged authorization.

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

**ARTICLE 5**  
**GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

5.1 Rights and Responsibilities of the Association. The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided by law. Any duty of the Board, or any Board Member, shall run to the Owners collectively, and not to any individual Owner.

5.2 Association Obligation for Common Area and Facilities. The Association shall make provisions for completing all inspection, maintenance, repair, and replacement requirements and obligations of the Common Area and Facilities. The duties outlined in this Section 5.2 shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and Facilities and the Development, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards. The Association shall use reasonable efforts to fulfill its obligation under the Maintenance Agreement.

Nothing in the foregoing provisions of this Section 5.2, however, shall be construed to prevent the Association from taking on obligations of the County or from turning over obligations to the County pursuant to a written agreement between the County and the Association.

The Association is responsible for providing snow removal services for the Common Area roads, Common Area parking, and Common Area trash areas in an amount, quantity, and quality determined by the Board. This section shall not impose on the Board any obligation for a minimum amount, quantity or quality of snow removal.

5.3 Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

- (a) Subject to applicable law, the Board alone may authorize the payment of any capital improvement so long as the amount to be paid in any particular fiscal year for that capital improvement does not exceed twenty-five percent (25%) of the Association's annual budget.
- (b) Subject to applicable law, any capital improvement to the Development which requires a payment in one fiscal year that exceeds twenty-five percent (25%) of the Association's annual budget shall require approval of the Board and Owners holding at least thirty percent (30%) of the total Allocated Interests in the Association.
- (c) Notwithstanding the foregoing, in any emergency situation (and only in an emergency situation) the Board is expressly authorized to approve the engineering, grading, construction,

maintenance, replacement and repair of roads within the Development upon the vote of the Board alone.

5.4 Paying Expenses. The Association shall provide for the payment of Association expenses.

5.5 Setting and Collecting Assessments. The Association shall establish, collect and account for Assessments as necessary to operate the Development consistent with the requirements of the Governing Documents.

5.6 Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Development. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable, as determined by the Board, in light of the circumstances pertaining to the situation or issue addressed by the Rule.

5.7 Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Board in the management and operation of the Development and may delegate the Board's powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. **THE BOARD HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**

5.8 Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

5.9 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (a) impose fines; and (b) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

5.10 Discretion in Enforcement.

(a) Subject to the discretion afforded in this section, the Board uniformly and consistently shall enforce and implement the Terms and Conditions in the Governing Documents.

(b) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (i) whether to compromise a claim made by or against the Board or the Association; and (ii) whether to pursue a claim for an unpaid Assessment.

(c) The Association may not be required to take enforcement action if the Board, after fair review and acting in good faith and without conflict of interest, determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify

expending the Association's resources; or (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(d) Subject to Subsection (e) of this Section 5.10, if the Board decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.

(e) The Board shall not be arbitrary, capricious or act against public policy in taking or not taking enforcement action.

5.11 Reserve Fund. The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 17 of this Declaration or as required by the Act.

5.12 Preventing Conflicts with Service Providers and Vendors. The Association shall not permit any paid services or materials obtained by the Association reasonably valued at more than \$2,500 to be performed or provided by: (a) any Board Member; (b) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; or (c) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a ten percent (10%) ownership or beneficial interest without prior written disclosure of the relationship to the Board and a written agreement executed by the parties. For the purpose of this Section, a relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this section shall include, but is not limited to, managers, insurance brokers, investment or financial advisors, accountants, landscapers and contractors.

5.13 Establishing Hearing Procedures. The Board shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least two weeks' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

5.14 Annual Meeting. The Association shall arrange for and conduct an annual meeting of the Owners as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.

5.15 Payoff Information Fees. The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance, or closing of a Lot. Unless otherwise provided in the Rules and allowed by law, the amount of the payoff fee shall be twenty-five dollars (\$25.00). The Board may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.

5.16 Association Responsibility for Utility Services. The Association is not responsible or required to provide any utility services for the Owners, including, without limitation, power, sewer, gas, water, internet, cable and recycling, but the Board may decide to provide such services or make arrangements for third parties to provide such services. The Board's decision to provide or facilitate the utility services including internet, cable, and recycling may be terminated by the Board at any time, and no presumption or expectation of continued service shall be created by any Board action. The Water

Company is required to provide water services for the Owners in the Development and the Association may enter into agreements with the Water Company to effectuate or continue such service. The Association may enter into agreements with any other utility company for the purpose or effectuating or continuing utility service.

## **ARTICLE 6** **BUDGETS & ASSESSMENTS**

6.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation and protection of the Development; enhancing the quality of life of the Owners in the Development; enhancing and preserving the value of the Development; and in the furtherance of carrying out or satisfying any other duty or power of the Association.

6.2 **Budget and Regular Assessment.**

(a) The Board is authorized and required to adopt a budget for the following calendar or fiscal year not later than sixty (60) days prior to the beginning of each calendar or fiscal year. Unless and until the Board decides otherwise, the budget shall be a fiscal year budget. The Board may revise that budget from time to time as it deems appropriate.

(b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and other estimates as the Board deems appropriate.

(c) The Board shall present the budget at the Annual meeting and may also post the budget on the Association's website.

(d) The Board shall determine the amount of the regular Assessments to be paid by the Owners of each Lot by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Lot.

(e) The Board may not cause the regular Assessment to increase by more than ten (10%) in any given year relative to the prior year.

(f) If the Association moves to a calendar year budget, the Board is authorized to adopt a partial year budget sufficient to cover the time period from the end of the fiscal year budget to the next calendar year, and to assess the owners as provided below pursuant to the partial budget.

6.3 **Payment of Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment annually.

6.4 **Personal Obligation for Assessment.** Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, and including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due. The obligation to pay Assessment shall be absolute and unconditional and shall be due regardless of whether the Association has given notice to the Owner, or whether the Owner has received notice, or whether the Association has made sufficient efforts to locate the Owner. It is the obligation of every Owner to

ensure that the Association has his or her correct contact information. Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby further agrees that if such Owner is an entity, including but not limited to, a corporation, a partnership, a limited liability company, a limited partnership, or a trust, and not individual person, than such Owner agrees that obligation contained in this paragraph is not only an obligation of the Owner, but also an obligation of any stockholder, member, partner or beneficiary of any such Owner-entity. Further, more such Owner-entity irrevocably assigns to the Association any claim that it has or may have against any such stockholder, member, partner, or beneficiary for payment of the Obligation contained herein, and the Association may pursue any and all remedies against such stockholder, member, partner, or beneficiary for payment of the Obligation contained herein.

6.5 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board.

6.6 Percentage Assessments. Except as otherwise provided herein, and except for special Assessments to individual Lots, Assessments shall be allocated to Owners based on their respective Allocated Interest in the Association.

6.7 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

6.8 Certificate of Payment. The Association, within ten (10) business days after written demand by an Owner or such other Person for whom an Owner has given written permission in a form acceptable to the Association, shall issue a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Lot have been paid and the amount of delinquency, if any. Each written statement or certificate is conclusive in favor of a Person who relies on the written statement in good faith. The Association is authorized to charge a reasonable fee for issuance of written statement or certificate of payment. Unless otherwise provided in the Rules and allowed by law, the amount of the fee shall be twenty-five dollars (\$25.00). The Board may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.

6.9 Special Assessments. The Board may adopt a Association-wide special Assessment only upon the vote of fifty-one percent (51%) of the voting interest of the Association. Subject to this and any other limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses in accordance with this paragraph. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

6.10 Special Assessments to a Particular Lot or Lots. Special Assessments may be levied by the Association against a particular Lot for:

- (a) Costs incurred in bringing an Owner or Lot into compliance with the provisions of the Governing Documents;
- (b) Any other charge designated by the Board or the Manager as pertaining to an individual Lot consistent with the Governing Documents;
- (c) Fines, late fees, collection charges, and interest; and
- (d) Attorneys' fees, costs and other expenses relating to any of the above.

6.11 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Development, which benefits an individual Lot, and which can be accepted or not by the Lot Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Lot, at the discretion of the Board.

6.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular calendar year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Lot in the Common Expenses, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.13 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

6.14 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

**ARTICLE 7**  
**NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS**  
**FOR ALL PAST UNPAID ASSESSMENTS**

7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 7.

7.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within ninety (90) days of invoicing. Payments received after ninety (90) days from invoicing may be charged an initial late fee of thirty-five dollars (\$35.00.) Thereafter, additional late fee charges of thirty-five dollars (\$35.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at one percent (1%) per month or such other amount as may be set forth by the association in the rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.

7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Lot to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this Section 7.3 is separate and distinct from any lien rights associated with the Lot.

7.4 Lien. The Association has a lien on each Lot for all Assessments, which include, but are not limited to, interest, collection charges, late fees, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of whichever of the First Declaration, Second Declaration, Third Declaration, Fourth Declaration, Fifth Declaration, Sixth Declaration, Seventh Declaration, Eighth Declaration, Ninth Declaration or this Declaration was first recorded against each Lot, and shall have priority over all encumbrances recorded after the such Declaration was recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when (a) the time for appeal described in Utah Code Ann. § 57-8a-208(5) has expired and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code Ann. § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Lot except only: (i) a lien or encumbrance recorded before this Declaration is recorded; (ii) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (iii) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.

7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

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

7.7 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

7.8 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs



incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a Chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

7.9 Association Responsibility after Foreclosure. If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments or maintain the Lot.

7.10 Termination of Delinquent Owner's Voting Right. At the end of any grace or late period granted by the Association, if any Owner continues in default of his or her assessment obligation such Owner or Owners, in the case of multiple Owners of the same Lot, shall not be entitled to vote the Owner's Allocated Interest at any annual or special meeting until such Owner's account is brought completely current.

## **ARTICLE 8** **ARCHITECTURAL CONTROLS**

8.1 Architectural Review Committee. The Architectural Review Committee shall be composed of between three (3) and five (5) natural persons appointed by the Board. Persons serving on the Architectural Review Committee shall serve at the pleasure of the Board. The Board may remove a member of the Architectural Review Committee and appoint a new Architectural Review Committee member at any time. Members of the Architectural Review Committee may or may not be Board Members or members of the Association and may include one or more paid professionals, such as an architect, to perform such services. The Architectural Review Committee shall enforce the current Architectural Guidelines adopted by the Association. The Architectural Review Committee shall have and shall exercise all the powers, duties and responsibilities set out in this Declaration. The Architectural Review Committee may hire a secretary or other personnel to perform administrative, clerical and other functions and may hire architects, engineers, or other professionals as it deems necessary. The operating costs of the Architectural Review Committee, including the services of its planning consultants, professions and other staff, shall be covered through a fee paid to the Architectural Review Committee by Owners applying for plan review and approval, consistent with § 57-8a-109(2) of the Act. The Architectural Review Committee shall make available to all Owners a current fee schedule. The Architectural Guidelines shall also set forth the fee schedule, and the fee schedule may be modified from time to time in accordance with the provisions herein for the amendment and updating of the Architectural Guidelines. Fees must be paid in full before any review by the Architectural Review Committee commences and the unused portion of any fee is refundable.

8.2 Authority. Except as otherwise provided in this Declaration, no Dwelling or improvements of

any kind or changes in the natural condition of any property shall be erected, altered or permitted to remain on any Lots or elsewhere in the Development unless complete architectural plans, specifications and site plan showing the location and orientation for such construction, alteration or landscaping are approved by Architectural Review Committee, unless Board approval is required, prior to the commencement of any work. Work subject to Architectural Review Committee review may include, but is not limited to, the construction of structures, installation of utility lines, dog runs, awning, grading, planting, antennas, satellite dishes, any renovation, expansion or refinishing of the exterior of an existing Lot or structure, excavating, clearing, removal of trees, landscaping or other alterations. No fences are permitted in the Association without Board approval. So long as the architectural plans, specifications and site plans submitted to the Architectural Review conform to the architectural rules and standards adopted by the Association, such plans may be approved by the Architectural Review Committee alone. If any part of the submitted architectural plans, specifications or site plans deviate from the approved architectural rules and specifications, the Architectural Review Committee may refer the plans or specifications to the Board for review and potential approval or denial. The Architectural Review Committee is without authority to permit an exception or variance to the approved architectural rules or specifications of the Association.

8.3 Permitted Alterations. The Board may adopt Rules related to alterations that are permitted without prior permission from the Architectural Review Committee. Unless and until the Board adopts such rule, the following rules shall apply:

- (a) Interior alterations of a Dwelling that do not change the exterior of the Dwelling do not require approval. This includes but is not limited to windows, interior walls, wiring, insulation, and interior remodels; and
- (b) The following changes to the natural exterior condition of a Lot are also permitted if the Owner submits an exempt form (the "Exempt Form") and receives authorization from the Association: screens, doors, enclosures of a porch, enclosure of a balcony, sunshades, skylights, windows, installation of air conditioning and heating equipment, dog houses, rain water collection barrels, and flag poles. The Board shall ensure an Exempt Form is available for Owners. Dog runs are not permitted by an Exempt Form.

8.4 Architectural Review Committee Review Process. The process for reviewing building applications and/or landscaping applications will be defined by the Rules adopted by the Board. All architectural plans, specifications, site plans must be submitted in both paper and electronic form, unless the Board adopts a rule to the contrary.

8.5 General Standards. The Architectural Review Committee and the Board shall evaluate, among other things: (a) the materials to be used on the exterior of Lot or structures; (b) exterior colors; (c) harmony of architectural elements and design with other Lots within the Development; (d) height and other design features; (e) location with regard to topography and finished grade elevations; (f) harmony of the landscaping with the Community-Wide Standard; (g) impact of lighting on night skies and neighboring Lots (exterior and interior); and (h) consistency with the Architectural Guidelines.

8.6 Rules. The Board may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these architectural covenants and establish an architectural review process.

8.7 Construction Rules. With regard to any construction project affecting the exterior of any Lot and any construction of Lots, the Association may impose reasonable rules and regulations to minimize the inconvenience to adjoining Owners during the period of construction, and the Architectural Review Committee may recommend such rules to the Board. In connection therewith, the Board may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust,

removal of mud, and duration of construction. Concurrent with final plan submittal, an Owner shall deposit with the Architectural Review Committee a performance deposit to be determined by the Architectural Guidelines or other Rules. Additionally, Owner shall execute and deliver to the Architectural Review Committee, as appropriate, a deposit agreement in the form specified in the Architectural Guidelines. The performance deposit shall be retained pending the completion (including clean up) of all improvement described in the final, approved plans and constructed on the Owner's individual Lot. In the event that the Owner, the contractor or the contractor's respective agents, representatives or employees (a) cause any damage to other Lots or Common Area, including any road; (b) fail to construct the Lot or improvements in accordance with the approved plans; or (c) fail to comply with the Architectural Guidelines, the Declaration or any rules or regulations adopted or promulgated by the Board, the Board may use the performance deposit, among other things, to repair and/or rectify the damage or enforce the Architectural Guidelines, the Declaration and any other Rule thus violated and cure any defect or problem caused by the non-compliance. In the event of the Board's use of all or any portion of the performance deposit, the Owner shall immediately pay to the Association an amount sufficient to replenish the performance deposit to the sum initially deposited. Failure to replenish the performance deposit within seven (7) days following the Board's delivery of written demand shall be deemed a material breach of the Architectural Guidelines and this Declaration and shall entitle the Architectural Review Committee to deny the Owner's contractor's access to the Subdivision (including any of contractor's suppliers, subcontractors, employees and material men) and lien the Lot in an amount equal to the performance deposit deficiency. Upon tendering the performance deposit, the Owner shall execute and deliver to the Board a Notice of Voluntary Lien in a form pursuant to the Architectural Guidelines' requirements.

8.8 No Liability. Neither the Architectural Review Committee, the Board, the Association, the Association members, nor the Manager, shall be liable for damages to any person submitting any plans for approval, or to any Owner of lands within the Development by reason of any action, failure to act, approval, disapproval, failure to approve or disapprove with regard to such plans, or for the failure to store and maintain copies of such plans. The Architectural Review Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties. The decision of the Architectural Review Committee shall be governed by these covenants and any rules or regulations duly adopted by the Architectural Review Committee pursuant to these covenants.

8.9 Written Records. If possible, the Association shall try to maintain complete and permanent written records, which may be in an electronic format, of all approved applications, including one set of the final approved architectural and site development plans, and of all actions of approval or disapproval, and all other formal actions taken by it under the provisions of Article 8. The records of the Architectural Review Committee shall be maintained by the Association.

8.10 Inspection and Compliance. The Architectural Review Committee and the Board shall have no duty or obligation to make inspections of any construction. Nothing herein, however, shall prevent the Architectural Review Committee or the Board from making inspections prior to, during, or after construction. Upon the completion of any work for which approved plans and specifications are required, the Owner shall give written notice of completion to the Board. Within thirty (30) days after receipt of such notice, the Architectural Review Committee or the Board may inspect the work to determine its compliance with the approved plans. If either Committee finds that the work was not done in substantial compliance with the approved plans or any construction or change in natural conditions on any Lot was undertaken without first obtaining approval from the Board, written notice shall be sent by the Board to such Owner specifying the non-compliance and requiring the Owner to cure such non-compliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the non-compliance or to enter into an agreement to cure on a basis satisfactory to the Board within the time provided, the Board, at its option, may cause the non-complying improvement to be removed or the non-compliance to be cured. Upon demand, the Owner shall reimburse the Association

for all costs and expenses incurred by the Architectural Review Committee and/or the Board in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorneys' fees and costs (the "Compliance Assessment"). The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the non-complying Lot for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien. Such lien shall be (a) evidenced by a statement executed by the Association and notice of the lien recorded with the Wasatch County Recorder; (b) subordinate only to the first Mortgage; and (c) subject to foreclosure in the manner provided by law. Notwithstanding any other provisions hereof, neither the Board nor the Architectural Review Committee shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning or other land-use regulations; (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other person; (c) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist; or (d) any failure to carry out any construction in accordance with plans or specifications.

8.11 VariANCES. The Board may authorize variances from non-compliance with any of the Architectural Guidelines or the design review provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, esthetic or environmental considerations may require. Such variances must be in writing, signed by a majority of the Architectural Review Committee. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Architectural Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and provision hereof covered by the variance, and shall not affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot. A decision of the Board shall be the final decision and shall not be appealable.

8.12 BOND/CONSTRUCTION/IMPACT FEE. Notwithstanding anything to the contrary in this Declaration, before beginning the construction of a Dwelling on a Lot, the Owner of such Lot shall be required to give to the Association a payment to be held as bond by the Association to ensure completion of the work in accordance with the approved plans and specifications. Unless otherwise provided in a Rule adopted by the Association, the bond amount shall be equal to \$3.00 per square foot of the dwelling or renovation. This fee shall be an individual Assessment to the Lot upon which construction has or will commence. The Association may use this bond to pay all costs and expenses, including a reasonable attorneys' fee, which it incurs to ensure that the construction is completed in accordance with the approved plans and specifications and the Owner complies with the requirements of the Governing Documents. The Association is also authorized to adopt an impact fee by adoption of a rule, which impact fee is separate and apart from any bond, and to require the payment of that impact fee before permitting the construction of a Dwelling on a Lot. If the Association elects to require an impact fee, the Owner of any Lot that seeks to construct a new home shall be required to pay to the Association the impact fee before the Owner may begin construction. This impact fee shall be an individual Assessment to the Lot upon which construction has begun or will commence. The Association may impose an additional impact fee to any Lot Owner whose construction unduly damages the Common Area of the Association, including the roads. This impact fee shall include the cost to the Association of repair or replacement of the Common Area damaged by the Owner and any costs or attorneys' fees incurred by the Association as a result of the construction of Owner's Dwelling. This additional impact fee shall be an Individual Assessment.

**ARTICLE 9**  
**EASEMENTS, ACCESS AND USE RIGHTS**

9.1 Grant of Easement. The Owners hereby grant to the Association, a non-exclusive, perpetual right of way and easement over, under, across, and through the Property and the Development, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities, and to do all things that are reasonably necessary to fulfill the Association's obligations for Area of Common Responsibility, subject to all of the terms, covenants, conditions and restrictions set forth herein.

9.2 Construction Easement. The Owners hereby grant Association a temporary construction easement over, under, across, and through the Property and the Development, including, without limitation, the Lots for the purpose doing all things that are reasonably necessary as a part of constructing, maintaining, or repairing any road within the Development or making other reasonably necessary repairs, modifications or installations to the Common Area and Facilities.

9.3 Noise. Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt the Owner's quiet enjoyment of the Lot until all improvements are complete, and waives any right to object to such construction activity

9.4 Utility Easements. Easements and rights-of-way over, under, across and through the Property and the Development for the installation, maintenance, repair and replacement of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, storm drain or other drainage systems, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Development, the Lots, or the Owners are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and/or the Lots by the Owners or Occupants. Each Owner, by acceptance of a deed or other instrument of conveyance, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Each Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

9.5 Encroachment Easements for Roads. Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that certain roads constructed or installed prior to the execution of this Declaration may deviate from the road easement or grant described on the Plat and/or may cross over part of such Owner's Lot and hereby grants an easement for such road over, across and through such Owner's Lot to the Association and the other Lot Owners to the extent reasonably necessary to use, repair, and maintain the road.

9.6 Right of Access. Each Owner shall have a right of ingress and egress over, across, and through the Common Area and Facilities as necessary for access to the Owner's and shall have the right to the horizontal, vertical and lateral support of the Owner's Lot. Such right of access and right to support shall be appurtenant to and shall pass with title to the Lot and in no event shall such appurtenant right be separated therefrom.

9.7 Right of Access for Emergency Services. A right of access and right of ingress and egress over and across any Common Area and Facilities within the Development is hereby granted to any governmental or quasi-governmental body having jurisdiction over the Development for purposes of providing police and fire protection, transporting school children, and providing emergency and other governmental or municipal services.

9.8 Nonexclusive Owner Right and License to Use Common Area and Facilities. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the nonexclusive right

and a license for use and enjoyment of the Common Area and Facilities, subject to any use restrictions provided in this Declaration or in the Rules or other Governing Document. Such nonexclusive use right and license shall be appurtenant to and shall pass with title to the Lot and in no event shall such appurtenant right and license be separated therefrom. Authorized Occupants shall have the same right and license for the use and enjoyment of the Common Area and Facilities, if any, as the Owner whose Lot the Occupant is occupying. Unless and until the Board adopts a different Rule, each Owner's use of the Common Area must be reasonable. The Owner's rights under this Declaration to use and enjoy the Common Area are linked to the present possessory right to use and enjoy the Lot. Accordingly, for any Owner who has leased, sublet, or otherwise assigned such Owner's present possessory right to the Owner's Lot to another individual or group, such Owner has no right to use and enjoy the Common Area. By way of illustration, if an Owner has leased his or her home to a tenant who may use the Common Area, the Owner may not use the Common Area.

9.9 No View Easements. Views from a Lot and the Development are not assured or guaranteed in any way and no view easement has been or shall be granted to any Owner. There is no warranty concerning the preservation of any view or view plane from the Development. Each Owner, by acceptance of deed or other instrument of conveyance, expressly acknowledges and agrees that there is no view easement or view right appurtenant to the Lot or the Development.

## **ARTICLE 10** **USE LIMITATIONS AND CONDITIONS**

10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions to ensure that the Development is maintained and used in a manner consistent with the interest of the Owners and/or the Community-Wide Standards. Pursuant to 57-8a-218(15) of the Act, the requirements of 57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified and shall not apply to the Association.

10.2 Signs. The Association may regulate and restrict signs in the Development, to the extent permitted by law, in the Rules and Regulations. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs, but not including holiday decorations) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Lot with the apparent purpose, in whole or in part, of making it visible to another Lot.

10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Development, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Development in violation of any law, ordinance, statute, rule or regulation of any local, City, County, state or federal body. The Board may adopt rules regarding quiet hours. Unless and until the Board adopts such rules, it shall be a nuisance under this Section 10.4 for any Owner to create or permit excessive or unreasonably loud noise on such Owner's Lot after 10:00 pm and before 7:00 am. The Board may adopt Rules relating to what constitutes excessive or unreasonably loud noises. Unless and until the Board adopts such Rules, it shall be unreasonable for any noise to exceed 85 decibels when measured from the street nearest the Lot. All Owners, by acceptance of a deed for a Lot in the Development, accept and acknowledge that the security personnel employed or directed by the Board are empowered to abate and stop nuisance violations.

10.4 Temporary Structures. No structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Development or used therein unless it is approved by the Board.

10.5 Window Coverings. The Board may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. No window shall be covered by paint, foil, sheets, or like materials not intended for use as window coverings.

10.6 External Laundering. External laundering and drying of clothing and other items is prohibited.

10.7 Parking. Unless otherwise permitted by the Association in the Rules, only “customary parking” and “temporary parking,” as defined by this Section 10, is permitted. No automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, fifth-wheel, motorhomes, RVs or boats) (any such vehicle a “Non-Standard Vehicle”) shall be parked, stored, or located within any portion of the Development unless they are Customary Parking or Temporary Parking. This Section shall not apply to Association owned or operated vehicles, including maintenance vehicles and security vehicles.

(a) “Customary parking” shall mean the parking of operable automobiles or Non-Standard Vehicles within the garage or driveway for the respective Lot. Non-Standard Vehicles owned by guests or invitees may not be parked for more than four (4) days in any two-week period. All automobiles and Non-Standard Vehicles must be operable and current on all applicable registrations. No parking on the unpaved portion of the Lot is permitted as customary parking.

(b) “Temporary parking” shall mean parking of operable automobiles or Non-Standard Vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. Temporary Parking of automobile or Non-Standard Vehicle may not continue for more than twenty-four (24) hours in any four-day period. No parking is permitted on the roads.

(c) The Association may adopt Rules relating to the parking of vehicles within and in the area of the Development by Owners, Occupants, and their respective family members, tenants, invitees, and guests including, without limitation: (a) the right to remove or cause to be removed any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles in any temporary parking or customary parking; (c) restrictions on the time period and duration of temporary parking; (d) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules, and (e) requirements for validating that vehicles are properly within the Development including markers or stickers for Owner-vehicles and temporary passes for non-Owner vehicles and a requirement for Owners to inform the Association of their visitors. Unless and until the Association adopts rules governing Temporary Parking, no overnight Temporary Parking is permitted.

(d) All construction related vehicles must be announced in advance by the Owner to the Association.

10.8 Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Lot shall be permitted.

10.9 Repairs. Repairs by Owners of any detached machinery, equipment, or fixtures, may be made in the Development only in garages. Regular maintenance of automobiles may be performed on the driveway or in the garage. The Association may repair and maintain its own equipment in areas determined by the Board to be appropriate for such repair and maintenance.

10.10 Unightly Items. All rubbish, debris, recyclables, unsightly materials or similar objects of any kind shall be regularly removed from Lots and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Lots, shall be prohibited on Lot unless obscured from view of neighboring Lots and Common Area and Facilities. Trash and recycling shall be properly and promptly disposed.

10.11 No Fires or Fireworks. No open fires or fireworks are permitted anywhere in the Development. Propane appliances, such propane grills, fire tables or fire pits, are permitted, but all fire in the Project must comply with Wasatch County fire ordinances, requirements, and bans. The Association may adopt Rules regulating the use and installation of propane appliances, which may be stricter than the county, and may temporarily suspend the use of all or some propane appliances for fire safety. **Firepits are permitted if approved by Wasatch County and properly permitted.**

10.12 Shooting and Hunting. Shooting of any type of firearm or bow is strictly prohibited within the Development. Hunting, including bow-hunting, anywhere within the Development is prohibited.

10.13 Snow Removal. All Owners are responsible for snow removal on such Owner's Lot, to the extent the Owner of a Lot desires snow removal on a Lot. No Owner shall be permitted to push or move snow off of such Owner's Lot and onto any road or other Common Area or onto any other Owner's Lot, unless the Owner has received permission from the Owner of the adjoining Lot

10.14 Smoking. Smoking and vaping is prohibited on the Common Areas.

10.15 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and rabbits may be kept in the Development subject to the rules and requirements of this Declaration. No livestock, farm animals, or reptiles may be kept in any Lot. All animals are subject to the Rules adopted by the Board. Notwithstanding the foregoing, no animal may be kept within a Lot which: (a) is raised, bred, kept, or maintained for any commercial purposes; or (b) in the good faith judgment of the Board, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Development. The Board may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. The following acts shall be considered a nuisance: (a) causing damage to the Lot or personal property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) running loose throughout the Development or on a Lot and not on a physical leash and under the control of a responsible individual; (e) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other pets; (h) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable individual or interfering with the rights of Owners and Occupants to the peaceful and quiet enjoyment of their property; or (i) the number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

All fecal matter from any of the above animals shall be immediately cleaned up in the Development. The Board may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including, but not limited to, requirements for registration, specific fees or deposits for Owners of Lots that have animals, the use of leashes, a maximum number of pets, and noise and barking limitations. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such pet or animal.

10.16 Residential Occupancy.

- (a) No trade or business may be conducted in or from any Lot unless:



- (i) the business activity conforms to all zoning and legal requirements for the Development and the business activity;
  - (ii) the business activity does not involve active solicitation of Occupants or Owners of the Development, although performing work for Occupants and Owners is acceptable;
  - (iii) the business activity does not create parking issues or increased vehicle traffic in the Development from clients, customers, vendors, service providers or other individuals coming into the Development who do not reside in the Development, as determined by the Board, in its sole discretion.
  - (iv) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Development;
  - (v) the business activity will not result in the increase of the cost of any of the Association's insurance;
  - (vi) the Owner of the Lot resides in the Lot in which the business activity is proposed for the entire time any business activity is conducted; and
  - (vii) the Board's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- (b) Except as allowed under Section 10.16(a) above, no Lot may be used for any purpose other than a Single-Family residence.
- (c) Owner who have a trade or business or who plan to start a trade or business consistent with the terms herein must inform the Association of the nature of the trade or business and seek approval of the trade or business. The Association may disprove any trade or business that fails to comply with the requirements herein.
- (d) The Association may adopt an impact fee to be charged to any Owner whose trade or business otherwise complies with the requirements of this Section, but nonetheless causes undue damage to the Common Area, including any roads, within the project.

10.17 No Subdivision or Timeshare of Lot or Recording by Owners of Terms and Conditions. No Lot shall be split, subdivided, separated or timeshared into two or more Lots or property interests (whether temporally or spatially), and no Owner of a Lot shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Lot. No subdivision plat or covenants, conditions, or restrictions related to any Lot or the Development shall be recorded on the Development unless the Board and/or Owners (as required in this Declaration) have first approved the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 10.13 shall be null, void, and of no legal effect.

10.18 Variances. The Board, at its option and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Article 10 if the Board determines, in its discretion (by majority vote): (a) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Development and is consistent with the Community-Wide Standards. Any such variance shall be unenforceable and without any effect whatsoever unless reduced

to writing and signed by a super majority of the then existing Board (if the Board has nine members, seven of the members must agree). No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Lot is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

10.19 Trees. All trees in the Development are presumptively protected from removal. The removal of any trees shall be considered landscaping, and no tree may be removed without the obtaining the written consent of the Board through the architectural review process for landscaping.

10.20 Hazardous Substances.

(a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Development, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Development that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Development of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Lot or the Development.

(b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Development, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Development. The obligations of each Owner under this Section 10.20 shall survive any subsequent sale of the Lot by an indemnifying Owner.

(c) As used in this Section 10.20, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos, formaldehyde or radioactive materials. As used in this Section 10.20, "Environmental Law" means federal and state laws and County, City and other ordinances or restrictions of the jurisdiction where the Development is located that relate to health, safety or environmental protection.

## ARTICLE 11 INSURANCE

11.1 Insurance Requirement. 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 in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

11.2 Annual Insurance Report. Prior to the annual meeting of the Association, the Board MAY obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association).

11.3 Property Insurance

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the all of the Common Area and Facilities the physical structure of all attached structures, buildings, fixtures, betterments, and the structures' service equipment on the Common Area and Facilities. Each Owner of a Lot shall be responsible to obtain property insurance coverage for his/her own Lot.

(1) 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 or otherwise permanently part of or affixed to Common Areas and Facilities.

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

(3) The blanket or guaranteed replacement cost 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 Lots) 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.

(4) The hazard policy shall include coverage for earthquake damage for all structures insured by the Association.

(b) Association's Right to Not Tender Claims that are under the Deductible. If the Board determines that a covered loss is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

11.4 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, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Association. The coverage limits under such policy shall not be less than five million dollars (\$5,000,000) covering all claims for death of or injury to any one individual 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. The Association may meet the minimum coverage requirement through the use of an umbrella policy so long as the coverage limit on the base policy is at least one million dollars (\$1,000,000).

11.5 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available).

This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months' regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Board members of the Association; (ii) employees and volunteers of the Association; (iii) any Manager of the Association; and (iv) officers, directors, and employees of any Manager of the Association.

11.7 Insurance Coverage for Online Banking Fraud. The Association shall obtain online banking fraud insurance or similar coverage that protects the Association's bank account and other financial assets from electronic theft, cyber-crime, hacking, phishing, or other digital crimes that have the effect of stealing funds from the Association's accounts.

11.8 Workers' Compensation Insurance. The Board shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law.

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

11.10 Named Insured. The named insured under any policy of insurance shall be the Association and the Owners.

11.11 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee (defined below) if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. 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 Lots.

11.12 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association 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.

## **ARTICLE 12** **EMINENT DOMAIN**

12.1 Taking of a Lot. If a Lot is taken by eminent domain, or sold under the threat thereof, or if a portion of a Lot is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the

undivided interests in the Common Areas and Facilities and Allocated Interests in the Association may be reallocated among the remaining Lots.

12.2 Taking of Common Area. If the portion of the Common Area and Facilities is taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Lot, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Development adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.

12.3 Taking of Entire Development. In the event the Development, in its entirety, is taken by eminent domain, or sold under threat thereof, the Development shall be terminated and the Board shall wind down the Association in accordance with applicable law and award proceeds, after payment of Common Expenses, shall be allocated to the Owners, secured Lenders and lienholders, as their interests remain.

12.4 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of any condemnation award allocated to such Lot. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

### **ARTICLE 13** **AMENDMENTS**

13.1 General Amendment Requirements. Except as otherwise provided herein this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than fifty-one percent (51%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Lot is sufficient if there are multiple owners of the Lot. If conflicting votes are received for one Lot, the Association shall disregard all votes from such Lot.

13.2 Scope of Amendments. This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration.

13.3 Execution and Effective Date of Amendments. An amendment that has been adopted as provided in Section 13.1 shall be executed by the president of the Association and the secretary of the Association shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Wasatch County, Utah.

13.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Development, including any boundary to any Lot or Lots upon the approval by vote fifty-one percent (51%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities, deleting, adding or modifying Benefitted Common Area, or other changes in the layout of the Development. If any such amendment affects any boundary of a Lot, that Lot Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

13.5 Amendment to Conform to Law. The Board may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- (a) The Association must obtain from an attorney who has significant experience and a regular practice in area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section,
- (b) The members of the Board must unanimously agree to the Amendment at the time it is recorded,
- (c) The Board must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of the Declaration; (iii) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Association (1) notifies the Owner that it intends to amend the Declaration pursuant to this section, (2) provides the Owner a right to object to the amendment within thirty (30) days, and (3) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (d) Within forty-five (45) days of providing the information to the Owners required by this Section 13.5, no more than thirty percent (30%) of the Allocated Interest holders have objected, in writing, to the amendment.
- (e) Having otherwise complied with all of the requirements of this Section 13.5, the Board members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interest holders objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Wasatch County.

#### **ARTICLE 14**

#### **INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION**

14.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat and the Declaration equally, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control.

14.2 Interpretation of Declaration and Applicability of the Act. The Association intends that the Development shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Development to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to

the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

14.3 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

14.4 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.

14.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the maintenance and operation of a residential planned community. References in this Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

14.6 Applicable Law. Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Development unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

14.7 Gender and Number. Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

14.8 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the Terms and Conditions is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 15 NOTICE

15.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:

- (a) Notice to an Owner from the Association. Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
  - (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Lot. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

- (iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered immediately after it is sent;
  - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (v) by any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (b) Notwithstanding anything to the contrary in this Section 15.1, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. Any Owner who chooses to receive notice via email pursuant to this Section 15.1(b) must update their address with the Association at least once per year.
- (c) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot address.
- (d) In case posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the Lot and any such posting may be removed by the Association the sooner of either two (2) days after the event or action for which notice was given or ten (10) days after the posting.
- (e) Special Notice Prior to Association Entry into a Lot
- (i) In case of an emergency involving the potential injury or loss of life, the Association's agent or representative may enter the Lot immediately and without any notice.
  - (ii) In case of any emergency involving immediate and substantial damage to a Lot or the Common Areas and Facilities before entering the Lot, the Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Lot; (2) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Lot on behalf of the Association, then wait one minute; and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
  - (iii) If the Association enters a Lot for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Lot, the Association shall: (1) give notice to the Owner that an entry is required at least one (1) week in advance with such notice stating: (a) that the Association or its authorized Persons will enter the Lot, (b) the date and time of the entry, (c) the purpose of entering the Lot, (d) a statement that the Owner or Occupant can be present during the time the Association is in the Lot, (e) the full names of any Person who will be entering into the Lot, and the phone numbers and addresses of the Persons entering the Lot or of the company for whom the Persons entering the Lot are employed for the purpose of entering the Lot, (f) any other information the Association deems appropriate to



include; and (2) post the written notice described above on the front door to the Lot at least three (3) days prior to entry into the Lot.

(f) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Association, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

(g) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

(i) by a written notice delivered personally to the Manager or President of the Association, which shall be effective upon delivery;

(ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

(iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or

(iv) by facsimile (whether to a machine or by other means) to the Association sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

## **ARTICLE 16** **ATTORNEYS' FEES AND COSTS**

### 16.1 Legal Costs Associated with Disputes with Owners.

(a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

(b) Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

(c) Exception to Owner's Liability for Fees and Costs. If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on any of the Terms and Conditions, or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Association could not establish an initial position on without

having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## **ARTICLE 17** **RESERVES**

17.1 Requirement for Reserves. The Association shall obtain a reserve analysis and shall maintain a reserve fund in accordance with Utah law.

## **ARTICLE 18** **LEASING AND NON-OWNER OCCUPANCY**

18.1 Declaration and Rules Govern Non-Owner Occupancy. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Residential Lot shall be governed by this Article 18, the Rules, and procedures adopted as provided herein.

18.2 Definitions. For the purpose of this section the following definitions shall apply:

- (a) “Non-Owner Occupied Lot” means:
  - (i) For a Lot owned in whole or in part by a natural person or persons, the Lot is occupied by someone when no individual Owner occupies the Lot; or
  - (ii) For a Lot owned by an entity, including a corporation or limited liability company, the Lot is occupied by someone when no individual owning at least twenty-five percent (25%) of the ownership or voting interests in the entity occupies the Lot; or
  - (iii) For a Lot owned by a trust, the Lot is occupied by someone when neither a beneficiary nor a trustor of the trust occupies the Lot.
- (b) “Family Member” means the parent, sibling, or child of an Owner and that Owner’s spouse and/or children.

18.3 Restrictions on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 18.4, 18.5, and 18.6, any Residential Lot may be leased or Non-Owner Occupied.

18.4 Owner Responsibility for Fines. In all cases of Non-Owner occupancy, the Owner is nonetheless responsible for any fines assessed against such Owner’s Lot and any Special Assessments assessed against such Owner’s Lot.

18.5 Permitted Rules. The Board may adopt Rules requiring:

- (a) reporting and procedural requirements related to Non-Owner Occupied Lots and the Occupants of those Lots other than those found in this Article 18, including requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like.
- (b) other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

18.6 Requirements for Leasing and Non-Owner Occupancy. Owners of rental Lots must comply with the following provisions:

- (a) Any lease or agreement for otherwise allowable non-owner occupancy must be in writing, must be for an initial term of at least six (6) months, and shall provide as a term of the agreement that the Occupant shall comply with the Declaration, the Bylaws, and the Rules, and

that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;

(b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for non-owner occupancy shall be delivered to the Association within the time period provided for in the Rules or required by the Board;

(c) An Occupant of a Non-Owner Occupied Lot may not occupy any Lot for transient, short-term (less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not);

(d) Except as a guest of an Owner while the Owner is occupying the Lot, daily and weekly occupancy by an Occupants is prohibited (whether for pay or not), unless the Occupant is not paying or transferring any money or consideration to the Owner; and

(e) The Owner of a Lot shall be responsible for the Occupant's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with this Declaration, the Association shall have the right (but not the obligation) to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this Subsection 18.5(e) and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Subsection.

18.7 Exceptions for Family Members. If only Family Members occupy a Lot, then notwithstanding anything to the contrary herein:

(a) Subsections 18.6(a), 18.6(c), and 18.6(d) above shall not apply to that occupancy;

(b) No written agreement regarding occupancy needs to be created between the Family Member and the Owner; and

(c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

## **ARTICLE 19** **GENERAL PROVISIONS**

19.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.

19.2 No Liability of Officers and Directors. To the fullest extent permitted by applicable law, neither the Board nor any director or officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

19.3 Use of Funds Collected by the Association. All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, constructing, maintaining, and preserving the Common Area and Facilities

and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, and preserving the Common Area and Facilities and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

19.4 Owner Liability and Indemnification. Each Owner shall be liable to the other Owners and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Lot, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Lot, agrees to indemnify each and every other Owner and Occupant in such other Owner's Lot, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Lot, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

19.5 Areas of Owner Responsibility. Each Owner shall be responsible for the maintenance, repair, and upkeep of his/her Lot and for the landscape maintenance for his/her Lot.

19.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner and Occupant consents to the rights reserved to the the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner consents to the appointment of the Association, with full right of substitution, as proxy holder and attorney-in-fact of such Owner at any meeting of the Water Company. Such appointment, being coupled with an interest, shall last for the specific period of the Association's reserved rights as set forth in this Declaration. Each Owner further appoints the Association attorney-in-fact to execute any documents on the Owner's behalf to effectuate the provisions of this section 19.6. Any Owner may nonetheless temporarily revoke the right appointment and proxy contained herein by personally attending a meeting of the Water Company. Any Owner may also temporarily revoke this appointment if such Owner executes a different proxy prior to a meeting of the Water Company and causes that proxy to be submitted to the Water Company at or before such meeting.

19.7 Security. The Association shall not, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Development. The Association shall not be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Development acknowledges the Association has no any duty to any Owner or Occupant related to security or criminal conduct and further acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Lot and/or residing in the Development, Owners and Occupants agree that neither the Association nor the Board are insurers of the safety or well-being of Owners or Occupants or of their personal property as it

relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

19.8 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Development that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area and Facilities, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

19.9 Reinvestment Fee Covenant upon Sale or Transfer of Unit. During the period of the Association's duration, the Board may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46 in an amount to be determined by the Board and allowed by law. For purposes of this Section 19.9, a transfer is any change in the ownership of the Lot as reflected in the Office of Recorder for Wasatch County, Utah, regardless of whether it is pursuant to the sale of the Lot or not. The amount shall be set forth by the Board in a recorded Notice of Reinvestment Fee Covenant. The value of the Lot for purposes of this section shall be the higher of: (a) the value of the Lot as determined by the property tax assessor on the date of the transfer of title; (b) the purchase price paid for the Lot, related to the transfer; or (c) the value of the Lot on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest Association's costs directly related to the transfer of the burdened property, not to exceed \$250 or such other amount as may be established by law. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made such as allowing the Association to select the appraiser; and (4) other procedural requirements and rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

19.10 No Representations and Warranties. Each Owner and Occupant understands, agrees, and acknowledges through taking title or residing in the development that the Association and the Board have not made any representations or warranties of any kind related to the Development and that each Owner or Occupant has not relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the Development.



**EXHIBIT A**

LEGAL DESCRIPTION

**EXHIBIT B**

**BYLAWS  
FOR  
TIMBER LAKES ESTATES ASSOCIATION**



**BYLAWS  
OF  
TIMBER LAKES ESTATES ASSOCIATION**

These bylaws are hereby adopted and established as the Bylaws of the Timber Lakes Estates Association (“the Association”). These Bylaws and any lawful amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants of the Development.

**ARTICLE I  
DEFINITIONS**

1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Management Policies for Timber Lakes Estates (the “Declaration”) shall have the same defined meanings when used in these Bylaws.

1.2 Notice. Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

**ARTICLE II  
OWNERS**

2.1 Annual Meetings.

(a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.

(b) Date and Time. The date and time of the annual meeting shall be determined by the Board, in its discretion, although the Board shall endeavor to hold the annual meeting in July of each year.

(c) Purpose. The Annual Meeting shall be held for the following purposes.

(i) electing members of the Board;

(ii) distributing of the budget, if it was not distributed before the meeting;

(iii) announcing the current deductible for the Association’s property insurance and the Owners’ potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and

(iv) transacting such other business as may properly come before the meeting.

(d) Approval of Minutes. The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Board’ discretion, by the Board at a subsequent meeting of the Board.

(e) Election of Board Members. If the election of the Board members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

(a) **Who May Call.** Special meetings of the Owners may be called by the Board, the President, or upon the written request of Owners holding not less than fifteen percent (15%) of the Allocated Interest of the Association.

(b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 **Place of Meetings.** The Board may designate the office of the Manager or any place within Utah as the place of meeting for any annual or special meeting.

2.4 **Notice of Meetings.** The Board shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than forty (40) nor less than ten (10) days prior to the meeting.

2.5 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than forty (40) or less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Person appearing in the records of the Association on such record date as the Owners of record of Lots in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 **Quorum.** The Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business.

2.7 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or individual who has been authorized by the Association to accept proxies at the meeting. An Owner may appoint and transmit a proxy by any means consistent with the §16-6a-712(2) of the Utah Revised Nonprofit Corporation Act, including, without limitation, by electronic mail.

2.8 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Lot of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two conflicting votes by co-Owners of one Lot, no vote shall be counted for that Lot but

one Owner shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Lot.

2.9 Ballots and Written Consent. The Association may utilize written consents and/or mailed ballots to be returned prior to the meeting consistent with the requirements of the Revised Nonprofit Corporation Act. Online or electronic ballots are permitted.

2.10 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request.

### **ARTICLE III** **BOARD OF DIRECTORS**

3.1 Number, Tenure, Qualifications, and Election.

(a) **Number of Members.** The Board of Directors shall be composed of nine (9) individuals meeting the qualifications stated in the Declaration.

(b) **Member Requirements.** All candidates must meet the requirements for Board members in the Declaration.

(c) **Term.** The term of each Board Member shall be three (3) years, so that at least three board seats are up for election each year.

(d) **Nominations.** At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Board. If the Association gives advance notice of any persons seeking election to the Board, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Board Members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.

(e) **Disqualification.** If any Board Member is alleged to not meet the qualification requirements in the Declaration and any Board Member is notified of or discovers this alleged lack of qualification, the Board shall promptly investigate and verify whether the Board Member is qualified or not, and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member's membership on the Board shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board established that the Board Member was not qualified. If a Board Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board, the decisions and actions of the Board and that Board Members are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section.

(f) **Removal for Failure to Participate.** If any Board Member shall fail to appear at three (3) successive regular Board meetings in a row or fifty percent (50%) or more of the regular Board meetings within any calendar year, after having received proper notice of the meetings, the other Board Members may by unanimous vote remove that member and appoint a new member.

### 3.2 Meetings.

- (a) Regular Meetings. The Board shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) Who Is Entitled to Attend. Consistent with § 57-8a-226 of the Act, Owners may attend meetings and except when the Board is in executive session.
- (c) Special Meetings. Special meetings of the Board may be called by or at the request of any two Board Members or the President of the Association. Notice of any special meeting shall be given at least forty-eight (48) hours prior thereto to each Board Member. Except for Owners who previously have requested, in writing, and except as otherwise required by law, notice of Board meetings, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- (d) Quorum and Manner of Acting. Five (5) Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board. The Board Members shall act only as a Board, and individual Members shall have no powers as such.
- (e) Place and Notice of Meetings. The Board may designate any place in Utah as the place of meeting for any regular meeting called by the Board All Board Members and Owners requesting notice, in writing, shall be given at least ten (10) days' notice of regular meetings.
- (f) Executive Session.
  - (i) The Board or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. The Board or any Sub-Committee may also schedule a meeting in advance to be held in executive session upon the request of any Board or Sub-Committee member, and no vote of the Board is required. A member of the Board who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Board.
  - (ii) The minutes of the meeting at which an executive session is held shall include:
    - (1) The purpose(s) of the executive session in sufficient detail. By way of example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," "To discuss the pending litigation with XYZ," or "to discuss a complaint of a Rule violation."
    - (2) Separate executive session minutes shall not be required, but may be used if determined by the Board.
  - (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Board or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
  - (iv) Executive sessions may be held to discuss and make decisions related to the following matters:

- (1) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel;
- (2) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
- (3) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
- (4) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
- (5) The Board or the Sub Committee holding the executive session shall determine who outside of that committee shall allowed to be present in executive session, and no one else is entitled to be present. All members of the Board shall be entitled to be present at executive committee meetings of the Board. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

### 3.3 Informal Action and Action by Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting if each and every Board Member, in writing, either:
  - (i) votes for the action or
  - (ii) votes against or abstains from voting, and does not exercise his/her right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
  - (i) describing the action taken;
  - (ii) signed by each Board Member; and
  - (iii) not revoked pursuant to subsection 3.3(d).
- (c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Board members then in office were present and voted.
- (d) A Board Member may revoke consent to any action given pursuant to this section by communicating that the member has changed his or her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
- (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Board and may be described as an action taken at a meeting of the Board Members in any document.
- (g) For purposes of this section:
  - (i) "Signed" or "signature" is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to

have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.

(ii) "Writing" shall refer to an email, letter, facsimile, or any other physical or electronic document.

(ii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.

(h) Any response to any electronic communication shall be:

(i) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or

(ii) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.

(i) A communication shall satisfy the requirement to "describe the action taken" if:

(i) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;

(ii) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or

(iii) the writing from the Board Member sufficiently describes or restates the proposed action.

3.4 Compensation. No Board Member shall receive compensation for any services that he/she may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as a to the extent such expenses are unanimously approved by the Board.

3.5 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the voting interest of the Association at a special meeting of the Owners duly called for such purpose.

3.6 Vacancies. If vacancies shall occur in the Board by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.

#### ARTICLE IV OFFICERS

4.1 Officers. The officers of the Association shall be a President, Vice-President/President-Elect, Secretary, and Treasurer. The Association may create other Board Member positions in the Rules.

4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board annually at the first meeting of the Board following the annual meeting. Each such officer shall hold

such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be members of the Board during the entire term of their respective offices.

4.3 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Subordinate officers need not be members of the Association.

4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Board Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board at any time, with or without cause.

4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.

4.6 The President. The President shall preside at meetings of the Board and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board approval as is necessary and prudent to preserve and protect property.

4.7 The Vice President / President-Elect. The Vice President / President-Elect shall undertake the duties of the President when the President is unwilling or unable to perform them. The Vice President / President-Elect shall be responsible for the duties of any other office while that office is vacant and shall perform such other duties as required by the Board. Upon the expiration of the President's term, the Vice President / President-Elect shall succeed to the office of the President, unless the Vice President / President-Elect term has ended and he or she is not re-elected to the Board. The Board shall endeavor to choose a Vice President / President-Elect who has at least two years of his or her term remaining.

4.8 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board.

4.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the

President in the event of the President and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Board.

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

## ARTICLE V SUB-COMMITTEES

5.1 Designation of Sub-Committees. The Board may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any Sub-Committee at any time.

5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

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

5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.

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

## ARTICLE VI INDEMNIFICATION

6.1 Indemnification. No Board Member, officer, or member of a Sub-Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been



taken by him/her as such Board Member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

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

## **ARTICLE VII** **AMENDMENTS**

7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Lots holding at least fifty-one percent (51%) of the Allocated Interest in the Association at a meeting called for that purpose.

7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Wasatch County, Utah.

## **ARTICLE VIII** **WAIVER OF IRREGULARITIES**

8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) if the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
- (b) if the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held,
- (c) if the objecting person was not in attendance at a meeting, did not have proper notice, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting,

(d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.

(e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of actual notice of the occurrence of the action, vote, or decision.

8.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.

8.3 Irregularities that Cannot Be Waived. The following irregularities cannot be waived under the prior subsection: (a) Any failure to comply with the provisions of the Declaration. and (b) Any failure to obtain the proper number of votes required to pass a particular measure.