

WHEN RECORDED, MAIL TO:

Mountain Horizon Homeowners Association  
c/o CCI Law  
577 S 150 E  
Smithfield, Utah 84335

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**MOUNTAIN HORIZON  
HOMEOWNERS ASSOCIATION**

**Morgan, Morgan County, Utah**

Lots 1-19 (shown on the plat as lots 1-R – 19-R) of the Mountain Horizon Subdivision – Phase 1 as shown in the plat entitled the same that was recorded as entry no. \_\_\_\_\_ on the \_\_\_\_ day of the month of \_\_\_\_\_, 2024, in the recorder’s office of Morgan Country, Utah.

<u>Lot No.</u>	<u>Parcel No.</u>	<u>Lot No.</u>	<u>Parcel No.</u>
1-R		11-R	
2-R		12-R	
3-R		13-R	
4-R		14-R	
5-R		15-R	
6-R		16-R	
7-R		17-R	
8-R		18-R	
9-R		19-R	
10-R			

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

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**Morgan, Morgan County, Utah**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration is made on the date executed below by the Declarant, and is effective on the date of recording in the recorder’s office of the County.

**1. RECITALS**

A. WHEREAS, the Declarant owns a certain parcel(s) of land<sup>1</sup> that is located in the County (the “Land”); and

B. WHEREAS, the Declarant has or will organize the Association as a Utah nonprofit corporation (the “Corporation”); and

C. WHEREAS, the Declarant has or will filed for recordation the Plat in the recorder’s office of the County (see **Exhibit A**); and

D. WHEREAS, the Declarant has constructed or will construct, in one or more phases of construction, a residential development as illustrated in the Plat; and

E. WHEREAS, the Declarant, by recording this Declaration and the Plat, intends to submit the Land and all Improvements constructed thereon, regardless of the number of phases of construction, to the provisions of this Declaration, the Plat, and the other Governing Documents, as they may be amended from time to time, for the benefit of all Dwellings in the Project and all Owners thereof; and

F. WHEREAS, the Declarant, by recording this Declaration and the Plat, intends that the provisions of this Declaration and the other Governing Documents, as they may be amended from time to time, shall be enforceable as equitable servitudes that shall run with the land; and

G. WHEREAS, the Declarant, by recording this Declaration and the Plat, intends to submit the Land and all Improvements constructed thereon to the provisions of the Act, as it may be amended from time to time, for the benefit of the Association, all Dwellings in the Project, and all Owners of such Dwellings; and

H. WHEREAS, the Declarant intends that, to the greatest extent allowed by law, all Owners, Residents, and Persons that enter upon the Project or in any way make use of the Common Area shall be subject to and abide by the provisions of this Declaration and the other Governing Documents, as they may be amended from time to time;

I. NOW THEREFORE, for the foregoing purposes, the Declarant makes and adopts this Declaration which includes these Recitals and the following covenants, conditions, and restrictions that, along with the other Governing Documents, shall run with the land as enforceable equitable servitudes.

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<sup>1</sup> Parcel nos. 00-0004-9278 and 00-056-1256 (serial nos. 05-229-016 and 05-NG1-0002) located at approximately 275 N 300 E in Morgan, Utah.

## 2. DEFINITIONS

Capitalized terms used in this Declaration shall have the following meanings. Additional or further definition of a term in this Declaration, including in the Recitals, shall be considered cumulative. Other terms may be defined in other articles of this Declaration.

- A. “**Act**” means the Utah Community Association Act, Utah Code 57-8a-101 *et seq.*, as amended or restated from time to time.
- B. “**Amenities**” means Common Area facilities such as parks, play areas, clubhouses, pools, and other nonessential or recreational facilities, but does not mean Common Area such as streets, sidewalks, and other improvements primarily intended for access to Dwellings, or Limited Common Area appurtenant to a Dwelling(s).
- C. “**Architectural Committee**” means a committee created by the Board for purposes of overseeing exterior architectural characteristics of the Association.
- D. “**Articles of Incorporation**” mean the Association’s articles of incorporation as amended or restated from time to time and as duly filed with the state of Utah. The Articles of Incorporation are attached to this Declaration as **Exhibit C** below.
- E. “**Assessment**” as used generally herein means a monetary charge, fine, fee, or other amount of any kind imposed or levied against an Owner, Resident, Lot, or Dwelling by the Association, as provided in the Governing Documents, regardless of whether such amount is identified as a Capital Assessment, District Assessment, Individual Assessment, Regular Assessment, Reserve Assessment, Special Assessment, fine, fee, or other charge.
- F. “**Assessment District**” means a grouping of one or more Dwellings, but fewer than all Dwellings in the Project, that share District Common Expenses.
- G. “**Association**” means the **Mountain Horizon Homeowners Association** that is or will be organized as Utah non-profit corporation (the “Corporation”) and is subject to the Act and the Nonprofit Act.
- H. “**Attached Unit**” means a single residence that is designed or constructed to be physically attached to at least one other residence by a Party Wall. Further, for purposes of the Act, “Attached Unit” also means “attached dwelling” as that term is used in the Act.
- I. “**Attorney-in-Fact**” or “**attorney-in-fact**” means an individual who is authorized to act as an agent of a Person or an estate as evidenced by a duly executed Power of Attorney, Designation of Agent, Letter Testamentary, Letter of Administration, or other similar authorizing document. An attorney-in-fact may act on behalf of an Owner or, if the attorney-in-fact represents a deceased Owner’s estate, with respect to the deceased Owner’s Dwelling as if the Owner for purposes of all notices, meetings, proxies, and votes described in the Governing Documents but not for purposes of eligibility requirements.
- J. “**Board**” and “**Board of Directors**” mean the governing body with primary authority to govern the Association.

- K. “**Bylaws**” mean the bylaws of the Association as duly amended or restated from time to time and as duly recorded in the recorder’s office of the County. The Bylaws are attached to this Declaration as **Exhibit B** below.
- L. “**Capital Assessment**” means an amount levied from time to time at the discretion of the Board against each Dwelling for the purpose of accumulating funds for capital improvements.
- M. “**Capital Fund**” means money or other highly liquid assets set aside for funding a Capital Improvement to the Project, but not for operating expenses, maintenance or repair expenses, or projects intended to be funded by the Reserve Fund. Capital Funds shall be maintained in an account separate from other Association funds.
- N. “**Capital Improvement**” means any new Improvement and any significant expansion or enhancement of any existing Improvement with a useful life of three (3) years or more, but does not mean maintenance, repair, or replacement of an existing Improvement.
- O. “**City**” means **Morgan, Utah**, the city in which the Project is physically situated.
- P. “**Common Area**” means all property within the Project designated as common area in the Plat or herein that the Association owns or maintains for the common use and enjoyment of all Owners including but not limited to any such property reserved for use as parks, playgrounds, roads, parking areas, sidewalks, pathways or trails, buildings, facilities, and open spaces. The term Common Area generally includes Limited Common Area except where the context requires otherwise.
- Q. “**Common Expenses**” means the costs, expenses, obligations, and liabilities incurred or reasonably anticipated by or on behalf of the Association for or in relation to: (a) managing, maintaining, preserving, operating, protecting, or improving the Common Area, Limited Common Area, and other Improvements owned or maintained by the Association; (b) meeting the maintenance obligations and financial obligations of the Association; (c) providing facilities, utilities, professional services, insurance coverage, and other services for or to the Project or Association or its membership as required by applicable law, this Declaration, or the Bylaws; (d) administering and enforcing the Governing Documents; (e) collecting assessments; (f) operating the Association; and (f) building reserve funds consistent with a one-hundred percent (100%) funding recommendation in a Reserve Study, all of the foregoing in accordance with applicable law, this Declaration, and the Bylaws.
- R. “**Control Period**” means the Declarant’s period of administrative control over the Association as cumulatively described in the Governing Documents and the Act.
- S. “**Corporation**” means the Association.
- T. “**County**” means Morgan County, Utah.
- U. “**Declarant**” shall mean **2B PROPERTY DEVELOPMENT, L.L.C.**, a Utah limited liability company, and its successors or assigns.
- V. “**Declaration**” means this document, including all covenants, conditions, and restrictions as contained herein, as duly amended or restated from time to time and as duly recorded in the recorder’s office of the County.

W. “**Detached Unit**” means a single residence that is not an Attached Unit. Further, for purposes of the Act, “Detached Unit” also means “detached dwelling” as that term is used in the Act.

X. “**District Common Expenses**” means the portion of the Common Expenses that is common to the Dwellings in an Assessment District but fewer than all the Dwellings in the Project.

Y. “**District Budget**” means a component of the Master Budget that, for a given fiscal year, is an estimate of the total Common Expenses attributed only to the Dwellings in a particular Assessment District.

Z. “**Dwelling**” means a Single-Family Unit or a Townhome Unit as the case may be.

AA. “**Family**” has the same meaning ascribed by the applicable City, County, or other applicable zoning code related to occupants of residential housing, as amended from time to time.

BB. “**Fine**” means a monetary amount assessed for a violation of the Governing Documents in the form of an Individual Assessment.

CC. “**Good Standing**” means: (a) free of any delinquent assessments, fines, or other amounts owed to the Association; and (b) free of any unresolved violations of the Governing Documents for which written notice has been issued by the Association. A Member is in Good Standing only if all of the Owner(s) and Resident(s) of the Member’s Dwelling are in Good Standing and if the Member’s Dwelling itself is in Good Standing.

DD. “**Governing Documents**” means the Declaration, Plat, Articles of Incorporation, Bylaws, Resolutions, Rules, and any written decisions of the Association made pursuant to such documents.

EE. “**Improvement**” means a structure or appurtenance of the Project. Such Improvements include but are not limited to buildings, Dwellings, roads, walkways, parking areas, driveways, sports courts, walls, curbs, garages, storage buildings, fences, lighting, playgrounds, landscaping, pools, and any other amenities, facilities, utilities, systems, installed components, and any appurtenances to any of the foregoing.

FF. “**Indemnitees**” means the Association’s past and present Board members, officers, Members, committee members, volunteers, employees, agents, trustees, Residents, and Managers, and the past and present directors, officers, members, and employees of such Managers.

GG. “**Individual Assessment**” means an amount levied or imposed against a particular Dwelling, Owner, and/or Resident.

HH. “**Insurance Fund**” means money set aside in an amount equal to the amount of the Association’s property insurance policy deductible or, if the deductible exceeds \$10,000, an amount not less than \$10,000, as required by Utah Code 57-8a-405(8).

II. “**Land**” means the one or more parcels of land of all phases and portions of the Project as described in the Plat.

JJ. “**Limited Common Area**” means all property designated as Limited Common Area in the Plat or herein that the Association owns or maintains for the exclusive use and enjoyment of the Owner(s) of one or more appurtenant Dwelling but fewer than all Dwellings in the Project.

KK. “**Living Area**” means the habitable interior area of a Dwelling but, unless otherwise permitted by the applicable government authority, does not include any area in, or structure of or associated with, a Dwelling that upon construction was intended primarily for use as a storage space, including a garage; such area or structure may not be used by any individual as Living Area.

LL. “**Lot**” shall mean any numbered building lot shown on the Plat that is intended to have at least one Dwelling constructed thereon.

MM. “**Majority**” means at least fifty-one percent (51%).

NN. “**Manager**” shall mean any Person engaged by the Board to manage all or part of the Association including the Common Area and Limited Common Area. The acts of a Manager in the performance of its duties as such shall be considered the acts of the Board.

OO. “**Master Budget**” means, for a given fiscal year, an estimate of the total income and the total Common Expenses of the Association including any Assessment Districts.

PP. “**Member**” means the Owner of a Dwelling or, if more than one (1) Owner, all such Owners taken together, such that there is a single Member per Dwelling and such that notice given to any one (1) such Owner shall be considered notice given to the Member and all such Owners.

QQ. “**Nonprofit Act**” means the Utah Revised Nonprofit Corporation Act, Utah Code 16-6a-101 *et seq.*, as amended or restated from time to time.

RR. “**Owner**” means a Person holding a Present Ownership Interest in a Dwelling. *See also* Attorney-in-Fact and Owner Representative. Notwithstanding the foregoing, if a Dwelling is subject to an executed purchase contract, the purchaser as opposed to the seller shall be considered the Owner upon presentation of a copy of the contract (with reasonable redactions) to the Board or Manager.

SS. “**Owner Representative**” means a director, officer, member, manager, beneficiary (but not a trustee or grantor), or other authorized representative of an Owner that is a legal entity, as such Owner shall appoint from time to time. Anything contrary notwithstanding, an Owner Representative shall be considered an Owner for purposes of all notices, meetings, proxies, votes, and eligibility requirements described in the Governing Documents.

TT. “**Painting**” means the coating or coloring of one or more surfaces with paint, stain, tint, or another colorant.

UU. “**Party Wall**” means any portion of a wall (including a foundation wall), ceiling, or floor, including those of an attached garage or the like, that is shared by and located on a dividing line between at least two adjoining Dwellings or between a Dwelling and a portion of a building owned by the Association, which portion shall be considered a Dwelling for purposes of Party Walls.

VV. “**Person**” means an individual, corporation, partnership, company, association, trust, or other legal entity of any kind whatsoever.

WW. “**Plat**” means the one or more plat maps of all phases and portions of the Project as such plats are or may be duly recorded or amended from time to time in the recorder’s office of the County. The initial Plat is attached to this Declaration as **EXHIBIT A** below.

XX. “**Present Ownership Interest**” means, with respect to a Dwelling: (1) a fee simple interest; (2) a joint tenancy, tenancy in common, or tenancy by the entirety; (3) an interest of a tenant

shareholder in a cooperative; (4) a life estate; or (5) the interest held by a beneficiary (as opposed to a trustee or grantor) of a trust in which the Dwelling is held. Notwithstanding the foregoing, a Present Ownership Interest shall not include a security interest in the Dwelling such as held under a mortgage, deed of trust, or similar instrument.

YY. “**Project**” means all phases of the **Mountain Horizon Subdivision** as described and illustrated on the Plat, including the Land, Lots, Dwellings, Common Area, Limited Common Area, buildings, facilities, structures, appurtenances, Improvements, rights, easements, and articles of personal property intended for use in connection therewith.

ZZ. “**Regular Assessment**” means, for a given fiscal year, an amount based on the Master Budget that is levied against the Dwellings sufficient to cover at least the Common Expenses, the Reserve Fund component of the Master Budget, and the required amount of the Insurance Fund.

AAA. “**Reserve Assessment**” means, for a given fiscal year, a component of the Regular Assessment allocated for the Reserve Fund, or other amount levied from time to time for the purpose of increasing or replenishing the Reserve Fund.

BBB. “**Reserve Fund**” means money or other highly liquid assets set aside for costs of repairing, replacing, and restoring common areas and facilities that have a useful life of three (3) years or more and a remaining useful life of less than 30 years, as required by Utah Code 57-8a-211, but not for Common Expenses or Capital Improvements.

CCC. “**Reserve Study**” means an analysis consistent with the minimum requirements of Section 211 of the Act that is performed by a competent third-party provider experienced in conducting such analyses and that includes a recommended reserve allocation amount for 100% funding of the Reserve Fund.

DDD. “**Resident**” means any natural person residing in a Dwelling, including without limitation Owners, tenants, family members of Owners or tenants, and their guests staying more than a week.

EEE. “**Resolution**” means a formal written document of the Association in its capacity as a nonprofit corporation that describes an action(s) taken by the Board or the membership of the Association. A Resolution is operable under the Nonprofit Act and is superior to and takes precedence over a Rule but is void to the extent it conflicts with applicable law, this Declaration, the Articles of Incorporation, or the Bylaws.

FFF. “**Rule**” means a duly adopted rule, regulation, policy, procedure, or the like established by the Board for the purpose of the operation, administration, control, or regulation of the Association that governs the conduct of Persons or the use, quality, type, design, or appearance of real property or personal property. Consistent with Utah Code 57-8a-102(25), a provision set forth in law, a contract, easement, or the Plat, Declaration, Articles of Incorporation, Bylaws, or a Resolution (unless the Resolution explicitly states otherwise).

GGG. “**Single-Family Unit**” means: (1) a Detached Unit and the Lot upon which it is constructed; (2) all rights and easements appurtenant to the Detached Unit; (3) the Lot itself until the Detached Unit is constructed; and (4) any Improvements constructed on the Lot that appertain exclusively to the Detached Unit or the Lot.

HHH. “**Special Assessment**” means an amount levied from time to time for the purpose of defraying, in whole or in part, any expenses not reasonably capable of being fully paid from the

Regular Assessment or, as applicable, the Insurance Fund or Reserve Fund, including expenses related to emergencies, but not for Capital Improvements.

III. “**Townhome Unit**” means: (1) an Attached Unit that is constructed as part of a building that includes multiple Attached Units; (2) the Lot upon which the Townhome Unit is constructed; (3) the Lot itself until the Townhome Unit is constructed; and (4) any Improvements constructed on the Lot that appertain exclusively to the Townhome Unit or the Lot.

### **3. HOMEOWNERS ASSOCIATION**

#### **3.1. Organization**

The Association is or will be organized as a Utah nonprofit corporation under, and shall be subject to, the Nonprofit Act, and shall also be subject to the Act. No portions of the Project are governed by the Utah Condominium Ownership Act. The Association is not a cooperative.

#### **3.2. Registration**

The Board shall cause the Association to be timely registered in the Utah Department of Commerce Homeowner Associations Registry, and shall cause such registration to be timely updated, in accordance with Section 105 of the Act.

#### **3.3. Power of Sale**

In compliance with Utah Code 57-8a-212(j), the Declarant hereby conveys and warrants pursuant to Utah Code 57-1-20 and 57-8a-302 to its attorney as determined by the Board, 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.

#### **3.4. Duties, Powers, and Obligations**

The Association shall have, exercise, and perform all of the duties, powers, and obligations granted to it under the Nonprofit Act, the Act, other applicable law, this Declaration, the Articles of Incorporation, and the Bylaws. Notwithstanding the foregoing, the powers of the Association, exercised through its Board or Members or otherwise, shall be limited and restricted as provided herein.

In general, it is the intent of this Declaration that the Association shall have all duties and powers reasonably necessary to regulate and operate the Common Area, the Limited Common Area, and the Project as a whole for the use, enjoyment, and benefit of the Owners and Residents and their guests and invitees, and to regulate and operate in a manner that makes the Common Area, Limited Common Area, and Project as a whole reasonably safe for and accessible to such Persons.

Notwithstanding anything to the contrary, and except as otherwise provided by applicable law, this Declaration, or the Bylaws, the duties and powers of the Association shall not include, and it is expressly prohibited from, regulating or otherwise controlling the health, safety, or welfare of the Owners or Residents or their guests or invitees, of any other individual(s), or of the Association’s membership as a whole for any purpose whatsoever. The Association is further prohibited from donating or otherwise providing Association funds to Persons, organizations, causes, advocacies, campaigns, candidates, initiatives, or otherwise, except to bona fide providers in payment for Common Expenses, Capital Improvements, or uses of the Reserve Fund made pursuant to Utah Code 57-8a-211(c) or other applicable law. Board members acting in or under color of their official



capacity shall be individually and personally liable to the Association and its Members for their intentional or grossly negligent violations, or attempted violations, of the Association's limitations, restrictions, and prohibitions enumerated in this paragraph, and subject to attorney fees and costs in relation thereto.

### **3.5. Association Limitations & Restrictions**

In addition to any other limitations in applicable law, this Declaration, the Articles of Incorporation, or the Bylaws, the powers of the Association, whether exercised through its Board or Members or otherwise, shall be restricted as follows. Any exercise of power by the Association in violation of any such restrictions, restrictions, or prohibitions shall be entirely void and unenforceable. The Association shall be liable at law and in equity for any violations of such limitations, restrictions, or prohibitions and for reasonable attorney fees and costs in relation to such violations.

#### **3.5.1. Inconsistent Actions**

Except as provided in the Nonprofit Act, the Act, or other applicable law, the Association, whether through its Board or otherwise, shall not act or fail to act in a manner that is inconsistent with the provisions of this Declaration, the Articles of Incorporation, or the Bylaws.

#### **3.5.2. Conflicting Rules**

The Association shall not establish any Rule or Resolution that conflicts with the Nonprofit Act, the Act, other applicable law, this Declaration, the Articles of Incorporation, or the Bylaws; any Rule or Resolution that conflicts in any manner with any of the foregoing shall be entirely void and unenforceable.

#### **3.5.3. Owner Easements**

Except as otherwise provided in applicable law, this Declaration, the Articles of Incorporation, or the Bylaws, or for purposes of reasonable maintenance or repairs or the like, the Association shall not limit or restrict an Owner's right and easement of use and enjoyment of the Common Area or of the Limited Common Area that appertains to that Owner's Dwelling. Notwithstanding the foregoing, and except for purposes of reasonable maintenance or repairs or the like, the Association shall not restrict or limit access to Dwellings via Common Area or Limited Common Area streets, sidewalks, driveways, parking areas, and the like.

Notwithstanding anything to the contrary in the Governing Documents, the Association shall have the right and power to temporarily close to its membership: (1) any portion of the Common Area for purposes of maintenance or repairs or the like; and (2) any of the Amenities, or any portion thereof, for purposes including but not limited to cleaning; reservations, inclement weather, hazardous conditions, and compliance with governmental regulations and the like.

#### **3.5.4. Property Dedicated to the Public**

Except as otherwise provided in this Declaration, the Association does not have the right or authority to regulate or control the use of property within the Project that has been dedicated to the public, including use by Owners and Residents. Such property includes 275 North Street and 275 East Street as shown on the Plat.

### **3.5.5. Personal Property**

Except as otherwise provided in this Declaration, the Association shall not interfere with, limit, or restrict personal property that may be kept at, or transported to or from, a Lot or Dwelling, nor shall the Association discriminate in any manner whatsoever against any Person in relation to their personal property or that of any other Person(s).

### **3.5.6. Religion**

Except as otherwise provided in this Declaration, the Association shall not interfere with, limit, or restrict any Person's free exercise of religion; nor shall the Association discriminate in any manner whatsoever against any Person in relation to their free exercise of religion or that of any other Person(s), nor shall religion or the free exercise thereof be a subject or condition of any Rule, Resolution, or the like.

### **3.5.7. Speech**

Except as otherwise provided in this Declaration, the Articles of Incorporation, or the Bylaws, the Association shall not interfere with, limit, or restrict any Person's right of free speech, nor shall the Association discriminate in any manner whatsoever against any Person in relation to their speech or that of any other Person(s), nor shall speech or the right to free speech be a subject or condition of any Rule, Resolution, or the like.

### **3.5.8. Assembly**

Except as otherwise provided in this Declaration, the Association shall not interfere with, limit, or restrict any Person's right to peaceably assemble at a Dwelling, virtually or otherwise, or outside the Project, including with the Person's guests, invitees, or others Persons, nor shall the Association discriminate in any manner whatsoever against any Person in relation to peaceably assembling at a Dwelling, virtually or otherwise, or outside the Project, nor shall peaceably assembling or the right to peaceably assemble at a Dwelling, virtually or otherwise, or outside of the Association be a subject or condition of any Rule, Resolution, or the like.

### **3.5.9. Association**

Except as otherwise provided in this Declaration, the Association shall not interfere with, limit, or restrict a Person's right to associate or the Person's right to privacy in relation thereto; nor shall the Association discriminate in any manner whatsoever against any Person in relation to the right to associate or the right to privacy in relation thereto; nor shall the right to associate or the right to privacy in relation thereto be a subject or condition of any Rule or Resolution.

### **3.5.10. Arms**

The Association shall not interfere with, limit, or restrict an individual's right to keep, bear, and lawfully use arms, including but not limited to firearms, ammunition, and all appurtenances related thereto, nor shall the Association discriminate in any manner whatsoever against any individual in relation to arms or the right to keep, bear, and lawfully use arms, nor shall the right to keep, bear, and lawfully use arms be a subject or condition of any Rule, Resolution, or the like.

### **3.5.11. Dwellings**

Except as otherwise provided in applicable law, this Declaration, or the Bylaws, the Association and its Board members, officers, committee members, volunteers, agents, employees, and contractors

shall have no right to enter into or onto, or to make use of, a Dwelling without the express permission of its Owner, nor shall such entry or use of a Lot or Dwelling, except with the express permission of its Owner, be a subject or condition of any Rule, Resolution, or the like. Notwithstanding the foregoing, a Rule or Resolution may establish procedures and policies with regard to easements, access rights, and other Association rights described by the Plat or this Declaration, but only to the extent such procedures and policies are not inconsistent with the intent of the Plat and Declaration.

### **3.5.12. Working from Home**

Except as otherwise provided in this Declaration, the Association shall not interfere with, limit, or restrict any Resident's right to work from the Lot or Dwelling that is their place of residence, nor shall the Association discriminate in any manner whatsoever against any individual in relation to working the Lot or Dwelling that is their place of residence, nor shall working from a Lot or Dwelling that is one's place of residence, or not working from such, be a subject or condition of any Rule, Resolution, or the like.

Notwithstanding the foregoing, working from a Lot or Dwelling may not involve having more than the occasional customer, client, co-worker, shipping or receiving personnel, or others entering the physical boundaries of the Project, or creating other nuisances. Further, the Association may establish Rules that reasonably regulate such occasional entry within the physical boundaries of the Project or nuisances related to working from a Lot or Dwelling. As used in this limitation, the phrase "a Resident's right to work from the Lot or Dwelling that is their place of residence" and the like refers to working from within the physical boundaries of the Project for or on behalf of an employer rather than working at the employer's office, facility, or other location. Such an employer may be one's own business.

### **3.5.13. Fines and Punishments**

The Association shall not impose excessive fines or inflict cruel and unusual punishments, nor shall fines be imposed for violations unless supported by the reasonable oath or affirmation of a witness(es) to such violations. Notwithstanding the foregoing, the Association may impose fines and limit the use of the Common Area and Limited Common Area as provided in this Declaration, the Bylaws, and the Act. The fines and fine amounts authorized by this Declaration and the Bylaws as they may be established or adjusted from time to time pursuant to the Declaration or Bylaws shall not be considered excessive.

### **3.5.14. Household Composition**

Except as otherwise provided in applicable law or this Declaration, the Association shall not interfere with, limit, or restrict the right of Owners or Residents to determine the composition of their households, nor shall the Association discriminate in any manner whatsoever against any Person in relation to the household composition of a Resident or any other individual(s), nor shall household composition be a subject or condition of any Rule, Resolution, or the like.

### **3.5.15. Privacy**

Except as otherwise provided in applicable law, this Declaration, the Articles of Incorporation, or the Bylaws, the Association shall not infringe the right of Persons to privacy and to be secure in

their persons, vehicles, houses, and papers and effects (whether electronic or otherwise), against unreasonable searches and seizures.

Except as otherwise provided in this Declaration, the Association shall not have the power to require any individual to undergo or refrain from any type of medical treatment, procedure, condition, or the like, including vaccinations, nor require any evidence or verification thereof, regardless of its source or form. The Association shall not discriminate against any Person in any manner whatsoever regarding an individual's decision to obtain, provide, disclose, or utilize such treatments, evidence, or verification, or to not do so. Nor shall the foregoing be a subject or condition of any Rule, Resolution, or the like.

Except as otherwise provided in this Declaration, the Association shall not have the power to require any individual to utilize or to not utilize any medical device or health-related device for any purpose whatsoever, including but not limited to face coverings, or to provide, disclose, or utilize any evidence or verification thereof, nor shall the Association discriminate in any manner whatsoever against any Person in relation to an individual(s) utilizing, providing, or disclosing the same or not utilizing, providing, or disclosing the same; nor shall any of the foregoing or anything in relation thereto be a subject or condition of any Rule or Resolution.

Except as otherwise provided in this Declaration, the Association shall not have the power or authority to compel an individual to use or abstain from using any medical device or health-related protective device for any purpose whatsoever, including but not limited to face coverings, nor require the provision, disclosure, or use of any evidence or verification thereof, regardless of its source or form. The Association shall not discriminate against any Person in any manner regarding an individual's decision to obtain, provide, disclose, or utilize such devices, or to not do so, nor shall the foregoing be a subject or condition of any Rule, Resolution, or the like.

Except as otherwise permitted by law or this Declaration, the Association shall not require any individual to provide or disclose any health-related information. The Association shall not discriminate against any Person in relation to health-related information, or a lack thereof. The Association shall not collect or maintain any health information without the voluntary written authorization of the individual, or if a minor, the individual's parent or guardian, to whom such information pertains. Such authorization may be withdrawn in writing at any time. Nor shall health-related information, or anything related thereto, be a subject or condition of any Rule, Resolution, or the like.

### **3.6. Membership**

Membership in the Association is appurtenant to each Dwelling; the Owner(s) of a Dwelling shall at all times be a Member of the Association so long as such Owner(s) holds a Present Ownership Interest in the Dwelling. An Owner's membership shall automatically terminate when the Owner(s) ceases to hold a Present Ownership Interest in the Dwelling and, upon transfer of such interest, the new Owner(s) succeeding to such interest shall likewise succeed to membership in the Association.

If more than one Person holds a Present Ownership Interest in a Dwelling, the membership appurtenant to that Dwelling shall be shared by all such Persons in the same proportion in which such interests are held.

### **3.7. Contact Information**

Upon becoming an Owner or a Resident, and upon reasonable request of the Association, each Owner and Resident shall provide the Association with at least the following contact information: (1) their full legal name and, if a legal entity, the State in which it was formed; (2) the address of their primary residence or, if a legal entity, the address of its primary office; (3) the address of the Dwelling by which they are an Owner or Resident; (4) their email address; (5) and their telephone number. Regardless of any waiver of notice provided to the Association, it shall be the continuous duty of each Owner and Resident to keep their contact information current with the Association. Owners and Residents that fail to keep their contact information current with the Association, whether or not they reside within the physical boundaries of the Project, shall be deemed not in Good Standing and in violation of this Declaration.

## **4. VOTING RIGHTS**

The Association shall have at least the following two classes of members; however, all votes shall be equal and counted as such, except where voting by separate class may otherwise be provided in the Articles of Incorporation, Bylaws, or this Declaration. The Association shall also have at least the following one class of nonvoting members. Additional classes of membership may be added by amendment to this Declaration.

### **4.1. Class A Members**

Class A Members shall be Owners, with the exception of Owners that are Class C Members and with the exception of the Declarant during the entire period when the Declarant is a Class B Member. Each Class A Member shall be entitled to one (1) vote for each Dwelling that Member owns. When more than one (1) Person owns a Dwelling, the vote for such Dwelling may be cast as they shall determine, but in no event will fractional voting be allowed. Fractionalized or split votes shall be disregarded.

### **4.2. Class B Members**

The sole Class B Member shall be the Declarant, who shall be entitled to ten (10) votes for each Lot and Dwelling owned or controlled by the Declarant. The Class B Member shall cease and be converted automatically to a Class A Member on the first to occur of the following events: (1) one (1) year after the conveyance to a new Class A Member of the last Dwelling owned or controlled by the Declarant; or (2) the day the Declarant, after giving written notice to the Owners, records an instrument voluntarily surrendering all rights to control activities of the Association in accordance with Section 502 of the Act as it may be amended from time to time, thus terminating the Control Period as of the date such notice is duly recorded in the recorder's office of the County.

### **4.3. Class C Members**

Class C Members shall be Owners, with the exception of the Declarant during the entire period when the Declarant is a Class B Member, that meet the following criteria: (1) the Owner holds a Present Ownership Interest in at least ten percent (10%) of the total number of Dwellings within the Association; (2) the Owner is a member of a family or extended family in which various members of such family/extended family, taken together, hold Present Ownership Interests in at least ten percent (10%) of the total number of Dwellings within the Association, where such family/extended family members are related by blood, adoption, marriage, cohabitation, or the like; (3) the Owner is

owned or controlled in whole or in part, directly or indirectly, by a Person or group of associated or related Persons that may own or control, directly or indirectly, zero or more other Owners that, together with the Owner, hold Present Ownership Interests in at least ten percent (10%) of the total number of Dwellings within the Association; or (4) any combination of the foregoing.

The intent of this class of membership (Class C Members) is to prevent Owners from effectively gaining control of the Association by amassing ownership interests in multiple Dwellings.

Nonlimiting examples of Class C Members include the following: (1) an Owner that owns at least 10% of the Dwellings; (2) Owners in the same family/extended family that, taken together, own at least 10% of the Dwellings; and (3) various Owners that, taken together, own at least 10% of the Dwellings where such Owners are all ultimately owned or controlled by the same Person or group of associated or related Persons regardless of how many intervening individuals or legal entities exist between such Owners and such Person or group of Persons.

#### **4.4. One Vote per Dwelling**

Notwithstanding anything to the contrary, in the event there is more than one Owner of a particular Dwelling, the vote relating to such Dwelling shall be exercised as such Owners may determine among themselves; but in no event shall more than one (1) Class A vote be cast with respect to any Dwelling. A vote cast at any meeting or by written ballot by any one (1) of a Dwelling's Owners, whether cast in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Dwelling; if more than one (1) vote is cast for the Dwelling then all such votes shall be disregarded completely.

### **5. OWNERSHIP AND EASEMENTS**

All easements described in this Declaration shall run with the land to which they are appurtenant.

#### **5.1. Common Area**

The Association owns all the Common Area.

Common Area shall include all areas designated as such on the Plat; notwithstanding the foregoing, certain areas designated as Common Area on the Plat may be designated as Limited Common Area herein with such designations herein controlling.

Each Owner shall have, in common with all other Owners, a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Dwelling and in no event shall be separated therefrom, or encumbered, pledged, assigned, or otherwise alienated by an Owner. Any Owner may temporarily delegate such rights and easements to any and all Resident(s) of the Owner's Dwelling. Notwithstanding the foregoing, such rights and easements common to all Owners, delegated or otherwise, shall be limited as provided in this Declaration and, to the extent permitted by the Declaration, subject to all Resolutions and Rules duly established.

#### **5.2. Limited Common Area**

The Association owns all Limited Common Area.

Limited Common Area shall include all areas designated as such on the Plat; notwithstanding the foregoing, certain areas designated as Common Area on the Plat may be designated as Limited Common Area herein with such designations herein controlling.

The Owner(s) of a Dwelling shall have an exclusive right and easement of use and enjoyment in and to the Limited Common Area that is exclusively appurtenant to its Dwelling. The Owner(s) of a Dwelling shall also have an exclusive right and easement of use and enjoyment in and to the Limited Common Area that is appurtenant to the Owner's Dwelling and one or more other but not all Dwellings, with such right and easement held in common with the Owners of such Dwellings. Such rights and easements shall be appurtenant to and shall pass with title to each Dwelling and in no event shall be separated therefrom, or encumbered, pledged, assigned, or otherwise alienated by an Owner. Any Owner may temporarily delegate such rights and easements to any and all Resident(s) of the Owner's Dwelling. Notwithstanding the foregoing, such rights and easements common to one or more but not all Owners, delegated or otherwise, shall be limited as provided in this Declaration and, to the extent permitted by the Declaration, subject to all Resolutions and Rules duly established.

### **5.3. Dwellings**

A Dwelling is owned by its Owner(s). The Association may own a Dwelling(s).

The Association shall have a perpetual nonexclusive easement in and to each Dwelling for purposes of: (1) reasonable access to and installation, inspection, maintenance, repair, replacement, and improvement of Common Area, Limited Common Area, and other property owned by the Association or for which it has an operation or maintenance or repair obligation, but only to the extent that such Common Area, Limited Common Area, or other property is located within or is only reasonably accessible from within a Dwelling; (2) mitigation of emergency conditions impacting or imminently threatening to impact Common Area, Limited Common Area, or other Dwellings; and (3) maintenance and repair of the exterior components of all Attached Units and all other Dwellings for which the Association has an exterior maintenance and repair obligation, which easement shall be considered an "ownership interest" as that term is used in the Act, albeit a nonpossessory ownership interest that is limited to the purposes of the easement and for purposes of the Act.

### **5.4. Utility Easements**

In addition to other easements granted in favor of the Association and other easements shown on the Plat, Attached Units and the Lots of Detached Units are hereby made subject to nonexclusive utility easements in favor of the Association for reasonable access to and installation, inspection, maintenance, repair, replacement, and improvement of utilities that run through, across, under, or over such Attached Units and Lots, including but not limited to electrical, gas, water, sewer, drainage, phone, cable, satellite, and internet.

Further, the Association shall have the right to grant such utility easements to any governmental, quasi-governmental entity, or utility provided, however, that such easements must be used in a manner that does not unreasonably interfere with the Association, the Dwellings, the easements of the Owners in, or the Owners' and Residents' right of use and enjoyment of, the Common Area and Limited Common Area. By accepting a deed to a Dwelling, each Owner expressly consents to such utility easements and authorizes and appoints the Association as its attorney-in-fact to execute any and all instruments conveying or creating such easements.

### **5.5. Encroachment Easements**

An nonexclusive encroachment easement is hereby granted in favor of the Association for purposes of encroachment and the maintenance of such encroachment in the event that any Common Area, Limited Common Area, or Improvement of the Association unintentionally encroaches at any time on a Dwelling either due to the manner of its construction or due to settling, shifting, repair, restoration, alteration, or replacement; such an encroachment easement shall continue for the duration of the encroachment. An equivalent easement is hereby granted in favor of the Owner(s) of a Dwelling for the same purposes in the event that the Dwelling unintentionally encroaches at any time on Common Area or Limited Common Area due to the same causes; and for the same duration. Such encroachment easements shall run with the land to which they are appurtenant.

An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### **5.6. Party Wall Easements**

Each Owner grants to all other Owners of adjoining Dwellings a party wall easement over and upon its Lot and/or Dwelling as the case may require for purposes of the inspection, maintenance, repair, and replacement of Party Walls and shared roofs. Such party wall easements shall run with the land to which they are appurtenant.

### **5.7. Easement Limitations**

An Owner's right and easement of use and enjoyment in the Common Area, delegated or not, shall be subject to the following limitations:

#### **5.7.1. Association Rules**

The right of the Association to establish Rules that govern the use of the Common Area;

#### **5.7.2. Suspension of Rights**

The right of the Association to suspend an Owner's and/or Resident's rights to use the Common Area for any period of time during which and of the Owners, Residents, or the Dwelling is in violation of any provision of the Governing Documents or delinquent in any amount due to the Association; notwithstanding the foregoing, the right to access a Dwelling via Common Area and Limited Common Area streets, sidewalks, and the like, and to obtain utilities and other public services at the Dwelling, shall not be suspended.

#### **5.7.3. Government Access**

The right of governmental and quasi-governmental entities and utilities that have jurisdiction over the Project to access and use the Common Area for purposes including but not limited to providing police and fire protection, transporting school children, installing and maintaining utilities, and providing any other governmental or municipal service.

#### **5.7.4. Dedication or Conveyance**

The right of the Association to dedicate or convey in accordance with applicable law any portion of the Common Area or Limited Common Area for such purposes and subject to such conditions as may be agreed by a vote of the Members representing at least sixty-seven percent (67%) of the



Dwellings and, in addition, the dedication or conveyance by the Association of any Limited Common Area shall require the written agreement of the Members representing all Dwellings to which such Limited Common Area is appurtenant, but only to the extent that such dedication or conveyance materially limits the use and enjoyment in and to such Limited Common Area.

#### **5.7.5. Views**

Views from Dwellings are not assured or guaranteed in any way, and there is no warranty concerning the preservation of any view or view plane from a Dwelling or the Project. There are and will not be any view easements or view rights appurtenant to any Dwelling. The Association shall have the right to add trees, landscaping, and other Improvements throughout the Project without being subject to maintaining any Owner's view.

#### **5.8. Damage from Easement Use**

Damage of any kind to the Common Area or Limited Common Area, or to any Dwelling, caused directly or indirectly in relation to the use of an easement granted under this Declaration shall be promptly and completely restored by and at the expense of the Person holding the easement.

#### **5.9. Irrigation Water Shares**

Except as otherwise provided in a valid trust document or other agreement, any water shares in a water association or the like used or intended to be used by the Association for irrigation of its landscaping that were or are transferred in relation to the development of the Project to a party, including the City or County or other governmental or regulatory entity or utility, other than the Association shall be considered held in irrevocable trust with the Association being the beneficiary and the equitable shareholder or the like, such party being the trustee and the legal shareholder, and the Declarant or, as the Declarant's agent, the other Person(s) holding title to such water shares prior to such transfer being the settlor(s). This irrevocable trust shall exist regardless of whether or not any issued stock certificate evidences the trust or identifies the shareholder as a trustee; it shall be the duty of the trustee to act as such regardless.

The terms of this irrevocable trust hereby include: (1) a spendthrift provision which restrains both voluntary and involuntary transfer or encumbrance of the beneficiary's interest; (2) a duty of the trustee to timely pay any shareholder assessments or the like in relation to the water shares; (3) a right of the trustee to be reimbursed, without markup, by the beneficiary for such paid shareholder assessments; (4) a right of the trustee to be paid a reasonable and minimal administration fee by the beneficiary; (5) except as otherwise agreed in writing between the beneficiary and the trustee, a duty of the trustee to maintain the means by which the Association accesses water in relation to the water shares at the Project; (6) a right of the trustee to be reimbursed, without markup, by the beneficiary for the reasonable expenses of trustee for such maintenance; (7) all other duties typically owed by a trustee, including a duty to represent and vigorously pursue the interests of the beneficiary; (8) a right of the beneficiary to appoint a substitute or replacement trustee at its discretion and without suit; (9) upon dissolution of the Association, the Owner(s) of each Dwelling shall become a beneficiary under this trust with a fraction of the total equitable ownership in the trust property and the same fraction of the total beneficiary obligations under this trust, such fraction being computed as the irrigable acreage of the Lot (if any) appurtenant to the Dwelling relative to the irrigable acreage of the total Land, if such fraction is greater than zero; and (10) equitable ownership of the

trust property, or of each fractional portion of the trust property as applicable, shall run with the land to which it is appurtenant.

## **6. OPERATION AND MAINTENANCE**

### **6.1. Common Area**

The Association shall have the right and obligation to operate and maintain the Common Area and shall furnish and be solely responsible for, at the Association's own expense, all of the care, inspection, maintenance, repair, and replacement of the Common Area. Notwithstanding the foregoing, Owners and Residents shall, with respect to their own use and enjoyment of the Common Area, and that of their guests, and invitees, be obligated to keep it neat, clean, free of hazards, and free of interference with the maintenance obligations of the Association.

Except as otherwise provided in this Declaration, the Common Area includes but is not limited to: (1) streets, sidewalks, and parking areas; (2) fencing, including perimeter fencing of the Project; (3) street lights; (4) community mailboxes; (5) utility lines and infrastructure that serve more than one (1) Dwelling and that are not maintained by the City or County; (6) landscaping and irrigation systems; and (7) Amenities. Notwithstanding the foregoing, no part or portion of a Lot upon which a Detached Dwelling is constructed shall be considered Common Area.

The Common Area does not include streets within the Project that have been dedicated to the public, such as 275 North Street and 275 East Street.

#### **6.1.1. Assessment Districts**

Common Area that serves only one or more Assessment Districts but not all Assessment Districts shall be considered the Limited Common Area of such Assessment Districts for purposes of budgeting the Association's maintenance obligations and for any Special Assessments and other assessments that are related solely to such Assessment Districts. Such Common Area may include but is not limited to: (1) streets, sidewalks, and parking areas; (2) fencing, including perimeter fencing of the Project; (3) street lights; (4) community mailboxes; (5) utility lines and infrastructure that serve more than one (1) Dwelling and that are not maintained by the City or County; (6) landscaping and irrigation systems; and (7) Amenities, but only to the extent that the foregoing serve only one or more Assessment Districts but not all Assessment Districts.

### **6.2. Limited Common Area**

Except as otherwise provided by applicable law or this Declaration, the Association shall have the right and obligation to operate and maintain the Limited Common Area and shall furnish and be solely responsible for, at the Association's own expense, all of the care, inspection, maintenance, repair, and replacement of the Limited Common Area. Notwithstanding the foregoing, Owners and Residents shall be responsible to keep Limited Common Area appurtenant to their Dwellings neat, clean, free of hazards, and free of interference with the maintenance obligations of the Association.

Except as otherwise provided in this Declaration or Plat, the Limited Common Area is: (1) the front porches of Attached Units; and (2) the guest parking stalls of the Attached Units.

### **6.3. Dwellings**

Except as otherwise provided by applicable law or this Declaration, and except for the exceptions below with respect to Attached Units, the Owner of a Dwelling shall, incidental to ownership, have

the right to improve and remodel, and the right and obligation to maintain, the Dwelling and shall furnish and be solely responsible for, at the Owner's own expense, all of the care, inspection, maintenance, repair, and replacement of the Dwelling and all its components, including its weather barriers, weather seals, weatherproofing, and the like.

### **6.3.1. Townhome Units**

As an exception to an Owner's rights and obligations to maintain their Dwellings, the Association shall be solely responsible for, at its own expense, the maintenance, repair, and replacement of the exterior portions of each Townhome Unit except for the following exterior components for which the Owners shall remain responsible: consumable items; exterior glass; skylights; screens and the like; windows and window frames and bucks; window wells and their contents both within and below; doors and door frames and bucks, garage doors and floors; foundation walls, slabs, and related structures and components that are installed substantially below grade; and utility equipment, lines, conduits, and the like, or any portion thereof, that serve only one Dwelling and that are not physically located within or under any other Dwelling. Notwithstanding the foregoing exceptions, the Association shall be responsible for the exterior Painting of window frames, doors and their frames, and any exterior trim of the foregoing.

Excluding the foregoing exceptions, exterior portions of a Townhome Unit for which the Association has a maintenance obligation shall include, to the extent above grade: exterior wall siding, stucco, stone, brick, and other veneers; exterior trim, vents, and the like; roof shingles, underlayment, sheathing, flashing, fascia, soffit, and vents; rain gutters and down spouts; exterior light fixtures and other exterior-mounted electrical fixtures and devices; exterior water spigots and hose bibs; and exterior shutters, awnings, and other originally-installed exterior components.

Note that a Lot upon which a Townhome Unit is constructed does not extend beyond its exterior surfaces. As such, all real property located beyond those exterior surfaces, excepting any abutting Lots, is Common Area.

### **6.3.2. Exception Limits**

The intent and purpose of the foregoing exceptions to Owner maintenance rights and obligations are to enable and obligate the Association to ensure: (1) timely maintenance, repair, and replacement of and to the above-grade exterior portions of Attached Units; and (2) consistency in color, style, quality, and other exterior characteristics of the Attached Units.

Notwithstanding anything to the contrary in the Governing Documents, the Association's exterior maintenance obligation with respect to Attached Units is limited solely to reasonable maintenance, repair, and replacement in relation to ordinary wear and tear and useful life. Notwithstanding the foregoing, the Association shall also be solely responsible to perform any needed exterior maintenance, repair, and replacement of an Attached Unit in relation to wear and tear beyond that which is ordinary but, to the extent not covered by Association insurance, the Owner(s) of the Attached Unit shall be responsible for all related costs.

### **6.3.3. Construction Defects**

The Association shall not be responsible for any construction defect in a Dwelling, or for any damage or harm caused by or in relation to such a construction defect. Notwithstanding the foregoing, the Association shall still be solely responsible to perform any required maintenance,

repair, and replacement to the above-grade exterior portions and characteristics of an Attached Unit in relation to such a defect but, to the extent not covered by Association insurance, the Owner(s) of the Attached Unit shall be responsible for all related costs.

#### **6.3.4. Weatherproofing**

The Owner(s) of a Dwelling, whether an Attached Unit or a Detached Unit, shall be solely responsible for its weather barriers, weather seals, and weatherproofing. In the event any water in any form, or any other substance, enters a Dwelling by any means whatsoever from the outside and causes any kind of damage inside the Dwelling, the Owner(s) shall be responsible for any and all damage caused by or related to such entry, for any and all repairs necessitated as a result of such entry, and for any and all costs related in any way to such entry.

#### **6.3.5. Exterior Alterations**

Owners shall maintain their Dwellings in substantially the same condition and appearance that existed when such Dwellings were initially constructed; no subsequent exterior alterations or remodeling of a Dwelling is allowed without the advance written approval of the Board.

#### **6.3.6. Fencing**

No installation or alteration of fencing by Owners or Residents is allowed. Notwithstanding the foregoing, the Board shall have the power to establish uniform Rules for the installation or alteration of fencing appurtenant to a Dwelling whether on the Lot of a Dwelling or on Limited Common Area appurtenant to an Attached Unit. Such Rules shall require at least the following: (1) that the requesting Owner shall obtain the advance written approval of the Board; (2) uniform review and approval procedures applicable to all Dwellings in the Association or to all Dwellings within a particular Assessment District(s); (3) that new or altered fencing shall be consistent in color, style, character, and quality with existing fencing; (4) that the requesting Owner shall be responsible to have surveyed the position of legal boundary lines as applicable; (5) that the requesting Owner shall be responsible for all costs related to the request, including costs of any related modifications including but not limited to modifications to any landscaping, irrigation systems, Common Area, and Limited Common Area, and that the Association shall be responsible for making all such modifications to Common Area and Limited Common Area; and (6) that no Owner may materially alter existing Common Area fencing or install new fencing on Common Area.

Any alterations to existing fencing, and any new fencing, that is installed on Limited Common Area shall be the property of and be maintained by the Association.

Gates that provide access to otherwise inaccessible Common Area or Limited Common Area shall never be locked or otherwise blocked by an Owner or Resident; such gates shall always be enterable by the Association and its agents for the care, inspection, maintenance, repair, and replacement of the Common Area or Limited Common Area behind such gates.

Any fencing installed on a dividing line between two or more adjoining Dwellings shall be considered a Party Wall. Fencing around the perimeter of the Project, even if it adjoins a Lot, shall be Common Area.

#### **6.3.7. Repairs by Association**

No Owner shall permit its Dwelling to fall into a state of disrepair. In the event that an Owner permits any portion of its Dwelling to fall into a state of disrepair that is dangerous, unsafe,

unsanitary, or unsightly, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within fifteen (15) days or other longer reasonable time. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Dwelling and take corrective action to abate the condition. All costs of abatement shall be assessed to the Dwelling and its Owner(s) that agrees to promptly pay the reasonable costs of all work performed under this provision. In addition, each Owner hereby grants to the Association a lien on its Dwelling to secure payment of the assessment, which lien may be foreclosed at any time by the Association. Alternatively, without requiring foreclosure, the Association may seek collection of the assessment from the Owner(s) of the Dwelling.

#### **6.4. Maintenance Caused by Owner**

To the extent that an Owner or Resident, or their guest(s) or invitee(s), cause damage to the Common Area or Limited Common Area, all costs related to the cleaning, maintenance, repair, or the like of such damage, along with all related administrative and other costs, shall be assessed to the Owner or Resident. If the individual(s) that caused the damage is a non-Owner Resident of a Dwelling, or the guest or invitee of such Resident, the Owner of the Dwelling shall be jointly and severally liable for such assessments.

### **7. PARTY WALLS**

#### **7.1. General Rules of Law Apply**

To the extent not inconsistent with the Act, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions in relation to Party Walls shall apply.

#### **7.2. Maintenance of Party Walls**

Each Dwelling that shares one or more Party Walls with another Dwelling(s) may also share other common elements, such as a common roof, common exterior walls, or other common exterior elements with an adjacent Dwelling(s). As such, certain maintenance and repairs to portions of Dwellings with Party Walls may become necessary that involve one or more adjacent Dwellings. Therefore, except as otherwise provided herein, maintenance, repair, and replacement of common roofs, common exterior walls, or other common exterior elements of such Dwellings shall be performed by the Association.

Regarding interior Party Walls, the Owners of such shared interior Party Walls shall jointly and severally be responsible for their maintenance, repair, and replacement; the Association shall not have any duty to maintain, repair, or replace any such interior Party Wall unless the Association is an Owner of such.

Notwithstanding the foregoing, the maintenance, repair, and replacement of fencing located on a dividing line between two or more adjacent Dwellings shall be performed by the Owners of the adjacent Dwellings, and all costs shall be shared between them in proportion to the relative lengths of their shared fencing that is being maintained, repaired, or replaced.

### **7.3. Destruction of Party Walls**

If a Party Wall is destroyed or damaged by fire or other casualty, the Owners that share the Party Wall shall restore the same.

### **7.4. Cost Sharing for Party Walls**

The costs related to the maintenance, repair, and replacement of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use. Notwithstanding, costs related to repairing any damage beyond normal wear and tear to a Party Wall that is caused intentionally or otherwise by an Owner or its Resident, or the guest or invitee of either, shall be the responsibility of that Owner.

## **8. ARCHITECTURAL CONTROL**

### **8.1. Architectural Committee**

The Board may appoint a committee as provided in the Bylaws to serve as the Architectural Committee for purposes of overseeing exterior architectural characteristics of the Association. If not created, the Board shall function as the Architectural Committee. Except as otherwise provided in this Declaration, and consistent with the Association's architectural control standards, it shall be the duty of the Architectural Committee to oversee the external characteristics of Dwellings and the landscaping of the Lots in accordance with the Association's architectural control standards. Further, the Architectural Committee shall not be responsible for: (1) determining that any modification or plan conforms to applicable building codes, zoning ordinances, and other governmental or land-use regulations; (2) the content or accuracy of any plan, documents, specifications, or the like prepared by the applicant or by any architect, engineer, or other person; (3) any loss, damage, or failure due or related to, either directly or indirectly, any natural or man-made condition(s) that may exist; or (4) any failure of applicant or any other person to carry out work in accordance with plans.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, the Architectural Committee may, but need not, be comprised of architects, engineers, or similar professionals, the Manager or any of its employees, or any other Person regardless of membership in the Association. Even so, the Board may have the final say in decisions made by the Architectural Committee.

### **8.2. Architectural Control Standards**

Consistent with any architectural control standards in this Declaration, the Board may adopt additional architectural control standards in the form of Rules with respect to the external characteristics of Dwellings and the Lots (including landscaping) upon which they are constructed, including but not limited to such exterior characteristics as colors, materials, appearance, etc. Notwithstanding such Rules or the lack thereof, and except as otherwise provided in this Declaration, the Association's architectural control standards shall include maintaining such external characteristics materially consistent with their original construction unless otherwise approved for general application across the Association or an Assessment District(s) by a majority vote of the applicable Members.

Notwithstanding the foregoing, no Rule or other architectural control standard may be adopted or enforced with respect to the interior of a Dwelling or the landscaping of a Lot's fully fenced

backyard for which the Owner, as opposed to the Association, is responsible for the maintenance thereof.

### **8.3. Architectural Committee Approval**

Prior to any material modification of the external characteristics of a Dwelling or to the landscaping of a Lot (except for the landscaping of a fully fenced backyard for which the Owner as opposed to the Association is responsible for the maintenance thereof), an applicant shall submit written plans to the Architectural Committee for approval. Notwithstanding, only the Association (as opposed to Owners and Residents) has the right to modify Common Area and Limited Common Area.

The applicant must ensure that plans submitted to the Architectural Committee are in conformance with all applicable building codes, zoning ordinances, and other applicable governmental or land-use regulations. The Architectural Committee shall have no liability to any applicant or other party for plans that are not in conformance with the foregoing, approved or otherwise. Corrections or changes in plans to bring them in to conformance must be approved by the Architectural Committee prior to modification.

The Architectural Committee shall review submitted plans and respond in writing to the applicant within thirty (30) days of submission with either: (1) an approval; (2) a variance that is described in detail in writing and acts as an approval; (3) a disapproval that includes the specific reasons for such that, if correctable, once corrected by the applicant will result in approval; or (4) a reasonable request for additional essential information. The decision of the Architectural Committee shall be based solely upon the provisions of this Declaration and any pre-existing and duly adopted Rules that set forth the Association's architectural control standards; such decision shall not be based on or influenced by the personal preferences of any member of the Architectural Committee, the Board, or other party. It is the duty of the Architectural Committee to timely approve plans that reasonably comply with the Association's architectural control standards.

### **8.4. Board Oversight**

The Board may at any time review and overturn in writing any action taken by the Architectural Committee. The Board may alternatively have the Architectural Committee operate strictly in an advisory capacity.

### **8.5. Noncompliance**

If at any time the Board finds that a modification or other work done is not in substantial compliance with the Association's architectural control standards, approved plans, or was done without first obtaining approval, such shall be considered a violation to be removed or cured within thirty (30) days of written notice in accordance with applicable law or the provisions of the Bylaws for violation of this Declaration. If the Owner fails to remove or cure the noncompliance as required, or to enter into an agreement to remove or cure on a basis satisfactory to the Architectural Committee within the thirty (30) day period or any extension thereof as may be granted, the Board may, at its option, cause the noncomplying work to be removed or cured and the Owner shall reimburse the Association upon demand for all costs and expenses incurred, including collection costs and reasonable attorney fees and costs, such costs and expenses shall be considered an Individual Assessment, and the Association shall have a lien against the noncompliant Dwelling in the amount of all such costs and expenses.

## **8.6. Variances**

The Architectural Committee may authorize a variance for compliance with any architectural control standard Rules when it determines that circumstances such as topography, natural obstruction, hardship, or cost, aesthetic, or environmental considerations justify such a variance.

Notwithstanding the foregoing, no variance shall: (1) be effective unless in writing; (2) be contrary to this Declaration; or (3) prevent the Architectural Committee from denying a variance under similar circumstances.

If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any aspect of the Governing Documents other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all applicable ordinances, laws, and other governmental regulations.

## **8.7. No Liability**

The Architectural Committee shall not be liable to the applicant, the Association, or the Owners for any loss or damage caused in relation to its good faith actions or inactions, or its approval or disapproval or otherwise of a submitted plan. Each Owner shall have an equal right to enforce the Association's architectural control standards against every other Owner, and may seek independent redress if it believes the Architectural Committee has failed to act or acted improperly.

# **9. USE LIMITATIONS & RESTRICTIONS**

## **9.1. Household Composition**

Occupancy of a Dwelling shall be limited to a single Family.

## **9.2. Guest Use of Common Area**

The Board shall have the power to establish Rules that place reasonable conditions and restrictions on the use of Common Area by guests of Residents or by guests of non-resident Owners, but only to the extent that such Rules apply uniformly to the guests of all Residents or to the guests of all non-resident Owners.

## **9.3. Rules and Governing Documents**

No Owner or Resident shall violate the Rules as adopted from time to time; no Owner or Resident shall do or keep anything within the Project that is in violation of the Governing Documents.

Owners and Residents shall be responsible for ensuring that their guests and invitees comply with all Rules and the Governing Documents.

## **9.4. Business Use**

No business use or trade may be conducted from a Dwelling unless: (1) the business use or trade is not readily apparent by sight, sound, or smell from outside the Dwelling other than for reasonable ingress and egress to and from the Dwelling and Project; and (2) the business use or trade does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of the Project or the Residents thereof. For purposes of this restriction, the phrase "business use or trade" shall not include: (3) working from home; (4) garage and yard sales; and (5) leasing or renting a Dwelling.



### **9.5. Garage Sales**

The Board shall have the power to establish Rules to allow and to that place reasonable conditions and restrictions on garage sales and yard sales within the Project. Absent such Rules, garage sales and yard sales are prohibited. Notwithstanding the foregoing, other limitations and restrictions provided in this Declaration, the Article of Incorporation, or the Bylaws, such as those regarding parking, signs, nuisance, and other topics are not subject to such rulemaking.

### **9.6. Subdivision or Timeshare**

Except for a parcel(s) of land that is part of an expansion of the Project, no Lot shall be subdivided, partitioned, or in any manner split into physical tracts or parcels smaller than the whole Lot as shown on the Plat; nor shall any Lot be combined with one or more other Lots into a physical tract or parcel larger than the whole Lot as shown on the Plat; nor shall any Lot or Dwelling be established or used as a timeshare.

### **9.7. Fireworks**

The Board shall have the power to establish Rules that place reasonable conditions and restrictions on the use of fireworks within the Project, including prohibiting fireworks entirely within the Project. Notwithstanding the foregoing, the use of illegal fireworks and incendiary devices as defined by Utah Code § 76-10-306 within the Project is strictly prohibited, as is the use of legal fireworks when such use is prohibited by a governmental or other regulatory authority that has jurisdiction over the Project.

### **9.8. Graffiti**

The Board shall have the power to establish Rules that place reasonable conditions and restrictions on the graffiti within the Project, including prohibiting graffiti entirely within the Project. The term “graffiti” as used herein means drawings or inscriptions made with sidewalk chalk or other medium that readily washes away with water or is otherwise readily removable from any surface to which it is applied with minimal effort; graffiti in any other medium of that does not meet this definition is strictly prohibited within the Project.

### **9.9. Trash Containers**

Except as otherwise established by Rule, all trash containers shall normally be stored so as to not be visible from the street except when put out for collection no earlier than the day prior to collection and put away again no later than the end of the day of collection.

### **9.10. Disorderly Activities and Conditions**

Except as otherwise provided in this Declaration, the Articles of Incorporation, or the Bylaws, any activity that causes or creates disorderly, unsightly, or unkempt conditions that are visible from outside a Dwelling is prohibited, and all rubbish, debris, and unsightly materials or objects of any kind that are visible from outside a Dwelling shall not be allowed to accumulate and shall be removed from Lots, Dwellings, Common Area, and Limited Common Area. Such conditions include but are not limited to bicycles, toys, or other personal property left on the Common Area or Limited Common Area or that otherwise interferes with the Association’s maintenance and repair obligations.

### **9.11. Nuisance, Noise, and Quiet Hours**

The term “nuisance” as used herein means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Nuisances are prohibited within the Project, including in, on, or about the Common Area, Limited Common Area, and Dwellings. Nuisances include but are not limited to any condition brought about or activity carried out, illegal or otherwise, by an Owner or Resident or their guest or invitee, or by a Dwelling, that: (1) is noxious or offensive; (2) causes embarrassment, discomfort, annoyance, distress, or disturbance to any other Owners or Residents or their guests or invitees, particularly if law enforcement is called to restore order; (3) creates an unreasonable amount of noise or traffic, especially after 10:00 pm and before 7:00 am; or (4) results in an unreasonable level of light or sound pollution, particularly that is out of character with the rest of the Project. The Board shall have the power to establish Rules consistent with this restriction in relation to nuisance, noise, and quiet hours within the Project.

### **9.12. Damage or Waste**

No damage or waste shall be caused to the Common Area or Limited Common Area by any Owner or Resident or their guest or invitee.

### **9.13. Smoking**

Smoking is prohibited in, on, and about the Common Area, Limited Common Area, and all Attached Units. Smoking is permitted in Detached Units only to the extent that smoke does not drift into the Common Area, Limited Common Area, Attached Units, or other Detached Units. The term “smoking” as used herein includes but is not limited to the burning, smoking, or otherwise using of any tobacco, marijuana, vaping, or other similar product or device of any type whatsoever. As provided in Utah Code 57-81-218, the Board shall have the power to establish Rules that prohibit smoking entirely within the Project, including within all Detached Units.

### **9.14. Hazardous Substances**

Owners and Residents shall comply with applicable environmental laws, and shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances within the Project that are not properly controlled, safeguarded, and disposed of. No one shall permit anything to be done or kept within the Project which would be in violation of any public law, ordinance, or regulation. Each Owner shall indemnify, defend, and hold harmless the Association and its Indemnitees against any and all actions, claims, damages, expenses, losses, or liabilities (including regulatory fines, court costs, and attorney fees) of any kind whatsoever incurred by or asserted against the Association or any of its Indemnitees arising from or in any way related to the acts or omissions of the Owner or its Residents or their guests or invitees in relation to such hazardous substances.

### **9.15. Open-Flame Devices**

Except for Detached Units and as required by Utah Code 15A-5-103 and section 308 of the International Fire Code, 2018 edition, the outdoor use and storage of open-flame devices is strictly prohibited unless such devices are stored and operated at least ten (10) feet away from all combustible construction including Dwellings, combustible balconies, garages, and fencing (including vinyl fencing). Further, the use and storage of open-flame devices is strictly prohibited on grass and planter areas and on driveways. The use of open-flame devices is strictly prohibited in

garages. Open-flame devices include barbecues, charcoal-fueled grills, fire pits, and any other outdoor device that produces a flame.

Notwithstanding the foregoing and consistent with Utah law, the following are not prohibited: (1) the use and storage of liquid propane (LP)-gas cooking devices having an LP-gas container with a water capacity (WC) of not greater than 2½ pounds (nominal 1 pound (16 oz) LP-gas capacity); (2) the use and storage of electric cooking grills that do not produce a flame and that bears the mark of an independent testing laboratory, such as Underwriter Laboratory; and (3) the installation and use of conventional indoor gas appliances such as gas ovens, stoves, cooktops, water heaters, and furnaces.

#### **9.16. Insurance Impacts and Inspections**

Nothing beyond that which is customary for residential use shall be done or kept within the Project by any Owner or Resident that will increase the rate of any insurance maintained by the Association, or that will result in cancellation of such insurance.

In the event of an insurance inspection or survey or the like that results in a requirement by the insurance provider for the Association to implement a loss control measure or the like, the Board shall timely take the required action and/or establish a Rule(s) or adopt a Resolution(s), as appropriate, that is sufficient to reasonably meet the requirement.

#### **9.17. Reservations and Admission Fees**

The Board shall have the power to establish Rules for: (1) reserving the use of Common Area facilities, including parking facilities, to certain parties at certain times at the exclusion of the general membership of the Association; and (2) for charging reasonable admission and other fees for such reservations. The fees charged shall be sufficient to cover the costs of making the reservations, inspecting the facilities before and after use, cleaning the facilities after use as needed, and otherwise managing the reservations and related incidental work. Notwithstanding the foregoing, no such reservations or fees shall be allowed for Common Area streets or sidewalks or for Limited Common Areas, nor shall any fees be charged without reservations for the use of any Common Area by the general membership of the Association, nor shall the general membership of the Association be prohibited from using any Common Area when not reserved.

#### **9.18. Fences and Walls**

Except as otherwise provided in this Declaration, no fence, wall, or the like shall be caused to be installed by any Owner or Resident on Common Area or Limited Common Area. The Board shall have the power to remove any such structure and to assess all costs related to removal to the Resident and Owner of the Dwelling at which the structure is kept.

#### **9.19. Trees, Shrubs, and Bushes**

No tree, shrub, bush, hedge, or the like, real or artificial, shall be caused to be planted in or placed on the Common Area or Limited Common Area by any Owner or Resident. The Board shall have the power to remove any such plant and assess the cost related of removal to the violating Owner or Resident and to the Owner of the Dwelling at which such plant is kept.

## **9.20. Lawn and Vegetation**

Any condition brought about, or activity carried out, by an Owner or Resident or their guest or invitee, or by a Dwelling, that materially disturbs, damages, or destroys the lawn, vegetation, landscaping, sprinkler system, or other appurtenances of the Project, internally or otherwise, is prohibited.

## **9.21. Planting and Gardening**

No planting or gardening, real or artificial, shall be caused to be done by any Owner or Resident in the grounds of Common Area or Limited Common Area. The Board shall have the power to remove any such planting and assess the cost related to such removal to the violating Resident and to the Owner of the Dwelling at which the planting occurred. The Board shall have the power to establish Rules that place reasonable conditions and restrictions on the placement of easily movable planter boxes and the like on Common Area immediately around Dwellings, and on Limited Common Area, including prohibiting such planter boxes or the like entirely within the Project. Notwithstanding the foregoing, the Board shall not allow placement of planter boxes or the like that interfere with or increase the cost of recurring landscape maintenance, or that will cause damage to the landscaping.

## **9.22. Animals**

No animals of any kind shall be kept by Owners or Residents within the Project, including in, on, or about any Dwelling, Common Area, or Limited Common Area. Notwithstanding the foregoing, no more than two (2) common household pets may be kept and housed on the interior of a Dwelling provided such pets are not kept for commercial or breeding purposes. One (1) aquarium with any number of fish shall be considered one (1) pet. The term “pet” as used herein is limited to meaning a bird, cat, dog, fish, or rodent, except as prohibited herein below. Notwithstanding the foregoing, if federal, state, or local law, or any Association insurance provider, disallows an otherwise allowed pet or type of pet from being possessed or kept in the Project, then such disallowed pet is not allowed in the Project. The following prohibited pets are commonly considered “high-risk” by insurance carriers.

### **9.22.1. Prohibited Birds**

Notwithstanding anything to the contrary in the Governing Documents, the following types of birds are prohibited from being kept within the Project: all types of birds including but not limited to crows, poultry, and raptors, except for the following types of birds that are not prohibited: African Grey, Amazon, Caique, Canary, Cockatiel, Cockatoo, Conure, Eclectus, Finch, Lorikeet, Lory, Lovebird, Macaw, Parakeet, Parrot, Parrotlet, or Poicephalus.

### **9.22.2. Prohibited Cats**

Notwithstanding anything to the contrary in the Governing Documents, the following types of cats are prohibited from being kept within the Project: all types of Bobcat, Bengal, Canadian Lynx, Chausie Cat, Caracal, Geoffroy’s Cat, Jungle Cat, Maine Coon, Manul, Ocelot, Pixiebob, Savannah, Serval, and any other cat not normally considered a common pet house cat.

### **9.22.3. Prohibited Dogs**

Notwithstanding anything to the contrary in the Governing Documents, the following types of dogs are prohibited from being kept within the Project: all types of Akita, Bandog, Boxer, Bulldog, Bully

Kutta, Cane Corso, Chow Chow, Doberman Pinscher, Dogo Argentino, German Shepherd, Great Dane, Gull Dong, Japanese Tosa, Malamute, Mastiff, Pit Bull Terrier, Presa Canario, Rottweiler, Rhodesian Ridgeback, Siberian Husky, Staffordshire Terrier, Wolf Hybrid, and any other dog not normally considered a common pet dog."

#### **9.22.4. Prohibited Fish**

Notwithstanding anything to the contrary in the Governing Documents, the following types of fish are prohibited from being kept within the Project: all types of Arapaima, Boxfish, Catfish, Carp, Electric Eel, Piranha, Pufferfish, Snakehead, Stingray, Stonefish, Triggerfish, and any other fish not normally considered a common indoor pet fish.

#### **9.22.5. Prohibited Rodents**

Notwithstanding anything to the contrary in the Governing Documents, the following types of rodents are prohibited from being kept within the Project: all types of rodent including but not limited to mice and rats, except for the following types of rodents that are not prohibited: hamsters, gerbils, guinea pigs, chinchillas, and rabbits (though rabbits are not technically classified as rodents).

#### **9.22.6. Pet Registration**

All dogs and cats shall at all times be registered or licensed by the licensing or registering authority as required by applicable City or County ordinances.

Owners and Residents shall annually register their pets with the Association. Required documentation to register a pet shall include: (1) the name and Dwelling address of the pet, and name of the applicant Owner or Resident; (2) the type and breed of the pet; (3) a complete copy of the written application for the pet's licensure or registration that was submitted to the licensing or registering authority (e.g., the City or County); (4) complete copies of the written records of the pet's licensure or registration as issued by the licensing or registering authority; (5) complete copies of the written veterinary records, proofs of vaccination, health certificates, and the like that were required by the licensing or registering authority; (6) the license or registration number issued to the pet by the licensing or registering authority; (7) the name and city or county of the licensing or registering authority; and (8) at least one color photograph of the pet sufficient to visually and accurately identify the pet at the time of registration. Failure to provide the required documentation, or providing incomplete information, shall result in denial of the pet registration request.

Each pet must always wear any identification tag or the like issued to it by the licensing or registering authority.

The Board shall have the power to establish Rules related to pet registration that are not inconsistent with this Declaration, including but not limited to Rules that establish: (A) a pet registration fee that shall not exceed \$50 (fifty US Dollars); (B) other required documentation for pet registration in addition to that required above; (C) procedures related to pet registration and review, approval, and denial; (D) a schedule of fines specific to pet violations; and (D) conditions under which the Owner or Resident shall be required to permanently remove the pet from the Project.

#### **9.22.7. Outdoor Pets Prohibited**

Pets are prohibited from being outdoors in the Project at any time. Notwithstanding the foregoing, a pet may leave its Dwelling only if it is on a leash, or being held by, and under the control of a responsible party. The responsible party shall also have on their person the receptacles necessary to,

and shall, immediately clean up and remove any animal feces or other debris that the pet may leave outside.

Notwithstanding the foregoing prohibition on outdoor pets, Detached Units with yards that are fully fenced may keep pets in such fully fenced yards but only to the extent that the pet does not create a nuisance.

#### **9.22.8. Pet Nuisance**

No pet, or pet owner in relation to the pet, shall create a nuisance at any time. The term “nuisance” as used herein in relation to pets shall mean, but shall not be limited to, any of the following acts by or conditions caused in relation to a pet: (1) damage to the property of anyone; (2) unpleasant odors; (3) unsanitary conditions; (4) defecating on any Common Area, Limited Common Area, or the Lot of any Dwelling when the feces are not immediately cleaned up and removed; (5) barking, howling, whining, or making other noises that disturb the quiet peace and enjoyment of others; (6) lunging at, molesting, jumping on, harassing, attacking, chasing, or acting aggressive toward other animals or passersby whether they are walking, running, riding, or in vehicles; (7) escaping from a leash, responsible party controlling the pet, Dwelling, or yard; (8) otherwise acting or creating conditions so as to unreasonably bother, annoy, disturb, or interfere with the quiet peace and enjoyment of others; (9) keeping more than the allowed number of pets; and (10) failing to register a pet with the Association. The Board shall have the power to establish Rules that further define nuisance in relation to pets.

#### **9.22.9. Pet Removal**

The pet owner shall permanently remove the pet from the Project upon written notice by the Association. A pet that has not been registered with the Association and that has been the subject of two (2) fines for any reason, subject to the final decisions of any informal hearings, shall be permanently removed from the Project. A pet that has been the subject of two (2) fines for nuisance, subject to the final decisions of any informal hearings, shall be permanently removed from the Project. The Board shall have the power to remove any such pet and assess the cost related to removal to the pet owner and Owner of the Dwelling at which the pet is kept.

#### **9.22.10. Joint and Several Liability**

Each pet owner and the Owner(s) of the Dwelling at which the pet is kept, whether such pet is registered with the Association or otherwise, shall be jointly and severally liable to the Association for: (1) violations of the Governing Documents in any way related to the pet; (2) acts and omissions of or in any way related to the pet, regardless of intent or the degree of negligence; (3) damage to Common Area and Limited Common Area caused either directly or indirectly by or in any way related to the pet; and (4) any other actions, claims, damages, expenses, losses, or liabilities (including regulatory fines, court costs, and attorney fees) of any kind whatsoever arising from or in any way related to the pet.

#### **9.22.11. Indemnification**

Each pet owner and the Owner(s) of the Dwelling at which the pet is kept, whether such pet is registered with the Association or otherwise, shall indemnify, defend, and hold harmless the Association and its Indemnitees against any and all actions, claims, damages, expenses, losses, or liabilities (including regulatory fines, court costs, and attorney fees) of any kind whatsoever incurred

by or asserted against the Association or any of its Indemnitees arising from or in any way related to the pet.

### **9.23. Signs, Banners, and Flags**

No sign, banner, flag, or the like shall be caused to be placed or displayed by any Owner or Resident on the Common Area, Limited Common Area, or allowed on the outside of their Dwelling, nor shall any such item be placed or displayed within a window or otherwise so as to be visible from outside of their Dwelling. Such items include but are not limited to: (1) political, for sale, for rent, security, posters, billboards, and all other types of signs, banners, flags, or the like regardless of their size, message, location, or placement; (2) electronic or digital or other types of displays; and (3) advertising of any kind whatsoever. Notwithstanding the foregoing, common welcome doormats that do not include political or activist or other such messages shall not be prohibited.

Notwithstanding the foregoing, the Association shall not prohibit an Owner or Resident from displaying a United States flag inside their Dwelling or Limited Common Area appurtenant thereto, or on their Lot, or on the exterior of their Dwelling, if the display complies with United States Code, Title 4, Chapter 1, The Flag, and if no Common Area or Limited Common Area is modified, interfered with, or damaged in order to display the flag.

### **9.24. Holiday Displays**

Notwithstanding anything to the contrary in this Declaration, and subject to time, place, and manner Rules established by the Board, Residents may, on the exterior of their Dwelling and its exclusively-appurtenant Limited Common Area, display holiday signs, symbols, and decorations of the kinds and at the times normally displayed on residences in single-family residential neighborhoods to the extent that such displays are temporary and, for Attached Units, leave no lasting traces on the exterior of the Dwelling. The term "holiday" as used here shall be limited to the official federal and Utah state holidays as they may change from time to time. Notwithstanding the foregoing, no such signs, symbols, or decorations shall be placed on or otherwise interfere with or damage Common Area or lawns or landscaping that are maintained by the Association.

### **9.25. Antennas**

With respect to Attached Units, the Association reserves the right to enter into exclusive contracts and agreements with commercial providers of cable, satellite, and similar data/media services thereby negotiating and/or granting rights to such providers for exclusive service to the Association, and to regulate the provisioning of such services within the Association. Except by the Association, no satellite dish or other exterior antenna or similar device, or related cabling or the like, shall be allowed, placed, or maintained on the exterior of any Attached Unit. Notwithstanding the foregoing, any such antenna or the like may be used anywhere on the interior of an Attached Unit.

With respect to Detached Units, any satellite dish or data/media antenna or similar device installed or mounted on a Detached Unit shall be installed or mounted so as to minimize its visibility from the front of the Dwelling without compromising its intended purpose or operation.

With respect to all Dwellings in the Project, no radio or television antenna (as opposed to the types of antennas discussed above) shall be installed or mounted on Common Area, Limited Common Area, or any Dwelling. Notwithstanding the foregoing, and subject to reasonable time, place, and manner Rules that are not inconsistent with the following, any antenna that is temporarily erected, but not otherwise installed or mounted, on a Lot or its exclusively appurtenant Limited Common

Area may be used to the extent that it does not become a nuisance or interfere with maintenance of or damage lawns or landscaping that are maintained by the Association. Notwithstanding the foregoing, any such antenna or the like may be used anywhere on the interior of a Dwelling.

#### **9.26. Temporary Structures**

Except as otherwise provided in this Declaration, no Owner or Resident shall place or maintain any shed, storage container, tent, gazebo, or similar temporary structure on Common Area or Limited Common Area. Notwithstanding the foregoing, the Board shall have the power to establish Rules allowing and regulating such temporary structures that are not affixed to a Dwelling to the extent they are kept on Limited Common Area that is exclusively-appurtenant to the Owner's or Resident's Dwelling and to the extent that they do not become a nuisance or interfere with or damage Common Area or lawns or landscaping that are maintained by the Association.

#### **9.27. Dwelling Attachments and Fixtures**

Except as otherwise provided in this Declaration, no Owner or Resident shall affix or cause to be affixed anything, including but not limited to awnings, canopies, shutters, clothes lines, pots, plants, wind chimes, hose, lights, gates, electronic devices, flag pole holders, and other items, to or on any exterior surface, or that interferes with the maintenance or repair of such exterior surface, of any Attached Unit or other Dwelling for which the Association has exterior maintenance and repair obligations. Notwithstanding the foregoing, the Board shall have the power to establish Rules allowing and regulating the affixing of such items to the extent they do not unreasonably interfere with or increase the cost of the Association's maintenance and repair obligations.

#### **9.28. Solar Equipment**

Notwithstanding anything to the contrary herein, no Owner or Resident shall install or cause to be installed a solar energy system of any type whatsoever, including but not limited to solar panels, solar water heaters, and solar power battery storage systems, on any roof, exterior wall, other exterior building surface, Common Area, Limited Common Area, or other location for which the Association has a maintenance and repair obligation, such as Attached Units.

With respect to Dwellings upon which solar energy systems may be installed, such as Detached Units, the Board shall have the power to establish Rules that are not inconsistent with the above restriction and that are consistent with Utah Code 57-8a-701.

#### **9.29. Structural Integrity**

Except as otherwise provided in this Declaration, nothing shall be done in any Attached Unit, or in, on, or to Common Area or Limited Common Area, which will impair the structural integrity of a building, or any part thereof, or which would structurally change the building.

#### **9.30. Motor Vehicles**

##### **9.30.1. Passenger Vehicles**

All passenger vehicles, including but not limited to passenger cars, trucks, vans, and motorcycles, that are parked or stored in the Project by an Owner or Resident shall be registered pursuant to applicable laws and ordinances, and maintained in good running condition sufficient for highway use. Passenger vehicles may be parked or stored in usually closed garages or on driveways. Except for purposes of maintenance or repair by the Association, or as otherwise established by Rule, no



passenger vehicle shall be parked or stored on the alleyways or guest parking stalls appurtenant to the Attached Units.

#### **9.30.2. Recreational Vehicles**

All recreational vehicles that are parked or stored in the Project by an Owner or Resident shall be licensed in accordance with applicable laws and ordinances, and maintained in good running condition sufficient for highway use. Recreational vehicles may be stored in usually closed garages. Except for purposes of maintenance or repair by the Association, or as otherwise established by Rule, no recreational vehicle shall be parked or stored on the alleyways or guest parking stalls appurtenant to the Attached Units, nor shall a recreational vehicle be parked or stored in driveways for more than three (3) nights.

#### **9.30.3. Off-Highway Vehicles**

No off-highway vehicle, including but not limited to off-highway motorcycles or the like, golf carts, type I, II, and III all-terrain vehicles as defined in Utah Code § 41-22-2, snowmobiles, motorized boats, and motorized aircraft, shall be stored or used in the Project. A non-motorized glider aircraft intended for manned use shall be considered an off-highway vehicle for purposes of this Declaration. Notwithstanding the foregoing, the Board shall have the power to establish Rules that allow for off-highway vehicles to be brought into and removed from the Project only on trailers and stored only in usually closed garages. Any parking or storage of an off-highway vehicle on Common Area or Limited Common Area, and any use or operation of an off-highway vehicle within the Project, shall be considered a nuisance.

#### **9.30.4. Moving Vans**

Moving vans and the like may be parked on the streets and driveways of the Project during periods of loading or unloading; they should be parked so as to leave room for other vehicles to pass to the extent reasonably possible. Except as otherwise established by Rule: (1) no moving van shall be stored on the alleyways or guest parking stalls appurtenant to the Attached Units; and (2) no moving van shall be parked or stored in driveways for more than five (5) nights, and then only while the moving van is in the Project for purposes of being loaded or unloaded.

#### **9.30.5. Service Vehicles**

Service vehicles that are marked as such and are being used as such, including but not limited to vehicles used by or for contractors, service providers, emergencies, and deliveries, may park on the streets of the Project in the performance of services; they should be parked so as to leave room for other vehicles to pass to the extent reasonably possible. Except as otherwise established by Rule, no service vehicles shall be parked or stored on the alleyways or guest parking stalls appurtenant to the Attached Units except temporarily while the service vehicle is in the Project for purposes of the services and while not interfering with access to and from Attached Unit garages.

### **9.31. Trailers**

Trailers may be parked on the streets and driveways of the Project while being loaded or unloaded; they should be parked so as to leave room for other vehicles to pass to the extent reasonably possible. Trailers may be stored in usually closed garages. Except as otherwise established by Rule: (1) no trailer shall be stored on alleyways or guest parking stalls appurtenant to the Attached Units;

and (2) no trailer shall be parked or stored in driveways for more than five (5) nights, and then only while the trailer is in the Project for purposes of being loaded or unloaded.

### **9.32. Guest Parking**

The guest parking stalls located off the alleyways of the Attached Units are reserved for the use of guests and invitees of the Owners and Residents of the Attached Units, and shall be available for use on a first-come, first-served basis. The guest parking stalls shall not be used by the Owners or Residents of the Attached Units. Nor shall the guest parking stalls be used by the Owners or Residents of the Detached Units, or their guests or invitees.

### **9.33. Parking Enforcement**

Consistent with the other provisions of this Declaration, the Board shall have the power to establish Rules to govern and enforce parking in guest parking stalls. Such Rules may, but are not limited to: (1) allow for the booting and/or towing of vehicles that improperly park within the Project.

### **9.34. Rentals**

The term “tenant” as used in this Declaration means each renter, lessee, boarder, and occupant of a long-term or short-term rental and, to the extent allowed by law, each guest and invitee of each such renter, lessee, and occupant.

#### **9.34.1. Long-Term Rentals**

The term “long-term rental” as used in this Declaration means a Dwelling that is leased or rented for occupancy to one (1) or more tenants under an agreement with an initial term of at least six (6) months, regardless of whether or not the Owner resides in the Dwelling during some or all of the occupancy.

Subject to applicable laws and ordinances regarding the rental and leasing of real property, any Dwelling may be used as a long-term rental.

#### **9.34.2. Short-Term Rentals**

The term “short-term rental” as used in this Declaration means a Dwelling that is leased or rented for occupancy to one (1) or more tenants under an agreement with an initial term of fewer than six (6) months and as short as one (1) night or less, regardless of whether or not the Owner resides in the Dwelling during some or all of the occupancy.

Short-term rentals shall be prohibited. Notwithstanding the foregoing, and subject to applicable laws and ordinances regarding the rental and leasing of real property, the Board shall have the power to establish Rules to allow and govern short-term rentals. Such Rules may, but are not limited to: (1) establish uniform criteria for Dwellings to be used as short-term rentals; and (2) establish a schedule of fines specific to short-term rentals.

#### **9.34.3. Tenants Subject to Governing Documents**

Each tenant shall be subject to and abide by the terms of the Governing Documents.

#### **9.34.4. Joint and Several Liability**

The Owner(s) of a long-term or short-term rental and their tenants shall be jointly and severally liable to the Association for (1) violations of the Governing Documents by or in any way related to a tenant; (2) acts and omissions of or in any way related to a tenant, regardless of intent or the degree

of negligence; (3) damage to Common Area and Limited Common Area caused either directly or indirectly by in any way related to a tenant; and (4) any other actions, claims, damages, expenses, losses, or liabilities (including regulatory fines, court costs, and attorney fees) of any kind whatsoever arising from or in any way related to a tenant.

#### **9.34.5. Indemnification**

The Owner(s) of a long-term or short-term rental shall indemnify, defend, and hold harmless the Association and its Indemnitees against any and all actions, claims, damages, expenses, losses, or liabilities (including regulatory fines, court costs, and attorney fees) of any kind whatsoever incurred by or asserted against the Association or any of its Indemnitees arising from or related in any way to such rental.

### **10. COMPLIANCE AND ENFORCEMENT**

Any violation of the Governing Documents that is permitted to remain within the Project is deemed a nuisance and is subject to abatement by the Association of an Owner in any manner allowed by law.

#### **10.1. Compliance**

Each Owner or Resident of a Dwelling shall comply with applicable law, this Declaration, the Bylaws, and any Rules and Resolutions adopted pursuant thereto. Failure to comply therewith shall be grounds for legal action by the Association or an Owner.

#### **10.2. Remedies**

Violation of any provision of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board, acting on behalf of the Association, the right, in addition to any other rights set forth in applicable law or the Governing Documents, to do any or all of the following after giving notice and an opportunity to be heard: (1) levy reasonable fines in accordance with applicable law and the Bylaws; (2) enjoin, abate, or remedy such violation by any appropriate legal proceeding including but not limited to collection, lien, and foreclosure; and (3) bring suit or action against an Owner or Resident on behalf of the Association and/or on behalf of other Owners to enforce the Governing Documents.

In any legal proceeding or suit or action, the prevailing party shall be entitled to all costs and expenses, including but not limited to reasonable attorney's fees, of such proceeding, suit, or action.

#### **10.3. Time Limit for Claims**

Any claim, action, litigation, or the like arising out of this Declaration or the other Governing Documents brought by any party subject thereto against the Association or its Indemnitees must be commenced within twelve (12) months of the initial cause of such claim, action, litigation, or the like. Any such claim, action, litigation, or the like not brought against the Association or its Indemnitees within twelve (12) months shall be forever waived.

#### **10.4. Action by Owners**

Subject to any limitations imposed by applicable law or this Declaration, an Owner may bring an action against any Owner(s) or the Association to recover damages or to enjoin, abate, or remedy a violation of the Governing Documents by any appropriate legal proceeding(s).

### **10.5. Injunctive Relief**

Nothing in this article shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

### **10.6. Variances**

Variances to the provisions contained in this Declaration may be granted by the Board only when strict application would create an unforeseen or unreasonable hardship to an Owner(s); however, such a hardship cannot be self-created, solely economic in nature, or generally present with respect to a majority of Owners, Residents, or Dwellings. The Board cannot grant a variance that has the effect of modifying zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant. The granting of a variance consistent with this provision is within the sole discretion of the Board.

## **11. ASSESSMENTS**

Assessments collected by the Association shall be used for: (1) the operation, administration, management, care, maintenance, repair, preservation, improvement, and protection of the Project; (2) preserving and enhancing the value of the Project; and (3) for carrying out the duties and limited powers of the Association.

Except as otherwise provided in this Declaration, each Dwelling shall be subject to Assessments.

### **11.1. Assessment Districts**

For purposes of Regular Assessments, Dwellings are grouped together in Assessment Districts based on unit type; that is, all Single-Family Units are grouped together in a Single-Family Assessment District, and all Townhome Units are grouped together in a Townhome Assessment District.

The purpose of Assessment Districts is to allocate Common Expenses that are only applicable to the Dwellings in a particular Assessment District to a District Budget for that Assessment District.

### **11.2. Regular Assessment**

The amount of the Regular Assessment in a given year shall be no less than the total amount of the Master Budget for that year.

Each Dwelling subject to Assessments shall, in each given year, be assessed an amount based on the Master Budget for that year that is equal to that of all other Dwellings in its Assessment District.

The Regular Assessment shall be payable to the Association in monthly installments as Association dues.

### **11.3. Special Assessment**

The Board may levy Special Assessments from time to time for the purpose of defraying, in whole or in part, any expenses not reasonably capable of being fully paid from the Regular Assessment or, where appropriate, the Insurance Fund or Reserve Fund, including expenses related to emergencies, but not for Capital Improvements.

#### **11.4. Individual Assessment**

The Board may levy an Individual Assessment against a particular Dwelling, Owner, and/or Resident for: (a) damage to the Project caused by the Owner or Resident, or a member of their household or guest, or that otherwise causes the Association to incur any expense for maintenance, repairs, or enforcement action; or (b) any services reasonably provided to, or any reasonable expenses incurred in relation to, the Dwelling due to an Owner's or Resident's failure to maintain the Dwelling, including to make emergency repairs to protect other Dwellings, Owners, Residents, Common Area, or Limited Common Area. Such amount shall be determined by the cost of such damage, maintenance, repairs, enforcement action, services provided, or expenses incurred and shall include all overhead and administrative costs, reasonable attorney fees, and any other related costs.

An Individual Assessment may be levied prior to work being performed in the amount of a reasonable estimate of such work. Any amounts expended in excess of the estimate shall also be assessed.

#### **11.5. Capital Assessment**

The Board may, as a Capital Assessment component of the Regular Assessment or otherwise, levy a Capital Assessment upon obtaining the assenting vote of at least sixty-seven percent (67%) of the membership in the Association. Notwithstanding the foregoing, if the Capital Assessment will benefit only a specific Assessment District(s), the assenting vote of at least sixty-seven percent (67%) of the membership in that Assessment District(s) must be obtained.

Each Capital Assessment shall be allocated to a particular Capital Improvement prior to being submitted for membership approval and shall remain allocated to that same Capital Improvement after approval. Any balance remaining after completion or cancellation of the Capital Improvement shall be refunded to the membership in the same proportion it was assessed.

#### **11.6. Reserve Assessment**

As required by Section 211 of the Act, the Association shall, in each fiscal year, levy a Reserve Assessment as a component of the Regular Assessment. The amount levied shall be sufficient to fund the Reserve Fund at a level of 100%, including inflation adjustments, as established by the most recently performed reserve study.

#### **11.7. Reinvestment Fee Covenant**

With respect to each and every conveyance of a Dwelling to a new Owner, including the first conveyance to the first owner of the Dwelling, a fee in the maximum amount allowed by law as it may change from time to time, currently one-half percent (0.5%) of the value of the Dwelling, (the "Reinvestment Fee") shall be paid to the Association.

The Reinvestment Fee shall be paid by the buyer of the Dwelling unless otherwise agreed in writing by the buyer and the seller, and shall be in addition to any pro rata share of assessments due and adjusted at settlement.

The existence of this covenant (the "Reinvestment Fee Covenant") precludes the imposition of an additional reinvestment fee covenant on the burdened property. The purpose of the amount required to be paid under this covenant is to facilitate the maintenance of common areas and facilities, and is required to benefit the Project.

To the fullest extent practicable, the Reinvestment Fee shall be collected at the closing of the purchase/sale transaction by a title company, escrow company, or other person involved with the transaction, and paid directly to the Association.

Funds obtained from payment of all Reinvestment Fees shall be allocated solely to the Reserve Fund.

The obligation to pay the Reinvestment Fee shall be a joint and several personal and continuing obligation of the seller and buyer regardless of whether the buyer acquired title by regular conveyance or pursuant to a foreclosure sale (judicial, non-judicial, or otherwise). Notwithstanding, conveyance of a Dwelling by inheritance, probate, or the like, or from an Owner to a trust or similar structure of which the Owner is directly or indirectly a beneficiary, including a living trust, shall not be subject to the Reinvestment Fee.

### **11.8. Other Fees**

In addition to any other fees provided for herein, the Association shall be entitled to charge the following fees.

#### **11.8.1. Fines**

The Association may impose fines against Dwellings, Owners, and/or Residents in accordance with Section 208 of the Act and other applicable law, and as provided in the Bylaws.

#### **11.8.2. Closing Fee**

The Association may charge a fee in an amount not to exceed \$50 (fifty US Dollars) for providing Association payoff information needed in connection with the financing, refinancing, or closing of a Dwelling as provided in Section 106 of the Act.

#### **11.8.3. Setup Fee**

The Association may charge a setup fee in an amount not to exceed \$250 (two hundred and fifty US Dollars) for setting up a new Member, Resident, or other party with the Association.

#### **11.8.4. Late Payment Fee**

The Association may charge a late payment fee in an amount of \$25 (twenty-five US Dollars) or 10% (ten percent), whichever is greater, on any delinquent amount owed to the Association.

#### **11.8.5. Attorney Fees**

In addition to any other attorney fees and other costs provided for herein, the Association shall be entitled to recover attorney fees, administrative costs, and all other costs that it incurs in relation to: (a) obtaining legal advice about an actual default or an actual violation of the Governing Documents; (b) collecting, via third-party(s) or otherwise, unpaid assessments or other delinquent amounts; (c) filing and prosecuting lawsuits and taking any other legal actions (including mediation and arbitration) in relation to any such default or violation; (d) monitoring or otherwise engaging in any way in bankruptcy proceedings that involve any party in such default; (e) preparing, noticing, recording, securing, foreclosing, or taking any other action in relation to a lien against a Dwelling; and (f) taking any other action in relation to such default or violation. This provision shall be broadly construed to permit the Association to recover any reasonable attorney fees, administrative costs,

and other costs in any way related to such default or violation both during and after membership or residency in the Association.

In addition to the foregoing, should any party(s) bring suit in relation to the Project or the Association or its Governing Documents against any other party(s), either during or after any such party's membership or residency in the Association, the prevailing party(s) shall be entitled to recover costs and reasonable attorneys' fees, including court costs, witness fees, and all other related costs, from the non-prevailing party(s) which shall be jointly and severally liable for all such costs and fees.

#### **11.8.6. Board-Established Fees**

The Board may establish other reasonable and generally applicable fees using the rulemaking procedures provided in the Bylaws. Notwithstanding the foregoing, any such fee that is inconsistent with applicable law or the Governing Documents shall be void and unenforceable.

#### **11.8.7. Interest**

Interest shall accrue to the Association at a rate of 18% (eighteen percent) on all delinquent amounts due.

#### **11.9. No Offsets**

All assessments and fees shall be payable at the time and in the amount specified by the Association, and no offsets against such amounts by Owners and Residents shall be permitted for any reason, including but not limited to claims that the Board is not properly exercising its duties and power, claims in the nature of offset or that the Association owes the Owner or Resident money, or claims that the Association is not complying with its obligations as provided for in the Governing Documents.

#### **11.10. Statement of Unpaid Assessments**

Upon an Owner's written request accompanied by payment of a fee in the amount of \$10 (ten US Dollars), the Association shall within ten (10) days of such request and payment issue a written statement indicating any unpaid assessments or other amounts due and payable by the Owner as provided in Section 206 of the Act. Once issued, each such written statement shall be binding upon all other Owners, the Manager, and the Board in favor of any person who relies in good faith on the written statement.

#### **11.11. Due Dates and Collection**

##### **11.11.1. Assessments and Fees**

The monthly installments of the Regular Assessment (i.e., dues) shall be due and payable in full by the first (1<sup>st</sup>) day of each month for that month.

All other assessments, fees, and other amounts due shall be due and payable in full within thirty (30) days of the dates levied, imposed, or otherwise charged.

For purposes of the Act, all fees and other amounts due, including fines, accrued interest, administrative fees, and attorney fees and costs, shall be considered an Individual Assessment or other "assessment" as that term is used in the Act.

### **11.11.2. Delinquency**

Any assessment, fee, or other amounts due that are not paid in full by their due dates shall be considered delinquent.

### **11.11.3. Partial Payment**

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

### **11.11.4. Collection**

The Association may engage one or more agents to perform collection and other related tasks, and may disclose to its agents any personal information of Owners, Residents, and other parties reasonably necessary to perform such collection and other related tasks, even if such information is otherwise protected or considered private.

Amounts owed by any party under this Declaration or any other of the Governing Documents, including any assessments, fees, and interest accrued, that are delinquent for more than sixty (60) days may be submitted for collection. The owing party(s) shall pay all delinquent amounts owed together with any and all related costs, fees, and interest allowed by law and provided for in the Governing Documents. Should collection be performed by a third-party agent, the owing party(s) hereby covenants and agrees to pay all related collection costs and fees, including a fee in the amount of the maximum percentage allowed by law of the total delinquent amounts as well as all legal and other fees and costs related to their collection, with or without suit, including administrative fees, attorney fees, court costs, filing fees, and all other costs and fees related to the delinquent amounts and their collection. This provision shall remain in force against all parties owing any amount to the Association both during and after membership or residency therein.

### **11.11.5. Joint and Several Liability**

All Owners of a Dwelling shall be jointly and severally liable for all amounts owed to the Association in relation to the Dwelling or any of its Owners. Should a non-Owner Resident of a Dwelling owe any amounts to the Association, the Resident and all Owners of the Dwelling shall be jointly and severally liable for all such amounts.

### **11.11.6. Lien**

The Association has a lien on each Dwelling as provided in Section 301 of the Act for all assessments and for all fees, charges, and costs associated with collecting an unpaid assessment, including court costs and reasonable attorney fees, late fees, interest, and any other amount the Association is entitled to recover as provided for herein or as provided for in an administrative or judicial decision.

**WITH RESPECT TO ANY LIEN IN EXISTENCE NOW OR IN THE FUTURE, EACH OWNER OF A DWELLING HEREBY WAIVES THE BENEFITS OF ANY HOMESTEAD LAWS OR EXEMPTION LAWS, INCLUDING THOSE OF THE STATE OF UTAH, NOW IN EFFECT OR AS THEY MAY COME INTO EFFECT FROM TIME-TO-TIME HEREAFTER.**

The Association may, but need not, record a notice of lien against a Dwelling.



### **11.11.7. Foreclosure**

The Association shall have all rights and powers of foreclosure granted by the Act and other applicable law, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Dwelling constitutes a simultaneous conveyance of the Dwelling in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee from time to time by executing and recording a substitution of trustee form.

In addition to any other action taken, the Association may commence foreclosure proceedings, judicial or non-judicial, at any time after an amount owed to it has been delinquent for at least one hundred and twenty (120) days.

By taking a security interest in a Dwelling governed by this Declaration, lenders cannot make any claim against the Association for nonpayment of taxes, assessments, or other costs and fees associated with the Dwelling if the Association takes title to the Dwelling in relation to any failure to pay assessments.

### **11.11.8. Payment by Tenant**

Pursuant to Section 211 of the Act, the Association shall have a right to demand and collect rent from any tenant under a lease or similar agreement with an Owner of a Dwelling for any delinquent Assessment owed by the Owner to the Association that is more than sixty (60) days past due. Each tenant, by moving into the Project, agrees to be personally liable and responsible to the Association for all rent payments after the Association gives proper notice that rent payments shall be paid to the Association.

The Association may charge the delinquent Owner an administrative fee in an amount not to exceed \$25 (twenty-five US Dollars) for processing each tenant rent payment under this provision.

### **11.11.9. Other Remedies**

All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against an Owner or other obligee personally. Any trustee's fees, attorney fees, court costs, administrative costs, expenses of sale, interest, and other costs incurred in these efforts shall also be assessed against the Owner(s), their Dwellings(s), and/or other obligees jointly and severally.

## **12. BUDGETS, DUES, AND FUNDS**

### **12.1. Budget Adoption**

The Board shall prepare and adopt a Master Budget that includes a District Budget for each of the Assessment Districts no later than thirty (30) days prior to the beginning of each fiscal year.

The Master Budget shall be provided to the Owners immediately after its adoption by the Board.

## **12.2. Master Budget Composition**

The Master Budget shall, for a given fiscal year, include the sum of the estimated annual income listed in all District Budgets plus the sum of the estimated annual income of the Association itself, and shall also include the sum of the estimated annual expenses listed in all District Budgets plus the sum of the estimated annual expenses of the Association itself.

The Master Budget shall include line items for at least the following components:

### **12.2.1. Dues Income**

This budget line item represents the Association's total estimated annual dues income from payments of Regular Assessment installments by each of the Assessment Districts.

### **12.2.2. Reinvestment Fee Income**

This budget line item represents the Association's total estimated annual reinvestment fee income from reinvestment fees collected from each of the Assessment Districts.

### **12.2.3. Miscellaneous Income**

This budget line item represents the Association's total estimated annual miscellaneous income for interest, fines, fees, and other reasonably expected income collected by the Association as a whole and collected from or otherwise related to each of the Assessment Districts.

### **12.2.4. Insurance Expenses**

This budget line item represents the Association's total estimated annual insurance expenses for insurance premiums of the Association as a whole and each of the Assessment Districts.

### **12.2.5. Common Expenses**

This budget line item represents the Association's total estimated annual expenses for the Common Expenses of the Association as a whole and each of the Assessment Districts.

### **12.2.6. Reserve Component**

This budget line item represents the total annual reserve component that the Association is obligated to deposit in the Reserve Fund, including the amount for each Assessment District.

### **12.2.7. Additional Line Items**

The Association may include additional line items in its Master Budget as needed.

## **12.3. District Budget Composition**

A District Budget shall, for a given fiscal year, include the sum of the estimated annual income and the sum of the estimated annual expenses of the Assessment District.

Each District Budget shall include line items for at least the following components:

### **12.3.1. Dues Income**

This budget line item represents the Assessment District's total estimated annual dues income from payments of Regular Assessment installments.

**12.3.2. Reinvestment Fee Income**

This budget line item represents the Assessment District’s total estimated annual reinvestment fee income from reinvestment fees.

**12.3.3. Miscellaneous Income**

This budget line item represents the Assessment District’s total estimated annual income for interest, fines, fees, and other reasonably expected income.

**12.3.4. Insurance Expenses**

This budget line item represents the Assessment District’s total estimated annual expenses for insurance premiums.

**12.3.5. Common Expenses**

This budget line item represents the total estimated annual expenses for the Common Expenses related solely to the Assessment District.

**12.3.6. Reserve Component**

This budget line item represents the total annual amount that the Assessment District is obligated to contribute to the amount deposited in the Reserve Fund.

**12.3.7. Additional Line Items**

The Assessment District may include additional line items in its District Budget as needed.

**12.4. Budget Committees**

The Board, or a majority of the membership in a particular Assessment District, may establish a budget committee for an Assessment District of three (3) Members in the Assessment District to timely prepare and present a recommended District Budget to the Board. Notwithstanding, the Master Budget and all District Budgets shall each reflect a full and accurate estimation of income, expenses, and a reserve component.

**12.5. Dues Calculation**

For each of the Dwellings in a particular Assessment District, the monthly dues shall be calculated as follows: (1) divide the total estimated annual expenses listed in the District Budget of the Assessment District by the number of Dwellings in the Assessment District; (2) divide the total estimated annual expenses of the Association itself in the Master Budget by the number of Dwellings in the Association; and (3) the sum of the results of steps (1) and (2) is the amount of the monthly dues for each Dwelling in the Assessment District.

**12.6. Capital Fund**

The Board may create one or more bank accounts in which to deposit Capital Funds. Each Capital Fund, whether deposited in its own account or held with other Capital Funds, shall be accounted in its entirety to the Capital Improvement for which it was approved.

**12.7. Insurance Fund**

The Board shall establish an Insurance Fund, whether deposited in its own account or held with other Association funds, in an amount equal to the amount of the Association’s property insurance

policy deductible or, if the deductible exceeds \$10,000, an amount not less than \$10,000. The Insurance Fund shall be used only for property insurance deductible purposes; any amounts expended shall be replenished within sixty (60) days from the operating funds of the Association, by Special Assessment, and/or from the Reserve Fund.

### **12.8. Reserve Fund**

The Board shall establish a Reserve Fund that shall be deposited in an account(s) separate from all other Association funds as required by Section 211(9)(b) of the Act.

The Reserve Fund is reserved for, and shall only be used for, the costs of repairing, replacing, and restoring common areas and facilities that have a useful life of three (3) years or more and a remaining useful life of less than 30 years, as required by Section 211 of the Act, but not for operating expenses, ordinary maintenance expenses, or Capital Improvements.

In addition to a Reserve Fund for the common areas and facilities appurtenant to the entire Association, a separate Reserve Fund shall be established for each Assessment District that is reserved for, and shall only be used for, the costs of repairing, replacing, and restoring common areas and facilities appurtenant to the Assessment District.

## **13. RESERVE STUDIES**

The Board shall have a Reserve Study conducted no less frequently than every six (6) years and updated no less frequently than every three (3) years. Each such study shall be conducted or updated by a competent third-party provider experienced in conducting such studies.

## **14. INSURANCE**

### **14.1. Insurance Requirement**

**NOTICE: THE ASSOCIATION'S INSURANCE DOES NOT COVER SINGLE-FAMILY UNITS OR THE PERSONAL PROPERTY OR PERSONAL LIABILITY OF THE OWNERS, RESIDENTS, OR THEIR GUESTS AND INVITEES.**

The Association shall obtain insurance as required in this Declaration and the Act, and may obtain insurance that provides more or additional coverage than the insurance required.

For purposes of the Act, the term Attached Unit as defined herein also means "attached dwelling" as that term is used in the Act, and the term Detached Unit as defined herein also means "detached dwelling" as that term is used in the Act.

### **14.2. Property Insurance**

The Association shall obtain and maintain in force a blanket policy of property insurance covering all Common Area, Limited Common Area, and Attached Units. Such property insurance shall insure against loss or damage by fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, theft, and all perils normally covered by "special form" property coverage.

The coverage limits under such property insurance shall not be less than one hundred percent (100%) of actual replacement cost, as determined using methods generally accepted in the insurance industry, of all property covered by such policy (including the Attached Units) at the time the insurance is purchased and at each renewal date. The deductible for any Attached Units under such

property insurance shall not be less than \$10,000 (ten thousand US Dollars) and, to the extent available, the deductible for the Common Area and Limited Common Area under such property insurance shall not be more than \$1,000 (one thousand US Dollars).

Each property insurance policy shall include either a Guaranteed Replacement Cost Endorsement, under which the insurer agrees to replace the insurable property regardless of the cost, or a Replacement Cost Endorsement, under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which waives or eliminates the requirement for coinsurance.

Each property insurance policy shall include (if available): (1) an Inflation Guard Endorsement; (2) a Building Ordinance or Law Endorsement that provides for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction; and (3) if the property has central heating, cooling, or other equipment or fixtures, an Equipment Breakdown Endorsement that provides minimum insurer liability per accident of the lesser of (\$1,000,000 (one million US Dollars) or the insurable value of the building containing such equipment.

#### **14.2.1. Owner Responsibility for Deductible**

If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, the Association's policy provides primary insurance coverage.

If a loss occurs that is covered by a property insurance policy in the name of the Association, the Owner is responsible for the Association's deductible and the Owner's policy, if any, applies to that portion of the loss attributable to the Association's deductible.

An Owner that has suffered damage to any combination of its Dwelling or Limited Common Area appurtenant to the Dwelling ("Dwelling Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy (a "Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Dwelling Damage for that Dwelling to the amount of the deductible under the Association's property insurance policy. If the Owner does not pay the amount for which it is responsible within thirty (30) days after substantial completion of repairs to the Dwelling and/or the Limited Common Area appurtenant to the Dwelling, the Association may levy an assessment against the Owner for that amount.

#### **14.2.2. Claims under Deductible Amount**

If, in the exercise of the business judgment rule, the Board determines that a claim is likely not to exceed the Association's deductible: (1) the Owner's insurance policy is considered the policy for primary coverage up to the amount of the Association's deductible; (2) an Owner that does not have an insurance policy to cover the Association's deductible is responsible for the loss up to the amount of the Association's deductible; and (3) the Association need not tender the claim to the Association's insurer.

#### **14.2.3. Deductible Notice**

The Association shall provide notice to the Members of an Owner's obligation for the Association's deductible and of any change in the amount of the deductible. If the Association fails to provide

notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. Failure to provide notice shall not invalidate or affect any other provision in this Declaration.

#### **14.2.4. Costs of Attached Unit Insurance**

The costs of the insurance premiums for Attached Units and any appurtenant Limited Common Area shall be allocated to the applicable Assessment District(s).

#### **14.3. Earthquake Insurance**

The Association may obtain earthquake insurance as the Board deems appropriate.

#### **14.4. Flood Insurance**

The Association may obtain flood insurance as the Board deems appropriate.

#### **14.5. Liability Insurance**

The Association shall obtain and maintain in force comprehensive general liability (“CGL”) insurance insuring the Association and its agents and employees, and the Owners against liability arising from their ownership interest in the Common Area, the maintenance, repair, or replacement of the Common Area, and their membership in the Association.

The coverage limits under such liability insurance shall not be less than \$1,000,000 (one million US Dollars) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such liability insurance shall include a Severability of Interest Endorsement or equivalent provision that precludes the insurer from denying a claim because of the negligent acts of the Association or an Owner.

#### **14.6. Directors and Officers Insurance**

The Association shall obtain and maintain in force Directors and Officers liability insurance protecting the Association and its Board members, officers, committee members, volunteers, employees, and any managers and their employees 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). Such insurance shall include coverage for: (1) monetary and non-monetary claims; (2) claims made under any fair housing act or similar laws; (3) any form of discrimination or civil rights claims; and (4) defamation.

#### **14.7. Fidelity Insurance**

The Association shall obtain and maintain in force insurance covering the theft or embezzlement of funds that shall provide coverage for: (1) an amount of not less than the sum of three months regular assessment in addition to the prior calendar year’s highest monthly balance on all operating and reserve funds; and (2) theft or embezzlement of funds by the Association’s Board members, officers, committee members, volunteers, employees, and any managers and their employees.

#### **14.8. Workers’ Compensation Insurance**

The Association shall obtain and maintain in force workers’ compensation insurance for all employees, if any, of the Association to the extent that such insurance is required by law.

#### **14.9. Right to Negotiate**

Each Owner hereby appoints the Association as its attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, execution of all documents including releases of liability, and performance of all other acts necessary to administer Association insurance and any related claim. This power-of-attorney shall be irrevocable and binding on any heirs, personal representatives, successors, or assigns of an Owner.

#### **14.10. Dwelling Insurance**

**THE OWNER(S) OF EACH DWELLING SHALL OBTAIN AND MAINTAIN IN FORCE AT LEAST PROPERTY AND LIABILITY INSURANCE THAT COVERS THE DWELLING IN AN AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT, BUT IN NO EVENT IN AN AMOUNT LESS THAN THE DEDUCTIBLE OF THE ASSOCIATION'S PROPERTY INSURANCE POLICY.**

**THE ASSOCIATION SHALL NOT BE LIABLE FOR AND IS NOT REQUIRED TO FILE CLAIMS AGAINST ANY OF ITS INSURANCE POLICIES FOR ANY DAMAGE OR LIABILITY THAT SHOULD OR WOULD HAVE BEEN COVERED UNDER AN OWNER'S INSURANCE POLICY.**

### **15. DECLARANT RIGHTS**

The Declarant may delegate or assign any or all of its rights.

#### **15.1. Declarant Control Period**

Except as otherwise provided in the Declaration, the Control Period shall continue until the first of the following events occurs: (1) one (1) year after the date of conveyance of the last Dwelling to a new Owner; or (2) the day the Declarant, after giving written notice to the Members, records an instrument voluntarily surrendering all rights to control the activities of the Association in accordance with Section 502 of the Act as it may be amended from time to time.

Anything contrary notwithstanding in this Declaration, the Articles of Incorporation, or the Bylaws, during the Control Period the following provisions shall control:

##### **15.1.1. No Meetings of Members**

No annual, special, or other meetings of Members shall be held; notwithstanding the Declarant may hold such meetings at its sole discretion and the Declarant may take any action without a meeting of Members at its sole discretion; and

##### **15.1.2. No Action by Written Ballot**

No action by written ballot may be taken by the Members; notwithstanding the Declarant may facilitate such action at its sole discretion; and

##### **15.1.3. Declarant Control of the Board**

The various requirements in the Bylaws for the Board shall not apply; Board members, if any, and their number, terms, eligibility, powers, and duties may be appointed, determined, modified, and removed by the Declarant at its sole discretion, and the Declarant may exclusively exercise all powers and duties of the Board; and

#### **15.1.4. No Board Meetings**

Board meetings, if any, may only be called by the Declarant at its sole discretion, and the Declarant may take any action without a Board meeting at its sole discretion; and

#### **15.1.5. No Notice**

The Declarant waives all notice requirements to the extent allowed by law; and

#### **15.1.6. No Officers**

The various requirements in the Bylaws for Officers shall not apply; Officers, if any, and their offices, terms, powers, and duties may be appointed, determined, modified, and removed by the Declarant at its sole discretion, and the Declarant may exclusively exercise all powers and duties of the Officers; and

#### **15.1.7. Rules Determined by Declarant**

The Declarant reserves the right to, and hereby does, exempt the Declarant from Rules and the rulemaking procedures in the Governing Documents, and only the Declarant may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce Rules at its sole discretion; and

#### **15.1.8. Architectural Control**

The Declarant shall not be subject to or limited by any of the architectural control provisions provided in any of the Governing Documents.

#### **15.1.9. Use Limitations & Restrictions**

The Declarant shall not be subject to or limited by any of the use limitations or restrictions provided in any of the Governing Documents.

#### **15.1.10. Amendment by Declarant**

Only the Declarant may amend, restate, or record this Declaration at its sole discretion.

### **16. FLOOD CONTROL COVENANT**

Residential units constructed on Lots 1-10 must be elevated by earthen fill as needed so that the lowest adjacent grade (the lowest ground touching the structure) is at or above the base flood elevation ("BFE"), or as otherwise required by the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program ("NFIP"), or at least one (1) foot above BFE, whichever is greater, to ensure that the Lots and Dwellings constructed thereon are no longer designated as being within a Special Flood Hazard Area ("SFHA") and to meet Morgan City floodplain requirements; and

Before obtaining a certificate of occupancy from Morgan City for a unit constructed on Lots 1-10, the Lot owner must obtain either a Letter of Map Amendment ("LOMA") or a Letter of Map Revision Based on Fill ("LOMR-F") from FEMA confirming that the Lot and Dwelling constructed thereon has been removed from the SFHA designation. Dwellings constructed on Lots 1-10 shall not be sold for occupancy until a certified copy of the LOMA or LOMR-F has been provided to the Declarant and Morgan City. Further, Dwellings constructed on Lots 1-10 shall not be sold for occupancy until Morgan City has certified that they meet its floodplain requirements and has provided the Declarant with such certification.



The intent of this covenant is to ensure that Lots 1-10 and the Dwellings constructed thereon have, before occupancy, been removed from the SFHA designation and that Morgan City has certified that they meet its floodplain requirements. This is because Morgan City will not permit further construction on the adjacent land until the foregoing requirements have been met.

Liquidated damages for failing to comply with this covenant shall be awarded to the Declarant in an amount equal to its reasonably estimated losses, including costs and attorney fees, resulting from the inability to develop the adjacent land. The Declarant shall also have a lien against Lots 1-10, and any Dwellings and Improvements thereon, until compliance is achieved. This lien shall be enforceable in the same manner as other liens for assessments, as provided in this Declaration and applicable law.

## **17. INDEMNIFICATION**

### **17.1. Indemnification Generally**

Any obligation in this Declaration, the Articles of Incorporation, or the Bylaws for any party to indemnify, defend, or hold harmless the Association shall include an obligation for that party to similarly indemnify, defend, or hold harmless the Association's Board, officers, Members, committee members, volunteers, employees, agents, trustees, Residents, and Manager(s), and the directors, officers, members, and employees of such Manager(s).

## **18. GENERAL**

### **18.1. Principle Place of Business**

The principal place of business of the Association shall be at the address indicated in the Utah Department of Commerce Homeowner Associations Registry.

### **18.2. Notices**

All notices under this Declaration shall be provided as set for in the Bylaws.

### **18.3. Applicability**

This Declaration shall apply to and be binding upon all present and future Owners and Residents, as well as all Persons that enter upon the Project or in any way make use of the Common Area.

### **18.4. Constructive Notice**

By virtual of this Declaration being duly recorded against the Dwellings in the Project, each Owner and Resident, as well as each Person that enters upon the Project or in any way makes use of the Common Area, is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of the provisions this Declaration against each such Owner, Resident, and Person, and against each Dwelling in the Project.

### **18.5. Fiscal Year**

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of the Association's incorporation.

### **18.6. Compensation**

No Board member, elected Officer, committee member, or other volunteer shall receive compensation for their services. However, Board members, Officers, and other volunteers may be reimbursed for actual expenses incurred in the performance of their duties.

A compensated manager, contractor, employee, and other compensated Person may, incidental to their compensated services, serve as an appointed Officer but shall not receive additional compensation therefor.

### **18.7. Conflicts**

In the event of any conflict in applicable law and the Governing Documents: (1) the provisions of applicable law; (2) this Declaration; (3) the Articles of Incorporation; (4) the Bylaws; (5) the Resolutions of the membership of the Association; (6) the Resolutions of the Board; and (7) the Rules shall prevail in that order.

### **18.8. Amendment**

This Declaration may be amended by the approval of at least sixty-seven percent (67%) of the Members in Good Standing. Such approval to amend this Declaration shall be obtained by action by written ballot in accordance with the Bylaws.

A director may execute, certify, and record any duly approved amendment or restatement of this Declaration. Any such amendment or restatement shall be prepared at the request of the Board by an attorney licensed in the State of Utah. Such an amendment shall not be effective until duly recorded in the recorder's office of the County.

### **18.9. No Estoppel and Reliance**

No one may rely upon any authorization from the Board or anyone else that is contrary to the provisions of the Governing Documents, regardless of the circumstances. No claim of estoppel, waiver, or similar equitable claim or defense may be raised by anyone related to any alleged reliance.

### **18.10. No Representations or Warranties**

**EACH OWNER AND RESIDENT, AND THEIR GUESTS AND INVITEES, UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE TO A DWELLING IN, RESIDING IN, OR ENTERING UPON THE PROJECT THAT THE ASSOCIATION, ITS BOARD, AND MANAGER(S) HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.**

### **18.11. Waiver**

Failure of the Association at any time to enforce any aspect of the Governing Documents shall not be construed as a waiver of the Association's right to enforce such aspects, or as an abandonment of such aspects.

### **18.12. Governing Law**

This Declaration and all other of the Governing Documents shall be governed by and construed in accordance with the laws of the State of Utah without regard to principles of conflicts of laws.

**18.13. Jurisdiction**

Any action, suit, or other proceeding arising out of this Declaration or the other Governing Documents shall be brought in the courts of the State of Utah or a federal court located therein. To the extent allowed by law, all present and former Owners and Residents, and all Persons who at any time have entered upon the Project or in any way made us of any Common Area, irrevocably consent and submit to the exclusive jurisdiction of such courts for the purpose of any such action, suit, or proceeding.

**18.14. Attorney Fees Generally**

In the event the Association takes or defends against any action, with or without suit, arbitration, mediation, or the like, related in any way to the Governing Documents, and the Association prevails, the Association shall be entitled to recover its costs, including reasonable attorney fees, court costs, and other expenses incurred. These costs and fees shall become a lien on all applicable Owners' Lots, enforceable as other assessment liens.

**18.15. Severability**

Should any term, condition, provision, or portion of the foregoing, or any other aspect of this Declaration or the other Governing Documents be held invalid or unenforceable for any reason (an "Invalid Term"), such an Invalid Term shall be removed or restructured and then interpreted as determined by a court of competent jurisdiction so as to accomplish the intent of the Governing Documents, and the balance of the Governing Documents shall remain in full force and effect.

**18.16. Gender and Number**

All references herein to any party shall be read with such changes in gender and number as the context or reference requires.

**18.17. Headings**

The headings herein are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Declaration on the date written below.

**DECLARANT**

\_\_\_\_\_  
Ryan C. Nye, Authorized Member or Manager  
2B Property Development, L.L.C.

State of Utah        )  
                          ) ss.  
County of            )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, the above-named individual, proven by satisfactory evidence, personally appeared before me and, while under oath or affirmation, stated that he is an authorized member or manager of the Declarant, did sign this instrument of his own free will, and that the Declarant shall be bound by the same.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC SIGNATURE

## EXHIBIT A – Plat and Legal Description

The Plat is hereby incorporated by reference into this **Exhibit A** in its entirety for all of its content including the legal description(s) of the parcels(s) of the Land, which Land may currently or in the future include at least the following parcels, or any portions thereof, and which Land may be added to by the Declarant during the Control Period:

Parcel no. 00-0004-9278 (serial no. 05-229-016):

PT OF THE NW1/4 OF SEC 36, T4N, R2E, SLB&M. CITY OF MORGAN, STATE OF UTAH. DESC AS FOLS: COM AT MORGAN CITY MON "B", TH N 56°11'17" W 45.0 FT; TH S 33°48'43" W 341.49 FT (B.B.) ALG THE NW'LY LN OF 125 NORTH STREET; TH W 771.92 FT TO THE POB & RUN TH N 62°09'13" W 334.62 FT; TH N 40°18'35" E 23.39 FT; TH N 67°23'58" W 113.27 FT; TH S 26°43'53" W 67.66 FT; TH N 68°04'44" W 47.35 FT; TH S 40°20'00" W 286.55 FT; TH S 61°56'29" E 550.35 FT; TH N 27°48'20" E 341.86 FT TO THE POB. CONT 4.004 / 4.00 AC, M. OR L.

Also, parcel no. 00-0056-1256 (serial no. 05-NG1-0002):

ALL OF LOT 2, NORTH GATE PHASE 1, A COMMERCIAL SUBDIVISION, MORGAN CITY, MORGAN COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE & OF RECORD IN THE OFFICE OF THE MORGAN COUNTY RECORDER. CONT 0.12 AC, M. OR L.

# Mountain Horizon Subdivision - Phase 1

A part of the Northwest 1/4 of Section 36, T4N. R2E, SLB&M

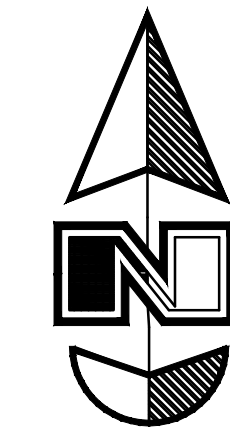
300 Morgan City, Morgan County, Utah

July 2024

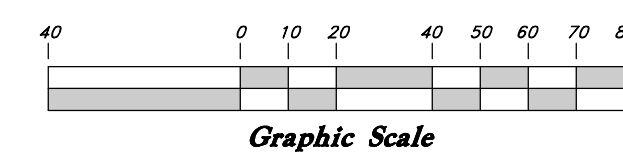
Lot	Address
1-R	194 N 300 E Unit 5
2-R	194 N 300 E Unit 4
3-R	194 N 300 E Unit 3
4-R	194 N 300 E Unit 2
5-R	194 N 300 E Unit 1
6-R	188 N 300 E Unit 5
7-R	188 N 300 E Unit 4
8-R	188 N 300 E Unit 3
9-R	188 N 300 E Unit 2
10-R	188 N 300 E Unit 1
11-R	199 N 300 E
12-R	197 N 300 E
13-R	195 N 300 E
14-R	193 N 300 E
15-R	191 N 300 E
16-R	189 N 300 E
17-R	187 N 300 E
18-R	185 N 300 E
19-R	183 N 300 E

Zone 2 Drinking Water Source Protection Zone Limit Line (Approximate)

2675.60' (2674.72' Record)



Scale: 1" = 40'



### LEGEND

- ▲ Set Nail & Washer
- Set Rebar & GBE Cap w/ Lath
- Set Hub & Tack
- ⊕ Monument to be set
- ⊖ Existing Fence Line
- ⊙ Found Rebar & Cap Radial Line
- (N/R) Non-Radial Line
- Meas. Measured Distances
- Flood Zone AE Flood Zone AE
- P.U.E. Public Utility Easement
- Centerline Centerline
- Radius Radius
- Property Boundary Property Boundary
- Drinking Water Source Protection Zone Limit Line Drinking Water Source Protection Zone Limit Line
- Easement Easement
- Road Centerline Road Centerline
- Existing Property Boundary Existing Property Boundary
- Hammerhead Temporary Turn Around Hammerhead Temporary Turn Around
- Property Tie Property Tie

**SURVEYOR'S CERTIFICATE**

I, Mark E. Babbitt, do hereby certify that I am a Professional Land Surveyor in the State of Utah, and that I hold Certificate No. 166484 in accordance with Title 58 Chapter 22, Professional Engineers and Land Surveyors Licensing Act. I also do hereby certify that Mountain Horizon Subdivision Phase 1 in Morgan City, Morgan County, Utah has been correctly drawn to the designated scale and is a true and correct representation of the following description of lands included in said subdivision, based on data compiled from records in the Morgan City, Morgan County Recorder's Office, and of a survey made on the ground in accordance with Section 17-23-17. Monumented Lot corners have been set as shown on this drawing.

I also certify that all the lots within Mountain Horizon Subdivision Phase 1 meet the frontage and area requirements of the Morgan City Zoning Ordinance. Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

166484 License No. Mark E. Babbitt

### DESCRIPTION

A part of the Northwest Quarter of Section 36, Township 4 North, Range 2 East, Salt Lake Base and Meridian, U.S. Survey.

Beginning at the Southeast Corner of Lot 3, North Gate Park Phase 1, a Commercial Subdivision, Morgan County, Utah; said point being 1117.67 feet South 89°58'17" East and 578.37 feet South 0°01'43" West to the Southeastly right-of-way line of State Road UT 66, and 188.00 feet South 67°22'15" East along the Southwesterly line and line extended of said Lot 3 from the Northwest Corner of said Section 36; and running thence South 28°45'36" West 67.66 feet; thence North 68°03'01" West 47.35 feet; thence South 40°21'43" West 286.55 feet; thence South 61°54'46" East 422.35 feet; thence North 27°50'03" East 100.00 feet; thence North 28°05'15" East 60.00 feet; thence North 61°54'45" West 72.15 feet; thence North 27°53'41" East 181.12 feet; thence North 62°07'30" West 134.93 feet; thence North 40°20'18" East 93.45 feet along the extension and East line of Lot 2 of said North Gate Park Phase 1 Subdivision; thence two (2) courses along the North and West Line of said Lot 2 the following two (2) courses North 55°41'40" West 82.28 feet and South 22°37'45" West 83.40 feet to the Southwest Corner of said Lot 2 and the South Line of said Subdivision; thence North 67°22'15" West 54.00 feet along said South line of Subdivision to the point of beginning.

Contains 2.824 Acres

### OWNER'S DEDICATION

We, the undersigned owners of the hereon described tract of land, hereby set apart and subdivide the same into lots, common area, and streets as shown on this plat, and name said tract and subdivision Mountain Horizon Subdivision Phase 1, and do hereby dedicate, grant, and convey to: (1) Morgan City, Utah, all those portions of said tract designated as streets to be used as public thoroughfares forever, and those certain strips designated as public utility easements to be used for the installation, maintenance, and operation of public utility lines and for drainage, as may be authorized by Morgan City; and (2) MOUNTAIN HORIZON HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, (the HOA) all those portions of said tract designated as common area for the perpetual use and enjoyment of the membership of the HOA as set forth in the Declaration of Covenants, Conditions, and Restrictions of the HOA along with such other common area, limited common area, and easements as may be set forth in said Declaration as it may be amended from time to time, which covenants shall run with the land and to which all lots in the subdivision shall be subject.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.  
~ 2B Property Development L.L.C. ~

Ryan Nye, Owner

### ACKNOWLEDGMENT

State of Utah } ss  
County of \_\_\_\_\_ }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_ Ryan Nye Owner, 2B Property Development, LLC.

Residing At: \_\_\_\_\_ A Notary Public commissioned in Utah  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_  
Print Name

### NARRATIVE

This Property Survey was requested by Ryan Nye, 2B Property Development, LLC, for the Purpose of establishing the boundary of the property and subdividing the property into roads and lots.

Basis of Bearings is S 77°08'34" E from a Brass Cap Monument found at the Northwest Corner of Section 36, T4N, R2E, SLB&M, and a Brass Cap Monument found in 125 East Street called out as Morgan County Monument "A".

Boundary has been rotated 0°01'43" clockwise to fit rebars and caps found during for North Gate, Park Phase 1 and Record of Survey for Dale Dawson prepared by William C Holyoak dated 15 August 1996, Survey File No. 000215 at Morgan County Recorders Office.

Record of Survey File No. \_\_\_\_\_

### LOTS 1-10 FLOOD PLAIN COVENANT

Residential units constructed on lots 1-10 must be elevated by earthen fill as needed so that the lowest adjacent grade (the lowest ground touching the structure) is at or above the base flood elevation (BFE), or as otherwise required by the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP), or at least one (1) foot above BFE, whichever is greater, to ensure the units are no longer designated as being within a Special Flood Hazard Area (SFHA) and meet Morgan City floodplain requirements; and

Before obtaining a certificate of occupancy from Morgan City for a unit constructed on lots 1-10, the lot and unit owner must obtain either a Letter of Map Amendment (LOMA) or a Letter of Map Revision Based on Fill (LOMR-F) from FEMA confirming that the unit has been removed from the SFHA designation. Units 1-10 shall not be sold for occupancy until a certified copy of the LOMA or LOMR-F has been provided to the Declarant and Morgan City.

### Property Line Curve Data

Curve #	Delta	Radius	Length	Chord Direction	Chord Length
C1	88°40'21"	100.00'	154.76'	S 17°34'34" E	139.77'
C2	88°40'22"	70.00'	108.33'	N 17°34'35" W	97.84'

- ### NOTES
- Morgan City restricts the occupancy of buildings within developments as outlined in the adopted building and fire codes. It is unlawful to occupy a building located within any development without first having obtained a certificate of occupancy issued by the city.
  - 10' Utility and Drainage Easements on all backs of lots and 7' wide Utility and Drainage Easements on front of lots as indicated by dashed lines, except as otherwise shown.
  - This area is subject to the Right to Farm Provisions and agricultural operations may begin early in the morning and may run late into the evening and these operations may contribute to noises and odors objectionable to some residents.
  - Lots noted with an "R" are in a drinking water source protection zone. Property owners acknowledge that there is a water source near the property that is used for drinking water and certain controls need to be implemented by the property owner to protect contamination of the public drinking water system. Owner agrees not to locate or allow the location of any uncontrolled potential contamination sources, as defined in R309-600(1)(v) of the Utah administrative code, unless design standards are implemented to prevent contaminated discharges. Sources of contamination include but are not limited to fertilizers, herbicides, pesticides, and common household hazardous waste.

### FLOOD PLAIN

- Mountain Horizon Homeowners Association address: 253 West 1550 South Morgan, UT 84050
- Parcel is subject to a blanket easement to use the existing water distribution system of canals and ditches and all appurtenant works and facilities of the North Morgan Irrigation Company. Entry No. 39692 Book M-13 page 99. Morgan Co. Recorders office. A 10 foot Irrigation Easement is shown on plat at location of Existing Irrigation Ditch.
- Morgan City requires structures in floodplain to be elevated a minimum of 1 ft above base flood elevation.
- Approval from FEMA may be required to construct structures in flood plain.
- Floodway and Flood Zone information shown hereon is based on scaling the FEMA map listed above and is a graphic representation only.
- FEMA elevation information shown hereon is based upon North American Vertical Datum of 1988.
- No basements are allowed.

**MORGAN CITY COUNCIL**  
This is to certify that this subdivision plat was presented to the Morgan City Council, at which time it was approved and accepted.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Mayor, City of Morgan  
Attest: Morgan City Clerk

**MORGAN CITY PLANNING COMMISSION**  
This is to certify that this subdivision plat was duly approved by the Morgan City Planning Commission.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Chairperson, Morgan City Planning Commission

**MORGAN CITY WATER ADVISORY BOARD**  
I hereby certify that this office has examined this plat and it is correct in accordance with information on file in this office on:

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Water Advisory Board

**MORGAN CITY ENGINEER**  
I hereby certify that this office has examined this plat and it is correct in accordance with information on file in this office on:

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

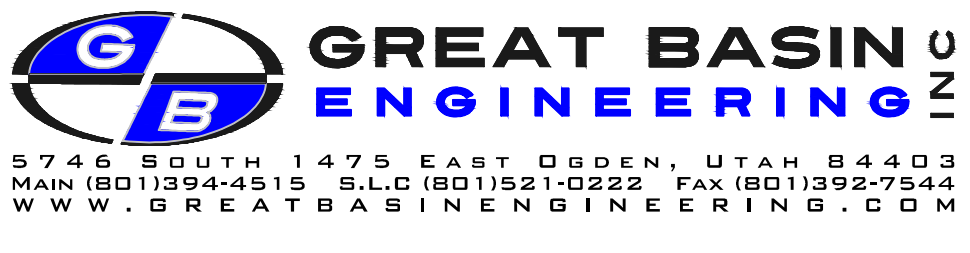
\_\_\_\_\_  
City Engineer

**MORGAN CITY ATTORNEY**  
I have examined this Subdivision Plat and in my opinion it conforms to the City Ordinance Applicable thereto and now in force and effect.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
City Attorney

MORGAN COUNTY RECORDER	
ENTRY NO. _____	FEE PAID _____
RECORDED _____	FILED FOR RECORD AND _____ AT _____
IN BOOK _____	OF OFFICIAL RECORDS, PAGE _____
RECORDED FOR _____	
MORGAN COUNTY RECORDER	
BY: _____	DEPUTY



## **EXHIBIT B – Bylaws**

A true and correct copy of the Bylaws of Mountain Horizon Homeowners Association is attached following this page.

**BYLAWS**

**MOUNTAIN HORIZON  
HOMEOWNERS ASSOCIATION**

**Morgan, Morgan County, Utah**



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**BYLAWS**

These Bylaws are made on the date executed below by the Declarant, and are effective on the date of recording in the recorder’s office of the County.

**1. RECITALS**

- A. WHEREAS, the Declarant has or will establish the Association as a Utah nonprofit corporation (the “Corporation”), and that as such the Association shall be subject to the Nonprofit Act; and
- B. WHEREAS, the Association is subject to the Act; and
- C. WHEREAS, the Act requires that an association record its bylaws in the office of the recorder in the County “in which any part of the real estate included within the association is located”;<sup>1</sup> and
- D. WHEREAS, the Act requires that an association’s bylaws meet certain requirements<sup>2</sup> which are met in these Bylaws;
- E. NOW THEREFORE, the Declarant makes and adopts these Bylaws which shall run with the land as enforceable equitable servitudes, and which include these Recitals.

**2. DEFINITIONS**

For the purposes of these Bylaws, the following terms shall have the following meanings.

- A. “**Act**” means the Utah Community Association Act, Utah Code 57-8a-101 *et. seq.*, as it may be amended from time to time.
- B. “**Action**” and “**action**” each means an official action taken, decision made, or thing done by the Association or Board. A “**proposed action**” means a formal proposal to take an action in accordance with these Bylaws and applicable law. An action may only be taken in a meeting of Members as an action by written ballot, in a Board meeting, or as an action without a Board meeting in accordance with these Bylaws and applicable law.
- C. “**Amenities**” means Common Area not generally considered essential for access to a Unit such as parks, play areas, clubhouses, pools, and other nonessential or recreational facilities.

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<sup>1</sup> UCA 57-8a-216(1)

<sup>2</sup> UCA 57-8a-216(2)

“Amenities” does not mean Common Areas such as Association streets, sidewalks, and other Common Area generally considered essential for access to a Unit or Limited Common Area appurtenant to a particular Unit.

D. “**Articles**” and “**Articles of Incorporation**” each means the Association’s articles of incorporation or other organizing documents as they may be amended or restated from time to time and as duly filed with the State.

E. “**Association**” means **MOUNTAIN HORIZON HOMEOWNERS ASSOCIATION, a Utah nonprofit Corporation**, or the name by which it may be reincorporated from time to time. Further, as the context may admit or require, Association also means the property, Directors, Officers, Managers, or other agents of the Association.

F. “**Attorney-in-Fact**” and “**attorney-in-fact**” each means an individual who is authorized to act as an agent of a Person or an estate as evidenced by a duly executed Power of Attorney, Designation of Agent, Letter Testamentary, Letter of Administration, or similar authorizing document. An attorney-in-fact may act on behalf of an Owner or, if the attorney-in-fact represents a deceased Owner’s estate may act with respect to the deceased Owner’s Unit as if the Owner, for purposes of all meetings, proxies, and voting described in the Governing Documents but not for purposes of eligibility requirements.

G. “**Board**” and “**Board of Directors**” each means the entity, regardless of name, with primary authority to manage the affairs of the Association.

H. “**Bylaws**” means these bylaws of the Association as they may be amended or restated from time to time and as duly recorded in the recorder’s office of the County.

I. “**Common Area**” means all property within the Project designated as common area in the Plat, the Declaration, or in these Bylaws that the Association owns or maintains for the common use and enjoyment of all Owners. Non-resident Owners may be limited in their use of the Common Area as provided by the Governing Documents or applicable law.

J. “**Control Period**” means the Declarant’s period of administrative control over the Association as defined in Section 102(20) of the Act and as further defined or described in the Governing Documents.

K. “**County**” means **Morgan County** in the State of Utah.

L. “**Declarant**” means **2B PROPERTY DEVELOPMENT, L.L.C., a Utah limited liability company**, and its successors or assigns. The Declarant may delegate or assign all or any part of its rights hereunder.

M. “**Declaration**” means the declaration of covenants, conditions, and restrictions of the Association as they may be amended or restated from time to time and as duly recorded in the recorder’s office of the County.

N. “**Director**” means an individual who is duly elected or appointed as a member of the Board of Directors in accordance with these Bylaws and applicable law.

O. “**Good Standing**” means: (1) free from all past-due assessments, fines, or other amounts owed to the Association; and (2) free from all unresolved Violations for which written notice has been issued by the Association. A Member is in Good Standing only if all of the Owner(s) and

Resident(s) of the Member's Unit are in Good Standing and if the Member's Unit itself is in Good Standing.

P. **"Governing Documents"** means the Declaration, Plat, and Bylaws; the Articles of Incorporation; Resolutions; and Rules.

Q. **"Limited Common Area"** means Common Area that, per a Governing Document, is designated for the use and enjoyment of fewer than all of the Units, Owners, or Residents.

R. **"Lot"** means any residential building lot designated on the Plat.

S. **"Manager"** means any Person engaged by the Board to manage all or part of the Association. The Actions of a Manager shall be considered acts of the Association and the Board.

T. **"Member"** means the Owner of a Unit or, if multiple Owners then all such Owners taken together, such that there is a single Member per Unit and such that notice given to any one such Owner shall be considered notice given to the Member and all such Owners

U. **"Minutes"** means an official record of the actions taken in (as opposed to a transcript of) a meeting of Members, a Board meeting, a meeting of a committee, action taken by written ballot, or action taken without a Board meeting. Minutes should include: (1) the name of the Association; (2) the type of meeting or, if an action without a meeting, a description of the proposed action; (3) the date, time, and place of the meeting or, if an action without a meeting, events related to the proposed action; (4) the names of the Directors, Officers, and Owners or their proxies or attorneys-in-fact present at the meeting or, if an action without a meeting, involved in the action; and (5) whether a quorum was present at the meeting or, if an action without a meeting, in the action. Once approved, Minutes shall be signed and dated by a Director or Office to verify their approval.

V. **"Nonprofit Act"** means the Utah Revised Nonprofit Corporation Act, Utah Code §§ 16-6a-101 *et. seq.*, as it may be amended from time to time.

W. **"Officer"** means an individual who is elected or appointed as an officer of the Association by the Board in accordance with these Bylaws.

X. **"Owner"** means a Person holding a Present Ownership Interest in a Unit. *See also* Attorney-in-Fact and Owner Representative.

Y. **"Owner Representative"** means a director, officer, member, manager, trustee, or other authorized representative of an Owner that is a legal entity. Anything contrary notwithstanding, an Owner Representative shall be considered an Owner for purposes of meetings, proxies, voting, and eligibility requirements described in the Governing Documents.

Z. **"Person"** means a natural person and a corporation, trust, partnership, company, or other legal entity.

AA. **"Plat"** means the one or more plat or subdivision map describing the real property within the jurisdiction of the Association as such may be amended or restated from time to time and as duly recorded in the recorder's office of the County.

BB. **"Present Ownership Interest"** means, with respect to a Unit, (1) a fee simple interest; (2) a joint tenancy, a tenancy in common, or tenancy by the entirety; (3) the interest of a tenant shareholder in a cooperative; (4) a life estate; and (5) an interest held by a beneficiary, but not by a trustee or grantor, of a trust in which the Unit is held. Notwithstanding the foregoing, a Present

Ownership Interest shall not include a security interest in the Unit such as held under a mortgage, deed of trust, or like instrument.

CC. **“Project”** means all phases of development of the Association as described in the Declaration or these Bylaws, or as shown on the Plat, including the Lots, Units, Common Area, Improvements, easements, and any Association-owned personal property intended for use in connection therewith.

DD. **“Resident”** means an individual who resides in a Unit. Except as prohibited by the Declaration or these Bylaws, such an individual may be: (1) an Owner; (2) an Owner Representative; (3) a tenant; (4) a dependent or family member of, or member of the same household as, any of the foregoing; or (5) any other individual who resides within the Project.

EE. **“Resolution”** means a formal written document of the Association in its capacity as a nonprofit corporation that is duly adopted by the Board or its membership. A Resolution is operable under the Nonprofit Act and is superior to and takes precedence over a Rule, but is void to the extent that it conflicts with applicable law, the Declaration, the Articles of Incorporation, or these Bylaws.

FF. **“Rule”** means an Association rule, regulation, policy, procedure, or the like, but not a Resolution unless and only to the extent expressly stated therein, that is duly adopted by the Board for the purpose of the operation, administration, control, or regulation of the Association.

GG. **“State”** means the State of Utah.

HH. **“Unit”** means a residential dwelling constructed on a Lot and, as applicable, the Lot itself.

II. **“Violation”** means an act or condition that is not in compliance with the provisions of the Governing Documents.

### **3. MEETINGS OF MEMBERS**

#### **3.1 Annual Meetings of Members**

As scheduled by the Board, one annual meeting of Members shall be held during the first quarter of each calendar year at a place and time designated by the Board. The primary purpose of the annual meeting shall be to elect one or more members of the Board.

If an annual meeting is not held during the first quarter of a particular year, the Board, or the first group of at least ten percent (10%) of the Members to provide the required notice of a meeting of Members, may schedule the annual meeting to be held as soon as possible thereafter.

The Secretary shall take and maintain Minutes of actions taken at all meetings of Members, regardless of meeting type. If the Secretary is not present, or is unable or unwilling to take the Minutes, those present at the meeting may appoint an Owner to take the Minutes. At the end of the meeting, those present at the meeting shall review, correct as needed, and approve the Minutes and direct the appointed Owner to sign and date the approved Minutes.

#### **3.2 Special Meetings of Members**

Special meetings of Members may be called at any time by the Board or upon written request signed by a majority of the Members and provided to the Board. Such a written request shall state the



specific purpose for the meeting requested. The Board shall designate the place, time, and purpose of a special meeting.

### **3.3 Electronic Meetings of Members**

To the extent arranged by the Board, some or all Members may participate in an annual or special meeting of Members by, or the meeting may be conducted entirely through the use of, any means of communication by which all individuals participating in the meeting may hear each other during the meeting. A Member participating in such a meeting shall be considered to be present in person at the meeting.

### **3.4 Notice of Meetings of Members**

The Association shall provide each Member entitled to vote at a meeting of Members written notice of the place, date, time, and purpose of the meeting no less than ten (10) days and no more than thirty (30) days before the meeting. Notice shall be mailed to Members via first-class or registered mail, or provided by electronic means such as email or the Association's website, or provided as otherwise allowed by law.

Written notice of a meeting of Members shall include a description of any matter(s) that must be approved by the Members or for which the Members' approval is sought.

When giving written notice of a special meeting of Members that was requested by a majority of the Members, the Association shall give notice of the specific purpose for the meeting and a description of any matter that a Member intends to raise for Member approval at the meeting.

### **3.5 Action by Written Ballot**

At the discretion of the Board, or upon written request signed by a majority of the Members and provided to the Board, any action that may be taken at a meeting of Members may alternatively be taken without a meeting of Members and without prior notice if the Association delivers a proper written ballot to every Member eligible to vote.

The Secretary shall take and maintain Minutes of actions taken by written ballot without a meeting of Members.

#### **3.5.1 Effect**

Any action taken by written ballot has the same effect as if the action was taken at a meeting of Members, and may be described as such in any document.

### **3.6 Quorum at Meetings of Members**

Except as otherwise provided in the Declaration or these Bylaws, the quorum required at a meeting of Members shall be those Owners present in person or by proxy at the meeting.

### **3.7 Eligibility of Members to Vote**

A Member must be eligible to vote for its vote to be counted. A Member is eligible to vote in a meeting of Members or in an action by written ballot only if that Member is in Good Standing for at least thirty (30) days prior to the date of the meeting of Members or the date the written ballot is postmarked, sent, or otherwise delivered. A Member is in Good Standing only if all of the Owner(s) and Resident(s) of the Member's Unit are in Good Standing and if the Member's Unit itself is in

Good Standing. A Member that is not eligible to vote is, for purposes of the Nonprofit Act, not entitled to vote.

### **3.8 Voting at Meetings of Members**

Any action taken at a meeting of the Members shall be taken by written ballot. Written ballots for such action may be delivered to the Members with written notice of the meeting or at the meeting.

Within no more than ten (10) days of a vote at any meeting of Members, the Association shall provide notice of the action taken by written ballot to the Members. Notwithstanding failure to provide such notice, the action(s) taken shall remain valid.

### **3.9 Proxy Appointments by Members**

Members may vote in person or by proxy in all meetings of Members.

#### **3.9.1 Content**

With respect to a Member's Unit, a proxy appointment form shall: (1) clearly appoint a named individual who is authorized to vote on behalf of the Member at a meeting of Members; (2) include a statement that the appointing individual signing the proxy appointment form is certifying under penalty of perjury that the provided information is complete, true, and correct and that, if the Owner is a legal entity, the appointing individual is a duly-authorized representative of the Owner for purposes of the proxy appointment (collectively the "Required Proxy Content").

In addition to the Required Proxy Content, each proxy appointment form shall include clearly-identified locations or fields for the appointing individual to provide the following information: (1) the physical address of the Unit for which the proxy is being appointed; (2) the printed name of the individual being appointed as proxy; (3) the date of the meeting for which the proxy is appointed or other period of time during which the proxy appointment is valid; (4) the day, month, and year the proxy appointment form was signed; (5) the appointing individual's signature; and (6) the appointing individual's full legal name (collectively the "Proxy Information").

**Exhibit A** is an example proxy appointment form that meets the requirements of these Bylaws.

#### **3.9.2 Receipt**

An original proxy appointment or a complete copy thereof, electronic or otherwise, must be received by the Association no later than the scheduled date and time of the meeting but no more than one week before such time.

#### **3.9.3 Validity**

Each proxy appointment form, or complete copy thereof, provided to the Association must be timely received by the Association. Any proxy appointment form not timely received by the Association shall not be considered valid and shall not be effective.

Each proxy appointment form returned to the Association shall include all the Required Proxy Content and all of the required Proxy Information. A proxy appointment form received by the Association shall not be considered valid and shall not be effective if it does not include all the Required Proxy Content and all of the required Proxy Information or if any of the foregoing is not provided in a reasonably legible form or in the identified locations or fields provided on the proxy appointment form for such information.

If multiple proxies are appointed for the same Unit, the most recently appointed proxy shall be the only valid appointment. If, in the sole discretion of the Board, the most recently appointed proxy is not clear then all shall be considered invalid. Votes by invalid proxy shall be considered invalid.

If an Owner dies or is found incompetent after making a proxy appointment, the Owner's proxy remains valid unless the Association is notified in writing of such prior to a vote by the proxy.

Duly executed documentation appointing an attorney-in-fact, if timely received by the Association, shall be accepted in lieu of a proxy appointment form.

### **3.9.4 Revocation**

A proxy appointment may be revoked by the appointing Member or its attorney-in-fact by attending a meeting and voting in person, or by delivering a subsequent proxy appointment form that is received by the Association no later than the scheduled date and time of the meeting.

### **3.10 Conduct at Meetings of Members**

All voting, including for Directors, at a meeting of Members shall take place using proper written ballots.

During a meeting of Members, the Board shall provide a reasonable opportunity for Owners to offer comments; the Board may limit such comments to one specific time period during the meeting.

Attendance at meetings of Members is limited to Owners, their proxies, or their attorneys-in-fact, and any Manager or its representative(s). Residents and others that are not Owners may not attend meetings of Members.

The Board may adopt further policies and procedures with regard to conduct at meetings of Members.

### **3.11 Written Ballots**

#### **3.11.1 Content**

Each written ballot shall: (1) briefly describe one and only one proposed action; (2) provide an opportunity to vote for or against, or as otherwise appropriate, for the proposed action; (3) specify the period of time during which the completed ballot must be received by the Association in order to be considered valid and counted; (4) indicate the number of valid returned ballots needed to meet quorum requirements; (5) state the percentage or other amount of approvals necessary to approve the proposed action; (6) include a statement that only one vote is allowed per Unit and that if more than one ballot is received by the Association from the Owner(s), proxy(s), or agent(s) for the same Unit then all of the ballots received for that Unit shall be considered invalid and shall not be counted; (7) include a statement that the voter signing the ballot is certifying under penalty of perjury that the provided information is complete, true, and correct and that, if the Owner is a legal entity, the voter is a duly authorized representative of the Owner for purposes of the action by written ballot; and (8) be accompanied by written information sufficient for Members to reach a reasonably informed decision on the proposed action (collectively the "Required Ballot Content").

In addition to the Required Ballot Content, and with respect to an Owner and its Unit for which a ballot may be cast, each written ballot shall also include clearly-identified locations or fields for the voter to provide the following information: (1) the physical address of the Unit; (2) the printed full

legal name of the Owner; (3) an indication as to whether the Owner is a legal entity; (4) the current physical address of the Owner; (5) the voter's printed full legal name, if different than that of the Owner; (6) the voter's current physical address, if different than that of the Owner; (7) the voter's current email address; (8) the voter's current telephone number; (9) the voter's signature; and (10) an indication as to whether the voter signing the ballot is: (a) the Owner, (b) the Owner's proxy or agent, or (c) the Owner's authorized representative if the Owner is a legal entity (collectively the "Voting Information").

Except as otherwise provided by the Declaration or these Bylaws, the period of time during which completed ballots must be received by the Association shall be at least thirty (30) days and no more than ninety (90) days, or such other period of time allowed by law.

Except as otherwise provided by the Declaration or these Bylaws, the number of valid ballots required to meet quorum requirements shall be the number of valid ballots timely received by the Association.

Except as otherwise provided by the Declaration or these Bylaws, the percentage or other number of approvals necessary to approve a proposed action shall be a majority of the valid ballots cast. Alternatively, if the ballot is for the election of one or more candidates, the candidate(s) receiving the most votes shall be deemed elected.

A completed written ballot that, after reasonable investigation by and in the judgement of the Board, is deemed to not be what it purports to be: (1) shall not be considered valid and shall not be counted; or (2) within a reasonable period of time after a vote by written ballot but not to exceed ten (10) days, may be declared invalid and the election results may be adjusted accordingly at the discretion of the Board. Such a declaration shall be in writing signed by a majority of the Directors, shall include the records of the investigation, and shall be kept with the Minutes of the action by written ballot.

Written ballots may be in electronic form, and signatures on written ballots may be scanned or may be digital or electronic signatures in any form considered valid and enforceable under Utah law.

**Exhibit B** is an example written ballot for voting on a single proposed action that meets the requirements of these Bylaws.

**Exhibit C** is an example written ballot for the election of a Director(s) that meets the requirements of these Bylaws. Such a ballot may need to be accompanied by additional written information sufficient for Members to reach a reasonably informed decision with respect to the candidates.

### **3.11.2 Delivery**

Written ballots and any related information shall be delivered to Owners in person, by mail, or by electronic means including email or a website, or delivered as otherwise provided by law.

### **3.11.3 Receipt**

Members shall have at least thirty (30) days from the day on which the written ballots and any related information are provided before their vote by written ballots must be received by the Association, except as otherwise provided by law. Members may return their vote by written ballots, or complete copies thereof, to the Association in person, by mail, by email, or by any other means allowed by law.

Notwithstanding the foregoing, votes by written ballots for a meeting of Members shall be submitted in person or electronically when called for by the individual presiding at the meeting of Members.

Once a vote by written ballot has been received by the Association, it cannot be revoked.

### **3.11.4 Validity**

Each vote by written ballot submitted to the Association must be timely received by the Association. Any vote by written ballot that is not timely received by the Association shall be considered invalid and shall not be counted.

Each vote by written ballot submitted to the Association shall include all the Required Ballot Content and all of the required Voting Information. Any vote by written ballot received by the Association shall be considered invalid and shall not be counted if it does not include all the Required Ballot Content and all of the required Voting Information, or if any of the Voting Information is not provided in a reasonably legible form or in the identified locations or fields provided on the written ballot for such information.

If more than one otherwise valid vote by written ballot is received by the Association from the Owner(s), their proxies, and/or agents of a Unit, then all of the votes by written ballot received for that Unit shall be considered invalid and shall not be counted.

#### **3.11.1 No Secret Ballots**

Written ballots, and votes thereby, are not secret ballots, and no secret ballot may be used for any meeting of the Members, for any Board meeting, or for any other Association purpose. All votes by written ballot, or true and complete copies thereof, shall be maintained with the Minutes to which they apply as part of the permanent records of the Association.

## **4. BOARD OF DIRECTORS**

### **4.1 Number of Directors**

The number of Directors is three (3); that is, the Board shall have positions for three (3) individuals.

### **4.2 Term of Directors**

Directors shall serve for a term of two (2) years; provided, however, that the initial Board, or an entirely new Board due to all prior Board positions becoming vacant, shall identify one of the three Directors to serve for a one-year term with the other two Directors serving two-year terms. Thereafter, all Directors elected shall serve for a two-year term. Notwithstanding the foregoing, Board members shall continue to serve until their respective successors are elected, or until their deaths, resignations, or removals.

### **4.3 Eligibility Requirements for Directors**

Each member of the Board shall at all times be an Owner. Notwithstanding the foregoing, if multiple Owners hold a Present Ownership Interest in the same Unit, only one of those Owners can serve as a member of the Board at any one time. An Owner need not be a Resident to be a member of the Board.

Notwithstanding the foregoing, if, after written notice of a meeting of Members for the purpose of electing a Director(s), no Owner volunteers to fill a vacancy on the Board within a reasonable time, such as at an annual meeting of Members, then the remaining Director(s) or, if none, the Manager shall select a non-Member Director to fill the vacancy. The selected non-Member may be any individual including a representative of the Manager.

#### **4.4 Powers and Duties of the Board**

Except as limited by the Declaration or Articles of Incorporation, the Board shall have all the powers and duties provided for by law, including but not limited to administering the Association's affairs, performing the Association's responsibilities, and exercising the Association's rights as set forth in applicable law and the Governing Documents.

The authority of each Director is equal to that of all other Directors, regardless of any office a Director may hold.

#### **4.5 Delegation of Powers and Duties of the Board**

To the extent allowed by law, the Board shall have power and authority to delegate from time to time its powers, authorities, duties, and discretions to one or more managers, officers, committees, volunteers, or other agents, subject to any limitations in the Declaration, the Articles of Incorporation, and these Bylaws.

Except as limited by applicable law, the Declaration, the Articles of Incorporation, or these Bylaws, the Board acts in all instances on behalf of the Association.

#### **4.6 Resignation of Directors**

A Director may resign at any time by delivering a written resignation to the Board. Unless otherwise specified in the written resignation, it shall take effect upon delivery.

Failure by a Director to attend at least two (2) Board meetings called over a year's period shall be effective as a resignation by the Director if confirmed by an affirmative vote of the Board, unless the Director notified the Board of his or her inability to attend in writing, electronic or otherwise, in advance of each unattended meeting. Failure by a Director to attend at least four (4) Board meetings called over a year's period shall be effective as a resignation by the Director if confirmed by an affirmative vote of the Board, regardless of the Director's notice to the Board. A Director's lack of Good Standing for a period of three (3) consecutive months shall be effective as the resignation of the Director, effective at the end of the last day of the third month. A Director's resignation under this paragraph shall also be effective as a resignation from any office(s) held by the Director.

At the time a resignation takes effect, voluntary or otherwise, a vacancy on the Board shall exist.

#### **4.7 Removal of Directors**

A Director may be removed from the Board at any time with or without cause. Removal of a Director from the Board shall require a vote by written ballot in which at least fifty-one percent (51%) of the Members vote to remove the Director. The vote to remove the Director shall take place only at a special meeting of Members with the written notice stating that the purpose of the meeting is to vote to remove the Director. A vote of the Board shall be insufficient to remove a Director from the Board.

## **5. NOMINATION AND ELECTION OF DIRECTORS**

### **5.1 Nomination of Directors**

Nominations for election to the Board may be made in advance of an annual meeting of Members by written solicitation for nominations. The solicitation shall be delivered to all eligible Members no less than ten (10) days and no more than thirty (30) days before written notice of an annual meeting of Members. The solicitation shall indicate: (1) the number of Director to be elected; (2) the term and eligibility requirements for Directors; (3) the date by which written nominations must be received by the Association, which date must be at least three (3) days before the written notice of the annual meeting of Members is sent; and (4) a statement that each nominee must provide a signed writing accepting such nomination and certifying that he or she meets the eligibility requirements for Directors.

Written ballots that include the names of the self-certified nominees as candidates shall be sent with the written notice of the annual meeting of Members.

Nominations for election to the Board may alternatively or additionally be made by any Owner from the floor at an annual meeting of Members. Owners may vote for a floor nominee by clearly writing the nominee's name on the written ballot instead of selecting another nominee whose name is printed on the ballot.

### **5.2 Election of Directors**

The election of Directors shall be by written ballot. The candidates receiving the greatest number of votes shall be elected. Cumulative voting shall not be permitted.

A Director may be elected to serve consecutive terms.

### **5.3 Vacancies on the Board**

In the event of the death, resignation, or removal of a Director, his or her successor shall be selected by the remaining Director(s) and shall serve for the remainder of the term of his or her predecessor. Notwithstanding the foregoing, if the Director was properly removed by the Members, that Director shall not be eligible for selection to serve the remainder of his or her term.

If all positions on the Board become vacant, the Manager shall, in accordance with these Bylaws, call a special meeting of the Members to elect a new Board of Directors. If the Association does not have a Manager, or if the Manager fails to call a special meeting of the Members within two weeks of the entire Board becoming vacant, the first group of ten percent (10%) or more of the Members to provide proper notice of a special meeting of the Members on the door of each Dwelling shall, in accordance with these Bylaws, elect a new Board of Directors at the noticed special meeting of the Members. To be proper in this situation, the notice of the special meeting of the Members shall also include the names, signatures, and Unit addresses of the ten percent (10%) or more of the Members.

## **6. MEETINGS OF THE BOARD**

### **6.1 Quarterly Board Meetings**

Meetings of the Board shall be held quarterly, or more frequently as determined by the Board, and shall be held at a place and time designated by the Board.

The Secretary shall take and maintain Minutes of actions taken at all Board meetings, regardless of meeting type.

A gathering of some or all of the members of the Board at which they do not conduct or vote on Association business shall not be considered a Board meeting.

## **6.2 Electronic Board Meetings**

As arranged by the Board, any or all Directors may participate in a Board meeting by, or the meeting may be conducted entirely through the use of, any means of communication by which all individuals participating in the meeting may communicate with each other during the meeting. Directors and Owners participating in such a meeting shall be considered to be present in person at the meeting.

## **6.3 Notice of Board Meetings to Directors**

Notice of Board meetings shall be provided to Directors by email or other electronic means at least 48 hours before a Board meeting, or by any other lawful means. This notice requirement shall be deemed waived for a Board meeting held to address an emergency for which 48 hours' notice is not reasonable.

Directors shall provide an email address to the Secretary for purposes of notice of Board meetings.

## **6.4 Notice of Board Meetings to Owners**

The Association shall provide notice of Board meetings to any Owner who has requested such notification in writing, including their email address. Notice shall be provided by email or any other lawful means, except in cases where notice is included in a previously provided Board meeting schedule or for emergency meetings where each Director receives notice less than 48 hours before the meeting. The Secretary shall maintain an annual list of Owners requesting notifications, and their email addresses. Owners must renew their request in writing, including their email address, to receive notifications for the following fiscal year.

Notice of Board meetings to Owners shall, for each Board meeting, state the place, date, and time of the Board meeting. If any Director may participate in a Board meeting via electronic means, the notice to Owners shall include the necessary information for attending Owners to participate electronically as well.

## **6.5 Action without a Board Meeting**

As further described in the following subsections, the Board may take any action without a Board meeting that may be taken at a Board meeting by obtaining written approval, electronic or otherwise, of a proposed action by a majority of the Directors. Any action so approved shall have the same effect as though taken at a Board meeting, and may be described as such in any document.

The Secretary shall keep and maintain Minutes of actions taken without a meeting.

### **6.5.1 Written Notice**

Written notice of an action to be taken without a Board meeting shall be sent by any Director to all members of the Board. Such notice shall state: (1) the action to be taken; (2) a reasonable time by which each Director must respond to the notice; (3) that failure to respond by the time stated in the notice will have the same effect as: (a) abstaining in writing by the time stated in the notice; and (b) failing to demand in writing by the time stated in the notice that the action not be taken without a



Board meeting. Such notice may be sent to Directors electronically or otherwise. Notwithstanding the foregoing, parts (2), (3)(a), and (3)(b) of the notice requirements in this paragraph shall be deemed waived if all Directors vote in response to the notice.

### **6.5.2 Voting**

In response to a written notice of an action to be taken without a Board meeting, each Director may, not later than the time stated in the notice, return his or her signed writing to the other Directors either: (1) for the action; (2) against the action; (3) abstaining from voting; or (4) demanding that the action not be taken without a Board meeting. Such a signed writing may be returned electronically or otherwise.

A Director's failure to respond to the written notice by the time stated therein shall have the same effect as the Director properly and timely demanding in writing that the action not be taken without a Board meeting.

In the event of a Director's timely demand that action not be taken without a Board meeting, the action cannot be taken without a Board meeting. Otherwise, the action is approved only if a majority of the Directors vote in approval of the action within the time stated in the notice.

Signatures on writings may be scanned or may be digital, or electronic signatures in any form consistent with Utah law. An email or other electronic transmission from a Director that clearly communicates his or her vote, abstention, or demand regarding an action shall be considered a signed writing.

### **6.5.3 Effect**

Any action taken without a Board meeting has the same effect as if the action had been taken at a Board meeting, and may be described as such in any document.

## **6.6 Quorum at Board Meetings**

A majority of the Directors shall constitute a quorum sufficient for the Board to conduct Association business. The majority of the Directors shall be determined based on the number of positions on the Board regardless of whether such positions are all filled or vacant.

## **6.7 Proxy Appointments by Directors**

Directors shall attend Board meetings themselves as opposed to by proxy. No proxy appointment by a Director for purposes of a Board meeting or action without a Board meeting shall be effective.

## **6.8 Conduct at Board Meetings**

Attendance at Board meetings is limited to Directors, any Officer or Manager invited by the Board, and those Owners that have requested in writing to be notified of Board meetings, or their attorneys-in-fact; otherwise, non-Owners, Residents or otherwise, shall not attend Board meetings.

Owners who attend Board meetings may be present for all discussion, deliberation, and decisions of the Board. Notwithstanding the foregoing, the Board may close a Board meeting to Owners in order to: (1) consult with an attorney for the purpose of obtaining legal advice; (2) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (3) discuss a personnel matter; (4) discuss a matter relating to contract negotiations, including review of a bid or proposal; (5) discuss a matter that involves an individual if the discussion is likely to cause the individual undue

embarrassment or violate the individual's reasonable expectation of privacy; or (6) discuss a delinquent assessment or fine.

Owners shall comply with all reasonable policies and procedures established by the Board for their attendance at Board Meetings, and shall remain silent except when comments are solicited by the Board. The Board may limit Owner comments to a specific period of time during the meeting.

The Board may adopt further policies and procedures with regard to conduct at Board meetings.

## **6.9 Action by the Board**

Any act of the Board shall be valid when a quorum is present at the time of the act unless otherwise required by law, the Declaration, the Articles of Incorporation, or these Bylaws. Each Director present shall have one vote.

## **7. OFFICERS**

### **7.1 Elected and Appointed Officers**

The elected officers of the Association shall be: (1) a president, (2) a vice-president, (3) a secretary, and (4) a treasurer.

The Board may appoint additional officers from time to time, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may determine and memorialize in the Minutes of the Board meeting at which such officers are appointed.

### **7.2 Term of Officers**

Elected officers shall serve for a term of one (1) year and shall continue to serve until their respective successors are elected, or until their death, resignation, or removal. Elected officers shall assume their duties at the close of the Board meeting at which they are elected.

Appointed officers shall serve until their death, resignation, or removal, with or without cause, by the Board.

### **7.3 Eligibility Requirements for Officers**

The President, Vice-President, and Treasurer shall at all times be Directors. The office of secretary may be held by any Officer, elected or appointed.

An appointed Officer may be any Person deemed qualified by the Board whether or not that Person is an Owner.

No Person, Director or otherwise, shall be eligible to hold more than two (2) offices at the same time.

### **7.4 Election of Officers**

At the first Board meeting following the election or selection of a new Director(s), the Board shall elect: (1) a president, (2) a vice-president, (3) a secretary, and (4) a treasurer.

An elected Officer may be elected to serve consecutive terms.

## **7.5 State Registration Requirement**

Within ninety (90) days of the election of a new president of the Association, and in accordance with Section 57-8a-105 of the Act, the Association shall update its registration with the Utah Department of Commerce to reflect the name, address, telephone number, and email address of the new president, or such information as may otherwise be required, who shall be considered the “Chair” (or other Association official as may be required) for purposes of such registration.

## **7.6 Duties of Officers**

Elected Officers shall, subject to the control of the Board, perform the duties provided in this section and such other duties as may be prescribed by the Board.

### **7.6.1 President**

The President shall: (1) preside at all meetings of Members and of the Board; (2) conduct or appoint another to conduct such meetings; (3) manage the administration of the Association’s affairs; (4) manage the performance of the Association’s responsibilities; (5) manage the exercising of the Association’s rights; (6) manage the enforcement of the provisions of the Governing Documents; and (7) carry out all other duties prescribed by the Governing Documents and applicable law.

### **7.6.2 Vice-President**

The Vice-President shall: (1) during the absence or disability of the President, perform all the duties of the President; and (2) perform such other duties as may be prescribed by the President or the Governing Documents.

### **7.6.3 Secretary**

The Secretary shall: (1) attend meetings of the Association; (2) record all votes and minutes of meetings in records to be kept for that purpose; (3) give notice of meetings of Members and of the Board; (4) maintain a list of Members entitled to vote at each meeting of Members, the list indicating the Owners’ names and corresponding Unit addresses; (5) create and maintain a record of Owners who attend a meeting of Members, including a signature of each attending Owner; (6) maintain Association documents and records as required by law; and (7) perform such other duties as may be prescribed by the Board or the Governing Documents. At a particular meeting or an action without a meeting, any Director or Officer, or other individual designated by the Board, shall be considered the Secretary for that meeting or action.

### **7.6.4 Treasurer**

The Treasurer, or other person appointed by the Board, shall: (1) have the custody of the Association funds and securities; (2) maintain complete and accurate accounts of receipts and disbursements in the Association’s books; (3) deposit all money and other valuables in the name and to the credit of the Association in such depositories as may be designated by the Board; (4) disburse the funds of the Association as may be ordered or authorized by the Board, and preserve proper vouchers for such disbursements; (5) prepare the Association’s annual financial report; (6) render to the President at the regular Board meetings, or whenever required, an account of the financial condition of the Association; (6) render a full financial report at the annual meeting of Members; (7) upon request, be furnished by all Officers and Association agents with such reports and statements as may be required regarding all financial transactions of the Association; and (8) perform such other duties as may be prescribed by the Board or the Governing Documents.

## **7.7 Delegation of Duties of Officers**

Unless otherwise limited by law or the Governing Documents, an elected Officer may delegate any or all of his or her duties to any other Officer, elected or appointed, and may engage one or more volunteer assistants from time to time.

An appointed Officer may not delegate duties without the written approval of the Board but may engage one or more volunteer assistants from time to time. The Board may withdraw its written approval to delegate duties at any time with or without cause.

Any or all of the duties of any Officer may be performed by or through a Manager, or be delegated to the Manager, at the discretion of the Board as determined by written agreement with the Manager or otherwise.

## **7.8 Resignation of Officers**

An Officer may resign at any time by delivering a written resignation to the Board. Unless otherwise specified in the written resignation, the resignation shall take effect upon delivery.

## **7.9 Removal of Officers**

An elected or appointed Officer may be removed from office at any time with or without cause. Removal of an Officer from office shall require a majority vote of the Board. Notwithstanding the foregoing, an Officer removed from office who is also a Director shall remain a Director unless also removed as a Director.

# **8. NOMINATION AND ELECTION OF OFFICERS**

## **8.1 Nomination of Officers**

Nominations for election to a particular office may be made by any member of the Board from the floor of a Board meeting, or by an eligible candidate providing to the Board a signed writing seeking the office.

## **8.2 Election of Officers**

The election of elected Officers shall be by majority vote of the Board and shall take place at the first Board meeting following an annual meeting of Members, or as soon as practicable thereafter. The candidates receiving the greatest number of votes shall be elected. Cumulative voting is not authorized.

An elected Officer may be re-elected to the same office any number of times.

## **8.3 Vacancies of Offices**

In the event of the death, resignation, or removal of an elected Officer, his or her successor shall be selected by the Board and shall serve for the unexpired term of his or her predecessor.

## **9. COMMITTEES**

The Board may appoint such committees as it deems appropriate in carrying out the purposes of the Association. Except as otherwise provided by the Declaration or Articles of Incorporation, a committee shall not have any powers, duties, or responsibilities beyond those expressly assigned by the Board. The Board may terminate any committee or committee member, or revoke any assigned powers, duties, or responsibilities, at any time with or without cause. All such actions shall be memorialized in the Minutes of the Board meeting(s) at which the actions were taken.

With regard to committees and their composition, powers, duties, responsibilities, proceedings, conduct, or any other matter, the Board may adopt further policies and procedures that are not inconsistent with the Declaration or these Bylaws.

Except as provided by applicable law, the Declaration, the Articles of Incorporation, or these Bylaws, all committees shall be strictly advisory in nature. The Board shall remain the sole body authorized to act for and on behalf of the Association and its Members.

## **10. RULEMAKING PROCEDURES**

### **10.1 Authority for Rulemaking**

Consistent with the Declaration and in accordance with Section 217 of the Act and other applicable law, and as limited by Section 218 of the Act, the Board shall have the authority to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce Rules.

### **10.2 Procedures for Rulemaking**

Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding a Rule, the Board shall: (1) at least fifteen (15) days before the Board meets to consider any of the foregoing actions, deliver notice to all Members of the Board meeting at which the action will be considered; and (2) provide an open forum giving Owners an opportunity to be heard at the Board meeting before the Board takes the action.

The Board shall deliver a notice of any changes to the Rules, along with a publication, electronic or otherwise, or a link thereto, of the current version of all the Rules, to all Members within fifteen (15) days of the Board meeting at which changes to the Rules were made. Each such publication shall include: (1) the name of the Association; (2) an indication that the publication contains the most current Rules of the Association; and (3) the date of the Board meeting at which the most recent changes to the Rules were made.

A Rule may not be inconsistent with any provision of applicable law, the Declaration, the Articles of Incorporation, these Bylaws, or any duly adopted Resolution. Any individual Rule that includes any such inconsistency shall be considered entirely void, without severability, and unenforceable.

### **10.3 Notice for Rulemaking**

Notices relating to Rule changes shall be provided in writing to Members via first-class or registered mail, by electronic means including email or posting on the Association's website, or as otherwise prescribed by law.

#### **10.4 Effective Date of Rules**

A Rule, or any changes thereto, shall be effective ten (10) days after the date that a publication containing all of the most current Rules of the Association is provided to the Members by first-class or registered mail, electronic means including email or posting on the Association's website, or as otherwise provided by law.

#### **10.5 Applicability of Rules**

Owners, Residents, and, to the extent allowed by law, all Persons who enter upon or in any way make use of the Common Area, shall be subject to enforcement of the Governing Documents.

Owners and Residents of a Unit shall be jointly and severally liable for violations of the Governing Documents by non-owner Residents of the Unit, including for violations by tenants of the Unit. Tenants shall not be responsible for the violations committed by Owners, provided that the tenants do not contribute to such violations.

#### **10.6 Limitations on Rulemaking**

In addition to other limitations prescribed by the Act and other applicable law, the Declaration, the Articles of Incorporation, and these Bylaws, the rulemaking powers of the Association, whether exercised through its Board or Members or otherwise, shall be limited as prescribed in the following subparts. Any act or other exercise of power by the Association in violation of the following limitations shall be entirely void, without severability, and unenforceable. Notwithstanding the foregoing, nothing in these limitations shall limit the Association or any other Person from taking lawful actions against illegal acts, or from recovering damages in relation to such illegal acts or arising out of the Association's violation of these limitations.

##### **10.6.1 Equal Treatment**

A Rule shall treat similarly situated Owners similarly, and shall treat similarly situated Residents similarly.

##### **10.6.2 United States Flag**

The Association shall not prohibit, by Rule or otherwise, a Resident from displaying the United States flag inside a Unit or on a Lot to the extent the display complies with United States Code, Title 4, Chapter 1, The Flag, and with Utah Code Title 57, Chapter 24, Display of Flag. Notwithstanding this prohibition and in relation to displaying the United States flag, no Owner, Resident, or any other Person shall have a right to utilize or modify Common Area in a manner that is not authorized by, or is inconsistent with, the Governing Documents.

##### **10.6.3 Inconsistent Actions**

Except as allowed by applicable law, the Association, whether through its Board or otherwise, shall not act or fail to act in a manner that is inconsistent with the provisions of applicable law and the Governing Documents.

##### **10.6.4 Conflicting Rules and Resolutions**

The Association shall not establish any Rule that conflicts in any manner with the Act, the Nonprofit Act, other applicable law, the Declaration, the Articles of Incorporation, these Bylaws, or a Resolution. Any such Rule shall be entirely void, without severability, and unenforceable. Nor shall

the Association establish any Resolution that conflicts with the Act, the Nonprofit Act, other applicable law, the Declaration, the Articles of Incorporation, or these Bylaws. Any such Resolution shall be entirely void, without severability, and unenforceable.

### **10.6.5 Owner Easements**

Except as allowed by law, the Declaration, or these Bylaws, or for the purpose of reasonable maintenance or repairs, the Association shall not limit or restrict an Owner's or Resident's right and easement of use and enjoyment of the Common Area as it pertains to their respective Unit. This includes access to the Unit via Common Area streets, parking areas, driveways, sidewalks, walkways, and the like.

Notwithstanding anything to the contrary, the Association shall have the right and power to temporarily close to its membership any portion of the Common Area for the purpose of reasonable maintenance or repairs.

## **11. ENFORCEMENT PROCEDURES**

### **11.1 Authority for Enforcement**

In accordance with Sections 208 and 213 of the Act, the Association shall have the right and power to enforce the Governing Documents and may assess fines against Units, Owners, Residents, and others for violations of the Governing Documents. The Board may not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action. The Board shall ensure consistent administration and enforcement of the Governing Documents.

Failure to enforce any provision of the Governing Documents shall not constitute a waiver or modification of that provision, nor shall it covenant constitute grounds for the abandonment of any covenant. Modification or abandonment of a provision or covenant herein shall only be effected by amendment of these Bylaws as provided for herein.

### **11.2 Reporting a Violation**

Any Owner or Resident may report an alleged violation of the Governing Documents to the Board or Manager. For such a report to be actionable, it must include: (1) the name, address, email address, and phone number of the Owner or Resident making the report; (2) the name and address of the Owner or Resident, or the address of the Util, allegedly in violation; (3) a description of the violation including the approximate date and time it occurred or was witnessed by the individual making the report; (4) identification of the provision(s) of the Governing Documents that was allegedly violated; and (5) a certification by the individual making the report substantially stating the following, "I CERTIFY UNDER PENALTY OF PERJURY THAT I PERSONALLY WITNESSED THE VIOLATION I AM REPORTING AND THAT, TO THE BEST OF MY KNOWLEDGE, THE INFORMATION I AM PROVIDING IS TRUE AND CORRECT. I understand that I may be called as a witness of the violation if my report results in an informal hearing before the Board." A violation report should include pictures of the violation, if possible.

**Exhibit D** is an example violation report form that meets the requirements of these Bylaws.

**NOTE:** an alleged violation is not an actual violation until confirmed by the Board or Manager and a Notice of Violation or a Notice of Fine, as applicable, has been issued.

### **11.3 Effect of Violations**

An Owner, Resident, or Unit shall be deemed not in Good Standing during the period of time beginning on the effective date of any notice of violation or notice of fine issued to such Owner, Resident, or Unit and extending through the date that the violation has been resolved and any fines and related charges issued have been fully paid. Owners that are not in Good Standing, and Owners of Units that are not in Good Standing, shall be ineligible to vote in Association elections. An issued notice of violation and an issued notice of fine shall each be considered notice of such ineligibility.

### **11.4 Notice of Violation**

In the event of a violation of the Governing Documents, the Association should issue a notice of violation against the offending party or the offending Unit, as the case may be.

A notice of violation shall only be issued for a violation of a Rule, covenant, condition, restriction, or other provision in the Governing Documents.

#### **11.4.1 Content**

A notice of violation shall be in writing and shall include: (1) identification of the Unit and, as applicable and available, the party in violation; (2) a brief description of the violation; (3) the date on or about which the violation occurred or was discovered; (4) identification of the provision(s) of the Governing Documents that was violated; (5) a statement that a fine may be assessed if: (a) the violation remains unresolved beyond a stated period of time (which period of time shall be not less than one (1) day and not more than ten (10) days from the date of the notice of violation, or as otherwise provided by law); or (b) a similar violation occurs within one (1) year from the date of the notice of violation; and (6) a statement explaining how the violation can be resolved.

**Exhibit E** is an example notice of violation that meets the requirements of these Bylaws.

#### **11.4.2 Delivery**

A notice of violation should be delivered via registered or certified mail, return receipt requested, but may be sent in any manner authorized by law.

If the offending party is a tenant of a rental Unit, the notice of violation should be delivered to both the tenant and Owner of the rental Unit.

Copies of all issued notices of violation shall be maintained in the records of the Association.

#### **11.4.3 Effective Date**

A notice of violation is effective at the earliest of the following: (1) the date received; (2) five (5) days after the date of mailing; or (3) the date the mailing receipt is signed by or on behalf of the addressee when the notice is sent via registered or certified mail, return receipt requested. Any period of time for resolution stated in a notice of violation shall begin on the effective date of the notice.

### **11.5 Notice of Fine**

Before a notice of fine for a violation can be issued, a notice of violation for a similar violation must have first been issued pursuant to Section 208 of the Act.

In the event of a violation of the Governing Documents, and after the issuance of a preceding notice of violation or notice of fine for a similar violation, the Association should issue a notice of



fine against the offending party and/or the offending Unit, as the case may be, provided that: (1) the violation remained unresolved after the period of time for resolution stated in the preceding notice of violation or notice of fine; or (2) the violation occurred within a year of the effective date of the preceding notice of violation or notice of fine.

A notice of fine shall only be issued for a violation of a Rule, covenant, condition, restriction, or other provision in the Governing Documents.

#### **11.5.1 Content**

A notice of fine shall be in writing and shall include: (1) identification of the Unit and, as applicable and available, the party in violation; (2) a brief description of the violation; (3) the date on or about which the violation occurred or was discovered; (4) identification of the provision(s) of the Governing Documents that was violated; (5) the date on which the preceding notice of violation or notice of fine was sent; (6) the amount of the fine being assessed and where it is specified in the Governing Documents; (7) a statement that the amount of the fine shall be assessed as of the date of the notice of fine; (8) a statement that: (a) the fine is due and payable immediately or as otherwise provided by the Governing Documents, whichever is later, (b) that late charges may apply if the fine is not timely paid, (c) that interest may apply if the fine is not timely paid, (d) that Units and/or Owners with unresolved violations or past-due amounts are deemed not in Good Standing and thus become ineligible to vote in Association elections, and (e) that the fine may constitute a lien that may be enforced by the sale of the Unit; (9) a statement that an additional fine may be assessed if: (a) the violation remains unresolved beyond a stated period of time (which period of time shall be not less than one (1) day and not more than ten (10) days from the date of the notice of fine, or as otherwise provided by law); or (b) a similar violation occurs within one year from the date of the written notice of fine; and (10) a statement explaining how the violation can be resolved.

**Exhibit F** is an example notice of fine that meets the requirements of these Bylaws.

#### **11.5.2 Delivery**

A notice of fine should be delivered via registered or certified mail, return receipt requested, but may be sent in any manner authorized by law.

If the offending party is a tenant of a rental Unit, the notice of fine should be delivered to both the tenant and Owner of the rental Unit.

Copies of all issued notices of fine shall be maintained in the records of the Association.

#### **11.5.3 Effective Date**

A notice of fine is effective at the earliest of the following: (1) the date received; (2) five (5) days after the date of mailing; or (3) the date the receipt is signed by or on behalf of the addressee when the notice is sent via registered or certified mail, return receipt requested. Any period of time for resolution stated in a notice of fine shall begin on the effective date of the notice.

### **11.6 Schedule of Fines**

#### **11.6.1 First Violation**

A written notice of violation shall be issued for a first violation.

### **11.6.2 Second Violation**

A fine in the amount of \$50 (fifty US dollars) shall be assessed if the first violation is not timely resolved or if a second similar violation occurs within a year of the first violation.

### **11.6.3 Third Violation**

A fine in the amount of \$100 (one hundred US dollars) shall be assessed if the second violation is not timely resolved or if a third similar violation occurs within a year of the second violation.

### **11.6.4 Fourth Violation**

A fine in the amount of \$150 (one hundred and fifty US dollars) shall be assessed if the third violation is not timely resolved or if a fourth or subsequent similar violation occurs within a year of the third violation.

## **11.7 Amount of Fines**

The Board may by Resolution increase the amount of the fine stated herein for a second violation. In so doing, the fines for a third and fourth violations shall be increased by the same percentage as the amount of the fine for a second violation.

## **11.8 Assessment of Fines**

The amount of a fine shall be assessed against a Unit's and its Member's account and, as applicable, against the account of a tenant Resident(s) of the Unit, and/or others as of the effective date a notice of fine.

If a particular violation continues unresolved through a fourth violation (i.e., a violation occurs that results in an initial Notice of Violation and that violation continues unresolved and/or repeated for three subsequent Notices of Fine) the Association may submit the violation to an attorney for further resolution. In such a situation, the Owner(s) of the Unit and, as applicable, the Resident(s) of the Unit shall be jointly and severally liable for all costs related to submission to an attorney for resolution including collection costs.

## **12. CORPORATE RECORDS**

### **12.1 Record Keeping**

Consistent with Section 227(1) of the Act and Section 1601(5) of the Nonprofit Act, and in addition to all other requirements under applicable law, the Association shall keep copies of the following records (the "Records") at its principal office: (1) the Declaration; (2) the Articles of Incorporation; (3) these Bylaws; (4) any adopted Resolutions; (5) the Minutes of all meetings of Members held over the most recent three (3) year period; (6) the Minutes of all Board meetings held over the most recent three (3) year period; (7) records of all actions taken without a meeting over the most recent three (3) year period; (8) all written communications to Members generally as Members for the most recent three (3) year period; (9) a list of the names, addresses, and email addresses of the current Directors and Officers; (10) the Association's most recent annual and other published financial statements, if any, for periods ending during the last three (3) years; (11) the most recent budget of the Association; (12) the most recent Reserve Study of the Association; and (13) certificates of insurance for each insurance policy held by the Association, or copies of the policies themselves.

## 12.2 Record Availability

The Association shall make the Records available to Owners, free of charge, through the Association's website. If the Association does not have an active website, physical copies of the Records shall be made available to the Owners by appointment during regular business hours at its principal office or that of its Manager.

An Owner may request in writing to inspect or copy a Record. Such a written request shall include: (1) the Association's name; (2) the Owner's name; (3) if the Owner is a legal entity, copies of entity records showing that the requesting party is an authorized representative of the Owner; (4) the address of the Owner's Unit; (5) the Owner's or authorized representative's email address; and (6) a description of the specific Record(s) being requested.

If an Owner requests the Association to provide it with a copy or scan of a Record, the Owner shall pay to the Association an amount that includes ten (10) cents per page and \$15 per hour for the Association's agent's time, or the actual amount if the copy or scan is provided by a third-party provider. Such amount shall be considered an assessment against the Owner.

## 13. AMENDMENTS

### 13.1 Amendment of Bylaws

These Bylaws may be amended by the approval of at least sixty-seven percent (67%) of the Members in Good Standing. Such approval to amend these Bylaws shall be obtained by action by written ballot.

A Director may execute, certify, and record any duly approved amendment or restatement of these Bylaws. Any such amendment or restatement shall be prepared at the request of the Board by an attorney licensed to practice law in the State of Utah.

### 13.2 Amendment Effective Date

Amendments to these Bylaws shall not be effective until duly recorded in the recorder's office of the County.

## 14. PROCEDURAL IRREGULARITIES

### 14.1 Waiver of Procedural Irregularities

No Person other than an Owner may make any claim or the like against the Association in relation to procedural irregularities or inaccuracies. All procedural inaccuracies and irregularities, and any claims, causes of action, or damages of any kind related thereto, in: (1) calls to, notices of, or the manner of conducting a meeting; (2) the manner of voting; (3) the form and handling of proxies; (4) the manner of asserting Persons present at a meeting; (5) the manner of taking action or making decisions; (6) the manner of accepting or counting votes; (7) the manner of taking Minutes or the content thereof; and (8) the manner of enforcing the Governing Documents, **shall be deemed waived under the following circumstances**: (a) if the objecting Owner did not object within thirty (30) days of a violation enforcement action taken; (b) if the objecting Owner was in attendance at a meeting, but the issue upon which the objection is based was perceptible and no objection was made

at the meeting; (c) if the objecting Owner was not in attendance at a meeting but proper notice of the meeting of the meeting was given; (d) if the objecting Owner was not in attendance at a meeting and proper notice of the meeting was not given, but the Owner had actual notice of the meeting before it occurred; (e) if the objecting Owner was not in attendance at a meeting, proper notice of the meeting was not given, the Owner did not have actual notice of the meeting before it occurred, but the Owner did not object within thirty (30) days of receiving notice of the occurrence of the meeting or of an decision action, or vote taken thereat; and (f) if a decision, vote, or action was taken without a meeting, but the Owner did not object within thirty (30) days of receiving notice of the decision, vote, or action taken.

## **14.2 Objections to Irregularities**

All objections to procedural irregularities or inaccuracies, except those made at a meeting, shall be made in a writing that is signed by the objecting Owner and provided to the Board. The date on which the writing is received by the Board shall control for purposes of waiver.

Whether at a meeting or in writing, objections must be specific, must include identification of the particular provision(s) of the Governing Documents or other law(s) alleged to have been violated, and must include a brief statement of the facts supporting the alleged violation.

Any purported objection to procedural irregularities or inaccuracies that does not comply with the foregoing requirements shall not be considered a valid objection.

## **14.3 Non-Waivable Irregularities**

Any procedural irregularity or inaccuracy resulting from fraud or knowingly and intentionally committed in violation the Governing Documents or applicable law shall not be waived.

## **15. ASSUMPTION OF RISK, RELEASE OF LIABILITY, AND INDEMNIFICATION**

For purposes of this Article, the term “Common Area” as used in the context of “use of the Common Area” shall also mean “Limited Common Area” and any other property owned or managed by the Association that is made available in any manner to any Person.

### **15.1 General Assumption of Risk**

In consideration of use of the Common Area, including but not limited to any of the following that currently exist, or may be constructed in the future, within the Association: (1) water systems and features and related equipment and facilities, including but not limited to any pools, hot tubs, splash pads, decks, tables, chairs, equipment, sprinklers, irrigations systems, and other water systems and their appurtenances; (2) equipment and facilities including but not limited to buildings, clubhouses, kitchens, fitness rooms and related equipment, game rooms and related equipment, theater rooms and related equipment, restrooms, laundry rooms, parking areas, walkways, streets, and lawn areas; (3) gathering areas including but not limited to parks, picnic areas, pavilions, and related tables, chairs, and other equipment, both outdoors and indoors; and (4) play areas including but not limited to children’s play areas and related sand boxes, playgrounds, play equipment, and other related equipment, both outdoors and indoors, **each Person that enters upon or makes use of the Common Area in any way shall be deemed to ACKNOWLEDGE, ACCEPT, AND ASSUME ALL RISK related thereto**, including but not limited to risk of temporary and

permanent personal injury, illness, disability, paralysis, death, and other harm of any kind, and property damage of any kind whatsoever, in any way arising from or related to such use. Each such Person is further deemed to understand and acknowledge that such use of the Common Area may involve risks that include but are not limited to accident, injury, death, sensitivities to and injuries arising from pool or other chemicals, slips and falls, trip hazards, cardiovascular stress, the reckless conduct of others, equipment malfunctions and failures, and other apparent, hidden, unforeseen, and unforeseeable dangers. Each such Person is further deemed to understand and acknowledge that use of the Common Area is not or may not be supervised by the Association or its agents, that the Association does not employ lifeguards or other staff to protect the Person's interests, and that the Person is fully and solely responsible for their own proper and careful use of the Common Area regardless of its condition. As part of accepting all risk, each such Person is further deemed to acknowledge, represent, and covenant that the Person has, or will immediately upon entering upon or making use of the Common Area, inspect and carefully consider the Common Area and its condition, and that such entering upon or making use of the Common Area constitutes the Person's acknowledgment that the Common Area has been inspected and carefully considered by the Person, and that the Person finds and accepts the Common Area as being safe and reasonably suited to the Person's purposes of such entering upon or use.

### **15.2 Health Assumption of Risk**

In further consideration of use of the Common Area, each Person that enters upon or makes use of the Common Area in any way shall be deemed to acknowledge the possible existence of all health hazards, including without limitation those related to viruses, bacteria, fungi, germs, spores, protozoa, pathogens, diseases, bodily fluids, contaminants, and all other health hazards, (the "Health Hazards") and to ACKNOWLEDGE, ACCEPT, AND ASSUME ALL RISK related to such Health Hazards. Each such Person shall be deemed to understand and acknowledge that the Person may be exposed to such Health Hazards from or while using the Common Area, and that such risks include without limitation temporary and permanent injury, illness, disability, and death. Each such Person shall be deemed to understand and acknowledge that the risk of becoming exposed to or infected by such Health Hazards from or while using the Common Area may result from the actions, omissions, or negligence of the Person or others, including but not limited to Members of the Association and any of its agents, contractors, directors, officers, volunteers, Owners, or Residents, or their families, children, and guests. Each such Person is further deemed to understand and acknowledge that the condition of the Common Area with respect to Health Hazards is not or may not be monitored by the Association or its agents, that the Association does not employ Health Hazard monitors, mitigators, or other staff to protect the Person from Health Hazards, and that the Person is fully and solely responsible for their own proper and careful use of the Common Area with respect to possible Health Hazards.

### **15.3 Covenants, Conditions, Restrictions, and Rules of the Association**

Each Person that enters upon or makes use of the Common Area in any way shall be deemed to understand and acknowledge that the Association makes the Common Area available for authorized use only—that is, for the use and enjoyment of the Owners and Residents, and that entry upon and use of the Common Area is strictly voluntary and not required in any way. Each such Person shall be deemed to understand and acknowledge that the Person has an affirmative obligation to seek out, read, understand, and comply with all covenants, conditions, restrictions, and provisions of the Governing Documents, including Rules, and including as they relate to the Common Area, and that

the Person shall be jointly and severally responsible for ensuring that the Person's family, guests, and invitees also abide by all such covenants, conditions, restrictions, provisions, and Rules, and that the Person shall be jointly and severally responsible for the actions and inactions of all such family, guests, and invitees, and for any harm or damage they may cause, directly or indirectly, whether such family, guests, or invitees are the Person's own or those of their family, guests, or invitees. Each such Person is further deemed to certify and covenant that, while upon or using the Common Area, the Person shall obey all instructions given either verbally or in writing by the Association or its agents, and that the Person shall be jointly and severally responsible to ensure that the Person's family, guests, and invitees do likewise.

#### **15.4 Warnings, Rules, and Regulations Regarding Health Hazards**

Each Person that enters upon or makes use of the Common Area in any way shall be deemed to understand and acknowledge that federal, state, or local agencies or health departments may have and may yet promulgate warnings, rules, or regulations related to the Health Hazards or other matters, that the Person has an affirmative obligation to seek out, read, understand, and comply with all such warnings, rules, and regulations as they may issue or change from time to time, and that the Person shall fully comply with all such warnings, rules, and regulations while upon or making use of the Common Area, and that the Person shall be jointly and severally responsible to ensure that the Person's family, guests, and invitees do likewise.

#### **15.5 No Responsibility**

Each Person that enters upon or makes use of the Common Area in any way shall be deemed to understand and acknowledge that the Association and its agents are not responsible for any lost, stolen, or damaged personal property belonging to the Person or that of any of the Person's family, guests, or invitees including while such property is located in, on, or around the Common Area or other facilities or anywhere within the Project, including any parking areas.

#### **15.6 Release, Waiver of Liability, and Indemnification**

In further consideration of use of the Common Area, each Person shall be deemed to FOREVER WAIVE any and all claims and causes of action against the Association and its agents, contractors, Directors, Officers, volunteers, Managers, Owners, Residents, and insurers (the "Released Parties") arising out of or related in any way to the Person's entry upon or use of the Common Area, and such entry upon or use of the Common Area by any of the Person's family, guests, or invites. Each such Person is further deemed to FOREVER RELEASE and covenant to HOLD HARMLESS the Released Parties from any and all liability, alleged or otherwise, to the Person or to any of the Person's family, guests, and invitees in relation to any claims or causes of action or the like arising out of or in any way related to the ACTS, OMISSIONS, or NEGLIGENCE of the Association and its agents, Directors, Officers, volunteers, and Managers. Each such Person is further deemed to covenant to INDEMNIFY and DEFEND the Released Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, claims, suits, judgments, costs, expenses, and disbursements of any kind or nature whatsoever, including but not limited to attorneys' fees, with or without suit, and all related costs, (the "Indemnified Liabilities") caused or alleged to have been caused directly or indirectly to the Person or to any of the Person's family, guests, or invitees by the Association or its agents, Directors, Officers, volunteers, or Managers, or caused or alleged to have been caused directly or indirectly to any of the Released Parties by the Person or any of the Person's family, guests or invitees.

## **16. INDEMNIFICATION**

### **16.1 Indemnification by the Association**

The Association shall indemnify the Directors, Officers, committee members, volunteers, Managers, employees, and other agents of the Association against any and all claims, actions, suits, proceedings, costs, expenses, and liabilities whatsoever, including without limitation attorneys' fees, with or without suit, court costs, and all related expenses, arising against them personally or in their official capacities in relation to the good faith exercise of their powers, duties, and responsibilities in any way related to the Governing Documents. The indemnification provided herein shall continue as to any Person who has for any reason ceased to be a Director, Officer, committee member, volunteer, Manager, employee, or other agent of the Association and shall inure to the benefit of the heirs, executors, and administrators of such Persons.

### **16.2 Insurance**

The Association shall purchase and maintain, at its own expense, Directors and Officers insurance on behalf of any Person who is or was a Director, Officer, committee member, volunteer, Manager, employee, or other agent of the Association against any liability or alleged liability in any way related to these Bylaws, including for monetary and non-monetary claims of any kind, asserted against or incurred by such Person in any such capacity or arising out of such Person's status as such.

## **17. GENERAL**

### **17.1 Principle Place of Business**

The principal place of business of the Association shall be at the address indicated in the Utah Department of Commerce Homeowner Associations Registry as such may change from time to time.

### **17.2 Applicability**

These Bylaws shall apply to and be binding upon all Owners and Residents and, to the extent not prohibited by law, all Persons who enter upon or in any way make use of the Common Area.

### **17.3 Conflicts**

Notwithstanding anything contrary in the Governing Document and pursuant to Section 228(5) of the Act, in the event of any conflict in the Governing Documents and applicable law, the provisions of (1) the Act, (2) the Nonprofit Act, (3) the Plat and Declaration equally, (4) the Articles of Incorporation, (5) these Bylaws, (6) Resolutions of the Association's membership from newest to oldest, (7) Resolutions of the Board from newest to oldest, and (8) Rules shall prevail in that order.

### **17.4 Compensation**

No Director, elected Officer, committee member, or other volunteer shall receive compensation for their services. However, Directors, Officers, and other volunteers may be reimbursed for actual expenses incurred in the performance of their duties if such expenses were approved in writing in advance by the Board. Otherwise, such expenses may be reimbursed at the discretion of the Board.

A Manager, contractor, employee, or other Person compensated by the Association may, unrelated to their compensated services, serve as a Director or Officer to the extent authorized by these Bylaws, but shall not receive additional compensation for such services.

#### **17.5 No Estoppel or Reliance**

With respect to these Bylaws, no one may rely upon any statement or authorization from the Board or anyone else that is contrary to these Bylaws, regardless of the circumstances. No claim of estoppel, waiver, or similar equitable claim or defense may be raised by anyone in relation to any alleged reliance.

#### **17.6 Fiscal Year**

Unless otherwise provided by the Declaration, the fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of each year, except that the first fiscal year of the Association shall begin on the date of its incorporation.

#### **17.7 Waiver**

Failure of the Association at any time to enforce any provision or covenant of these Bylaws or the other Governing Documents shall not be construed as a waiver of the Association's right to enforce such provision or covenant, or as a waiver, abandonment, or modification of such provision or covenant. Modification or abandonment of a provision or covenant herein shall only be affected by amendment of these Bylaws as provided for herein.

#### **17.8 Time Limit for Claims**

Any claim, action, litigation, or the like arising out of these Bylaws or the other Governing Documents brought by any party against the Association, or its Board, Director, Officer, agent, volunteer, Manager, contractor, or employee must be commenced within twelve (12) months of the cause of such claim, action, litigation, or the like. Any such claim, action, litigation, or the like not brought within twelve (12) months shall be considered forever waived.

#### **17.9 Governing Law**

These Bylaws and the other Governing Documents shall be governed by and construed in accordance with the laws of the State of Utah without regard to principles of conflicts of laws.

#### **17.10 Jurisdiction**

Any action, suit, or other proceeding arising out of these Bylaws, or the other Governing Documents, shall be brought in a court of the State of Utah or in a federal court located therein. To the extent not prohibited by law, all Owners and Residents, and all other Persons who at any time have entered upon or in any way made use of the Common Area, irrevocably consent and submit to the exclusive jurisdiction of such courts for the purpose of any such action, suit, or proceeding.

#### **17.11 Severability**

Should any term, condition, provision, covenant, or portion of these Bylaws or the other Governing Documents, or any other aspect of such, be held invalid or unenforceable for any reason (an "Invalid Term"), such Invalid Term shall be removed or restructured and then interpreted as determined by a court of competent jurisdiction so as to accomplish the intent of the Invalid Term in view of the Governing Documents, and the balance of such shall remain in full force and effect.



**17.12 Gender and Number**

All references herein to any party shall be read with such changes in gender and number as the context or reference may admit or require.

**17.13 Headings**

Unless expressly stated otherwise, headings in these Bylaws and the other Governing Documents are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Declaration as of the date written below.

**DECLARANT**

\_\_\_\_\_  
Ryan C. Nye, Authorized Member or Manager  
2B Property Development, L.L.C.

State of Utah        )  
                              ) ss.  
County of            )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, the above-named individual, proven by satisfactory evidence, personally appeared before me and, while under oath or affirmation, stated that he is an authorized member or manager of the Declarant, did sign this instrument of his own free will, and that the Declarant shall be bound by the same.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC SIGNATURE

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBIT A – Example Proxy Appointment Form**

**PROXY APPOINTMENT FORM**

Unit Address: \_\_\_\_\_

BE IT KNOWN, that I, \_\_\_\_\_, the undersigned, hereby appoint \_\_\_\_\_ as my true and lawful attorney-in-fact and agent for me, and in my name, place and stead, to vote as my proxy at the association meeting to be held on \_\_\_\_\_ or any adjournment thereof (the “Meeting”), for the transaction of any business which may legally come before the meeting, and for me and in my name, to act as fully as I could do if personally present, and I herewith revoke any other proxy heretofore given.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_,

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**BY SIGNING THIS PROXY APPOINTMENT I CERTIFY UNDER PENALTY OF PERJURY THAT THE PROVIDED INFORMATION IS COMPLETE, TRUE, AND CORRECT AND THAT, IF THE OWNER IS A LEGAL ENTITY, I AM A DULY AUTHORIZED REPRESENTATIVE OF THE OWNER FOR PURPOSES OF THIS PROXY APPOINTMENT.**

## EXHIBIT B – Example Written Ballot for a Proposed Action

### Title of Proposed Action

(Include a *description* of the proposed action here)

Yes       No

Unit Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_

Is the Owner a Legal Entity?  Yes  No; **NOTE:** Owner's full legal name required.

Owner Address: \_\_\_\_\_

Voter Name: \_\_\_\_\_ Title: \_\_\_\_\_

Required only if different than Owner Name; **NOTE:** Voter's full legal name required.

Voter Address: \_\_\_\_\_

Required only if different than Owner Address.

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

I am signing as:  an Owner,  an Owner's Proxy or agent, or  an Authorized Representative of an Owner that is a legal entity.

**BY SIGNING THIS BALLOT I CERTIFY UNDER PENALTY OF PERJURY THAT THE PROVIDED INFORMATION IS COMPLETE, TRUE, AND CORRECT AND THAT, IF THE OWNER IS A LEGAL ENTITY, I AM A DULY AUTHORIZED REPRESENTATIVE OF THE OWNER FOR PURPOSES OF THIS ACTION BY WRITTEN BALLOT.**

**IMPORTANT:** All information requested above is required unless indicated otherwise. Your fully completed ballot must be received by the Association no later than *<date>* or it will be invalid and not counted. The number of valid written ballots required to meet quorum requirements for each proposed action is the number of ballots timely received by the Association. 'Yes' votes on a majority of valid ballots are required to approve the proposed action.

**WARNING: ONLY ONE VOTE IS ALLOWED PER LOT.** If more than one written ballot is received by the Association from the Owner(s) or its agent for the same Unit, then all of the written ballots received for that Lot shall be considered invalid and shall not be counted.

## EXHIBIT C – Example Written Ballot for an Election of Candidate(s)

### Election Ballot

Election of Directors

Vote for no more than two (2) of the following candidates:

- Candidate 1
- Candidate 2
- Candidate 3

Unit Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_

Is the Owner a Legal Entity?  Yes  No; **NOTE:** Owner's full legal name required.

Owner Address: \_\_\_\_\_

Voter Name: \_\_\_\_\_ Title: \_\_\_\_\_

Required only if different than Owner Name; **NOTE:** Voter's full legal name required.

Voter Address: \_\_\_\_\_

Required only if different than Owner Address.

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

I am signing as:  an Owner,  an Owner's Proxy or agent, or  an Authorized Representative of an Owner that is a legal entity.

**BY SIGNING THIS BALLOT I CERTIFY UNDER PENALTY OF PERJURY THAT THE PROVIDED INFORMATION IS COMPLETE, TRUE, AND CORRECT AND THAT, IF THE OWNER IS A LEGAL ENTITY, I AM A DULY AUTHORIZED REPRESENTATIVE OF THE OWNER FOR PURPOSES OF THIS ACTION BY WRITTEN BALLOT.**

**IMPORTANT:** All information requested above is required unless indicated otherwise. Your fully completed ballot must be received by the Association no later than <date> or it will be invalid and not counted. The number of valid written ballots required to meet quorum requirements for each proposed action is the number of ballots timely received by the Association. The two (2) candidates receiving the most votes will be elected. **If more than two (2) candidates are selected on this ballot then it shall be considered invalid and shall not be counted.**

**WARNING: ONLY ONE VOTE IS ALLOWED PER LOT.** If more than one written ballot is received by the Association from the Owner(s) or its agent for the same Unit, then all of the written ballots received for that Lot shall be considered invalid and shall not be counted.

**EXHIBIT D – Example Violation Report Form**

**VIOLATION REPORT FORM**

*<name of HOA>*

My Name: \_\_\_\_\_, Phone: \_\_\_\_\_

My Address: \_\_\_\_\_, Email: \_\_\_\_\_

Name and Address of violator or Unit in violation:

\_\_\_\_\_

Description, date and time of violation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Provision(s) of Governing Documents that was violated:

\_\_\_\_\_

Please provide pictures of the violation if available.

My Certifying Signature: \_\_\_\_\_

**I CERTIFY UNDER PENALTY OF PERJURY THAT I PERSONALLY WITNESSED THE VIOLATION I AM REPORTING AND THAT, TO THE BEST OF MY KNOWLEDGE, THE INFORMATION I AM PROVIDING IS TRUE AND CORRECT. I understand that I may be called as a witness of the violation if my report results in an informal hearing before the Board.**

## EXHIBIT E – Example Notice of Violation

### NOTICE OF VIOLATION

*<date of notice>*

Unit Address: \_\_\_\_\_

This is a formal notice that you are in violation of the following sections of the Governing Documents: *<list applicable sections here>*.

*<copy relevant text of applicable sections here>*

The specific violation occurred or was discovered on or about *<date>* and was: *<brief description of the violation and, as applicable and available, the party involved>*.

This violation can be resolved by: *<description of how to resolve the violation>*.

Failure to resolve this violation by *<date>*, or any occurrence of a similar violation within one year of the date of this notice, may result in a fine being assessed against the Unit and/or the Owner(s) and/or Resident(s) of the Unit.

Failure to timely resolve this violation may result in further action including but not limited to a lien against the Unit, legal proceedings, foreclosure, and/or termination of rights to vote.

All communication regarding this notice shall be in writing to:

The Homeowners Association  
*<email address>*

## EXHIBIT F – Example Notice of Fine

### NOTICE OF FINE

*<date of notice>*

Unit Address: \_\_\_\_\_

This is a formal notice that you are in violation of the following sections of the Governing Documents: *<list applicable sections here>*.

*<copy relevant text of applicable sections here>*

The specific violation occurred or was discovered on or about *<date>* and was: *<brief description of the violation and, as applicable and available, the party involved>*.

On *<date(s)>* a prior notice(s) was issued for a similar violation(s) of the same sections of the Governing Documents.

**FINE AMOUNT:** \_\_\_\_\_. This amount must be paid  by *<date>* or  within *<time period>* days of the date of this notice. Late payments may be subject to late charges, interest, collection costs, and/or attorney fees. Units and/or Owners with amounts past due may be deemed not in good standing and thus become ineligible to vote in Association elections. Past-due amounts may constitute a lien against the Unit which may be foreclosed.

This violation can be resolved by: *<description of how to resolve the violation>*.

Failure to resolve this violation by *<date>*, or any occurrence of a similar violation within one year of the date of this notice, may result in another fine being assessed against the Unit and/or the Owner(s) and/or Resident(s) of the Unit.

Failure to timely resolve this violation may result in further action including but not limited to a lien against the Unit, legal proceedings, foreclosure, and/or termination of rights to vote.

All communication regarding this notice shall be in writing to:

The Homeowners Association  
*<email address>*

## **EXHIBIT C – Articles of Incorporation**

A true and correct copy of the Articles of Incorporation of Mountain Horizon Homeowners Association are attached following this page.



Shopping Cart

AFTER FILING RETURN TO:

Ryan C. Nye  
253 West 1550 South  
Morgan, Utah 84050

**ARTICLES OF INCORPORATION**  
**MOUNTAIN HORIZON**  
**HOMEOWNERS ASSOCIATION**  
**A UTAH NONPROFIT CORPORATION**


I, the "Incorporator," a natural person eighteen (18) years of age or older, do hereby adopt these Articles of Incorporation thereby forming a nonprofit corporation under and subject to the Utah Revised Nonprofit Corporation Act, Utah Code 16-6a-101 *et seq.*, as such act may be amended from time to time (the "Nonprofit Act").

State of Utah  
Department of Commerce  
Division of Corporations and Commercial Code  
I hereby certified that the foregoing has been filed  
and approved on this 21 day of Jun 20 24  
in this office of this Division and hereby issued  
This Certificate thereof.

**ARTICLE I Incorporator Name and Address**

The name and address of the Incorporator are:

Ryan C. Nye, Director  
253 West 1550 South  
Morgan, Utah 84050

Examiner AW Date 6/27/24  
  
Adam Watson  
Adam Watson  
Division Director

**ARTICLE II Corporation Name and Initial Office**

The name of the nonprofit corporation is **Mountain Horizon Homeowners Association**, which nonprofit corporation is a homeowners association of the same name (the "Association" and the "Corporation"). The address of the initial office of the Corporation is:

253 West 1550 South  
Morgan, Utah 84050

The Corporation may change its office address from time to time by action of its Board or Designated Agent.

**ARTICLE III Registered Agent**

The registered agent of the Corporation within the state of Utah is:

Ryan C. Nye, Director  
253 West 1550 South  
Morgan, Utah 84050

The Corporation may change its registered agent from time to time by action of its Board or Designated Agent.

**ARTICLE IV Duration**

The duration of the Corporation is perpetual.

**ARTICLE V Purpose**

The Corporation is organized exclusively for the purpose of operating, maintaining, and governing the Association in accordance with the Nonprofit Act and its duly recorded declaration of covenants, conditions, and restrictions as such may be adopted, amended, or restated from time to time (the "Declaration"), other applicable law, and its other governing documents. Except as otherwise provided in the Declaration or Bylaws, no dividend or any part of the net income of the Association, if any, shall be paid to its directors, officers, committee members, volunteers, or members.

**ARTICLE VI Powers, Limitations, and Restrictions**

The powers of the Association, as well as the limitations and restrictions on such powers, shall be as provided in the Declaration and Bylaws.

**ARTICLE VII Board of Directors**

The Association shall have a board of directors (the "Board") which shall be organized as provided in its Bylaws. Notwithstanding the foregoing, the initial Board shall be comprised of the following director(s):

Ryan C. Nye, Director  
253 West 1550 South  
Morgan, Utah 84050

Cody M. Nye, Director  
2789 West Old Highway Road  
Morgan, Utah 84050

However, pursuant to Utah Code 16-6a-801(2)(b), 2B Property Development, L.L.C., a Utah limited liability company, (the "Declarant") is hereby authorized to exercise all of the powers that would otherwise be exercised by the Board of Directors until its Control Period under the Declaration has come to an end or, if the Declaration fails to define a Control Period or specify its termination, until the first of the following events occurs: (i) one (1) year after the date of conveyance of the last lot in the Association to a third party buyer not involved in the development of the lots within the Association; or (ii) the day the Declarant, after giving written notice to the Members, records an instrument voluntarily surrendering all rights to control the activities of the Association in accordance with Utah Code 57-8a-502 as it may be amended from time to time.

Except as otherwise provided in the Declaration or Bylaws, no director shall be compensated.

**ARTICLE VIII Director Liability and Indemnification**

To the fullest extent provided by present or future law, no director shall be liable to the Corporation or its members for monetary damages, except for willful misconduct or gross negligence.

To the fullest extent allowed by and in accordance with the Nonprofit Act as it may be amended from time to time, the Corporation shall indemnify the directors of the Corporation for inactions or actions taken on its behalf.

#### **ARTICLE IX Membership, Voting Rights, and Stock**

The Association shall have members with voting rights, and persons shall be admitted as members, as provided in the Declaration and Bylaws. The Association is a nonprofit corporation and shall not issue stock or, except as otherwise provided in the Declaration, interests in water or other property rights.

#### **ARTICLE X Bylaws**

The Incorporator or Declarant shall adopt and record bylaws of the Association (the "Bylaws") which shall not be inconsistent with applicable law, the Declaration, or these Articles of Incorporation. Should the Incorporator or Declarant fail to adopt and record Bylaws prior to expiration of the Control Period, the Board shall adopt and record initial Bylaws pursuant to Utah Code 16-6a-206(1)(a).

#### **ARTICLE XI Designation of Agent**

The Corporation may, from time to time and by notarized instrument(s) executed by the Declarant or at least one member of the Board, designate an agent (the "Designated Agent") to carry out the management of the Association and the business of the Corporation, such business including but not limited to: (1) Real Property; (2) Banks and Other Financial Institutions; (3) Operation of Entity or Business; (4) Insurance and Annuities; (5) Claims and Litigation; and (6) Taxes as described in Utah Code, Title 75, Chapter 9, Uniform Power of Attorney Act as amended from time to time regardless of whether such Act was intended to apply to the Corporation. The Designated Agent may be a manager of the Association with power of delegation to one or more of its managers and employees.

#### **ARTICLE XII Conflict**

In the event of any conflict or inconsistency between these Articles of Incorporation and the Declaration, the Declaration shall control.


#### **ARTICLE XIII Amendment**

The Corporation may amend these Articles of Incorporation by the assenting vote of 67% of the voting membership; such amendments shall not be effective until duly filed with the Utah Department of Commerce. Notwithstanding the foregoing, during a Control Period described in the Declaration, the Declarant may amend these Articles of Incorporation and file any such amendment at its sole discretion, which shall become effective upon proper filing.

**Signatures:**

DATED this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2024.

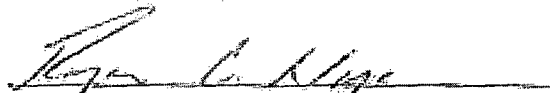
**INCORPORATOR:**

  
Ryan C. Nye

**Acceptance of Appointment and Consent to Serve as Registered Agent**

I acknowledge, accept, and consent to my designation or appointment as a registered agent in Utah on behalf of Mountain Horizon Homeowners Association. I understand that it will be my responsibility to receive any process, notice, or demand that is served on me as the registered agent of the represented entity; to provide the notices to the represented entity at the address most recently supplied to the agent by the represented entity; to keep current the information required by Utah Code 16-17-203(1) or 16-17-204(1) in the most recent registered agent filing for the entity; and in the event I am to resign, I shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

**REGISTERED AGENT:**

  
Ryan C. Nye  
Date: 01/22/24