

SECOND AMENDED AND RESTATED

DECLARATION
OF
COVENANTS, CONDITIONS,
RESTRICTIONS, ASSESSMENTS, AND
LIENS

FOR AND RESPECTING

THE BERKSHIRES,
A
PRIVATE, GATED COMMUNITY
IN
UTAH COUNTY, UTAH

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EXHIBIT A

EXHIBIT B

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
ASSESSMENTS, AND LIENS FOR AND RESPECTING

THE BERKSHIRES,

A PRIVATE, GATED COMMUNITY

This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, AND LIENS FOR AND RESPECTING THE BERKSHIRES, A PRIVATE, GATED COMMUNITY (hereinafter this "Declaration") is adopted by The Berkshires Homeowners Association, Inc. (the "Association"), a Utah nonprofit corporation, and is effective as of the date it is recorded in the Utah County Recorder's office.

RECITALS

- A. The DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, EASEMENTS, AND LIENS FOR AND RESPECTING THE BERKSHIRES A PRIVATE, GATED COMMUNITY was recorded on May 30, 2003, in the Utah County Recorder's office as Entry No. 81683:2003 (the "Enabling Declaration").
- B. The AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, EASEMENTS, AND LIENS FOR AND RESPECTING THE BERKSHIRES A PRIVATE, GATED COMMUNITY was recorded on October 8, 2010 in the Utah County Recorder's office as Entry No. 86773:2010 (the "First Amended Declaration").
- C. The AMENDED BYLAWS OF THE BERKSHIRES HOMEOWNERS' ASSOCIATION, INC. was recorded on October 8, 2010, in the Utah County Recorder's office as Entry No. 86774:2010 (the "Amended Bylaws").
- D. The FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, EASEMENTS, AND LIENS FOR AND RESPECTING THE BERKSHIRES A PRIVATE, GATED COMMUNITY was recorded on August 21, 2015, in the Utah County Recorder's office as Entry No. 76445:2015 (the "First Amendment to First Amended Declaration").
- E. This Declaration, along with and subject to any future amendments, is the sole declaration of covenants, conditions, and other restrictions for the Project and completely replaces and supersedes in all respects the Enabling Declaration, the First Amended Declaration, the First Amendment to First Amended Declaration, and all other prior declarations and amendments thereto made prior to the date of the recording of this Declaration, regardless of whether or not such prior declarations and amendments were recorded, properly adopted, or referenced in this Declaration.
- F. This Declaration is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project; (2) conform to changes to the Utah Community Association Act; (3) provide for a general plan for managing the Project and the Property; and (4) further the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project and the Property.

- G. This Declaration affects the real property located in Utah County, State of Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- H. The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previously adopted bylaws of the Association and any amendments thereto.
- I. The Association obtained a statement from Orem City that it has no objection to the maintenance provisions set forth in this Declaration and the removal of any requirement that the City approve future amendments to the Declaration.
- J. Pursuant to the amendment requirements contained in the First Amended Declaration and the amendment provisions contained in the Utah Community Association Act, the undersigned, on behalf of the Association, hereby certifies that this Declaration was approved by the requisite percentage of votes of the members of the Association.

NOW, THEREFORE, pursuant to the Recitals set forth above, which are incorporated herein, and subject to the Terms and Conditions set forth below, the Association hereby adopts this Declaration. This Declaration, together with the other Governing Documents adopted by the Association, and applicable statutes, define and govern the rights of the Owners and the Association related to the Project.

ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 **“Act”** means the Community Association Act codified beginning at Utah Code § 57-8a-101 *et seq.*, in effect at the time this Declaration is recorded and as may be amended from time to time.
- 1.2 **“Allocated Interest”** means the interest of that Owner of a particular Lot which is applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. Each Lot has an equal Allocated Interest.
- 1.3 **“Architectural Review Committee”** means the Association’s Architectural Review Committee as set forth herein.
- 1.4 **“Articles”** means the Association’s Articles of Incorporation filed with the Utah Division of Corporations and Commercial Code, or the chartering document of any other legal entity, if any is formed for the Association.
- 1.5 **“Assessment”** means any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration or in the Act.
- 1.6 **“Association”** refers to THE BERKSHIRES HOMEOWNERS ASSOCIATION, INC. under its current name and under any future name if the name is changed, any other alternative entity formed to operate the Project, or the Owners as a group if the Owners act as a group without legal organization.
- 1.7 **“Board Member”** means a duly-qualified and elected or appointed member of the Board of Directors.
- 1.8 **“Board of Directors”** or **“Board”** means the entity or governing body with primary authority to manage the Association’s affairs.

- 1.9 **“Bylaws”** means the Association’s Bylaws attached hereto as Exhibit B and all valid amendments and supplements thereto. No amendment to the Bylaws is effective until it is recorded with the Utah County Recorder’s office.
- 1.10 **“Common Area” or “Common Areas”** mean the common area within the Project as reflected on the Plats for the Project, any improvements thereon, and specifically including, but not necessarily limited to those areas identified in Section 4.2 of this Declaration, unless any such areas are otherwise more specifically provided in this Declaration and excluded from the Common Area.
- 1.11 **“Common Expenses”** mean the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, gardening, snow removal, and other related services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from operating the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.12 **“Declaration”** means this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, and Liens for and Respecting The Berkshires, A Private, Gated Community, including all attached exhibits, which are incorporated by reference, and any and all future amendments thereto.
- 1.13 **“Design Guidelines”** means those requirements governing the site location and architectural design of Dwellings and other buildings, structures, recreational facilities amenities, and improvements within the Project as adopted by the Board.
- 1.14 **“Dwelling”** means the single-family residence built or to be built on any Lot, including the attached garage.
- 1.15 **“Electronic Transmission” or “Electronically Transmitted”** mean a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.16 **“Governing Documents”** means and refers to the Declaration, the Plats, the Bylaws, the Rules, the Articles, and any other written instrument by which the Association may exercise power, manage, maintain, or otherwise affect the Project. The hierarchy of the Governing Documents is that set forth in Utah Code § 57-8a-228.
- 1.17 **“Lender”** means a holder of a mortgage or deed of trust secured by a Lot.
- 1.18 **“Lot”** means and refers to any parcel in the Project and may be designated on the Plat as a “Lot.” Reference to a Lot includes reference to the Allocated Interest appurtenant to such Lot, except where the context specifically requires otherwise.
- 1.19 **“Manager”** means any entity or Person engaged by the Board of Directors to manage the Project.
- 1.20 **“Occupant”** means a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Dwelling on the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or another Occupant.

- 1.21 **“Owner”** means the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Utah Recorder; however, the term “Owner” does not include a Lender or the trustee or beneficiary under a deed of trust.
- 1.22 **“Person”** means a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.23 **“Plat”** or **“Plats”** mean, and refer collectively to, the record of survey map or maps of The Berkshires recorded with the Utah County Recorder’s office and all amendments and supplements thereto. These Plats include the following:

<u>Plat Title</u>	<u>Recording Date</u>	<u>Entry Number</u>	<u>Map #</u>
The Berkshires Plat “A”	3/16/2001	24398:2001	8992
The Berkshires Plat “C”	4/26/2001	39859:2001	9037
The Berkshires Plat “D”	5/17/2002	56598:2002	9534
The Berkshires Plat “E”	11/26/2003	187585:2003	10280
The Berkshires Plat “F”	2/24/2004	20242:2004	10353
The Berkshires Plat “E” Amended	5/27/2004	60668:2004	10499
The Berkshires Plat “H”	9/21/2004	107794:2004	10688
The Berkshires Plat “I”	3/11/2005	25612:2005	10964
The Berkshires Plat “J”	4/07/2005	36667:2005	11029
The Berkshires Plat “K”	5/09/2005	49529:2005	11069
The Berkshires Plat “L”	5/13/2009	52928:2009	13017
The Berkshires Plat “N”	3/29/2011	24348:2011	13428
The Berkshires Plat “O”	9/26/2011	67924:2011	13525
The Berkshires Plat “M”	12/08/2011	88193:2011	13573
The Berkshires Plat “Q”	8/13/2013	77703:2013	13987
The Berkshires Plat “R”	1/28/2014	5885:2014	14136
The Berkshires Plat “S”	8/4/2015	70022:2015	14712

- 1.24 **“Project”** means the Property and all structures, Dwellings, and improvements thereon including the Lots and Common Areas.
- 1.25 **“Property”** means the property legally described and identified in Exhibit A and all easements and rights appurtenant thereto.
- 1.26 **“Rules”** means and refers to the rules, regulations, and resolutions adopted by the Board of Directors.
- 1.27 **“Terms and Conditions”** or **“Term and Condition”** means any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.

ARTICLE 2: THE PROJECT

- 2.1 **Binding Effect of Governing Documents.** The Association hereby confirms that the Property is part of the Project and declares and agrees that the Project and all of the Lots are held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, constitute equitable servitudes, covenants, easements, and liens all running with the land and that are binding upon and inure to the benefit of the Association, and each Owner, including the Owner’s heirs, executors, administrators, personal

representatives, successors, and assigns. By acquiring any interest in a Lot, such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.

- 2.2 **Nature of the Project.** The Project is an individual single-family residential subdivision situated in Utah County, State of Utah, and includes all Lots, streets and related property comprising approximately 52 acres of property and consisting of fifty-five (55) Lots and other open areas reflected on the official recorded Plats. Each Lot may contain a separate Dwelling. The Project is a planned unit development and is neither a cooperative nor a condominium.
- 2.3 **Project Name.** The Project is named "The Berkshires" and is located entirely in Utah County, Utah. The name commonly used by the Association for the Project may be different than the name identified in this Declaration or on the Plats.
- 2.4 **Identification of Lots.** The Lots are referenced specifically and identified by location on the Plats.
- 2.5 **Registered Agent.** The registered agent of the Association is as provided for in the Association's entity filings.

ARTICLE 3: ORGANIZATION & GOVERNANCE OF ASSOCIATION

- 3.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 3.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 3.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents must, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then-existing legal requirements, adopt documents consistent with the terms of the Declaration and Bylaws.
- 3.4 **Membership.** Membership in the Association consists exclusively of the Owners. Each Owner is a member of the Association so long as such Owner has an ownership interest in a Lot and such membership automatically terminates when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest will likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot is shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.
- 3.5 **Availability of Documents.** The Association shall make available to the Owners, Lenders, and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records, and financial statements related to the Association's operations. The term "available" as used in this Section means available for inspection and copying within thirty (30) days, unless a shorter time period is required by law, after receiving a proper written

request, during normal business hours and under other reasonable conditions. The Association has the right to refuse to disclose information that the Board determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.

- 3.6 **Board of Directors or Board.** The governing body of the Association is the Board of Directors elected or appointed pursuant to the Bylaws. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Board shall act, in all instances, on the Association's behalf. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Board may direct the actions of the Association. The Board may retain professionals, including, without limitation, attorneys, accountants, managers, and bookkeepers to assist in any Board function.

3.7 **Board Member Qualifications.**

- (a) To be on the Board of Directors, a Person must be an Owner, or spouse of an Owner, and over the age of eighteen (18) years. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board of Directors. Co-Owners of a Lot may not serve concurrently as Board Members, unless one or all co-Owners serving on the Board also have an ownership interest in another Lot.
- (b) In accordance with Utah Code § 57-8a-502(3)(a), a majority of Board Members must be Lot Owners. For purposes of this Section 3.7(b), in the case of a Lot owned by a trust or other entity created for estate planning purposes, a Person occupying the Lot and for whose estate the estate planning entity or trust was created shall be considered an Owner.
- (c) The Bylaws may provide for additional qualifications and procedures for serving on the Board.

3.8 **Limitation on Authority of Owners, Board Members, Officers, and the Board.**

- (a) Except as provided herein or in the Bylaws, the Board, any individual Owner, and any individual Board Member or Officer does not have the authority to and may not act on behalf of the Association or the Board to:
 - (1) Amend or terminate any Governing Document;
 - (2) Elect or remove members of the Board;
 - (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board Members; or
 - (4) Authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration.

- 3.9 **No Reliance on Actions Contrary to Governing Documents.** No one may rely upon any

authorization (from the Board of Directors or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel, waiver, or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Lot in the Association to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

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

ARTICLE 4: LOTS, COMMON AREA, & ALLOCATED INTERESTS

4.1 The Lots.

- (a) Each Lot is identified on a Plat by a distinct Lot number.
- (b) Subject to further specification herein, each Lot generally consists of any and all improvements, structures, and related equipment or installations on or within the boundary of the Lot, including but not limited to:
 - (1) The Dwelling;
 - (2) All garages, sheds, or other approved structures;
 - (3) All patios, decks, pools, courts, playground areas, and other improvements and recreational amenities and facilities within the boundary of the Lot;
 - (4) All pipes, wires, conduits, utility, water or sewer laterals and lines, or any other similar fixtures within the boundary of the Lot and that serve the Lot (utility, water, and sewer lines, and other similar fixtures located on a Lot and that do not serve only that Lot are not part of the Lot); and
 - (5) The driveway, any fence, and any other yard area.

- 4.2 **Common Area.** Unless otherwise provided in this Declaration, the Common Area is owned by the Association. Common Area, unless otherwise more specifically provided in this Declaration, means the real property, other than Lots, for the common use and enjoyment of the Owners and specifically includes, but is not limited to, the following:

- (a) All Common Areas designated as such on the Plat including any area designated as a Common Area or open space;
- (b) All private roadways, landscaped areas in the roadway islands or roundabouts, gates at the entrances to the Project, water features;
- (c) The perimeter fences, sidewalks, streetlights, landscaping, sprinkler system, security cameras, and other amenities not dedicated to a municipality and located outside the boundaries of the Lots;
- (d) French drains and other equipment and apparatus installed for draining water from the Common Areas;
- (e) All utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use of all Lot Owners or for the Common Area; and

- (f) All other parts of the Project necessary or convenient to its existence, maintenance, safety, or normally in common use.
- 4.3 **No Severance of Common Area.** The right to and interest in the Common Area is appurtenant to each respective Lot and may not be severed from the ownership of the Lot.
- 4.4 **Right to Sell or Transfer Common Area.** The Board may sell or transfer Common Area only with approval of sixty-seven (67%) of the Allocated Interests and by complying with any other applicable legal requirements.
- 4.5 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein, are hereby incorporated into and made a part of this Declaration.
- 4.6 **Allocated Interest of Each Lot in the Votes of the Association.** Each Lot is entitled to a vote equal to its Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve. Owners shall cast such votes in accordance with the Bylaws. Each Lot has an equal Allocated Interest of one (1) vote. As further set forth in Section 5.7, if multiple Lots are combined then combined Lots shall retain the Allocated Interest per Lot that existed before the combination took place.

ARTICLE 5: MAINTENANCE & MODIFICATION

5.1 **Owner Responsibility for Maintenance of Lots and Related Fixtures.**

- (a) Each Owner shall furnish and be responsible for, at the Owner's own expense, the maintenance, repair, and replacement of the Owner's Lot not otherwise delegated to the Association in this Declaration, including, but not limited to: (1) the Dwellings on the Lot; (2) landscaping on the Lot; (3) any porches, patios, decks, sidewalks, walkways, or driveways on the Lot; (4) all pipes, wires, conduits, public utility lines and fixtures, water or sewer laterals, or any other similar fixtures lying inside the boundaries of the Lot and servicing only the particular Lot; and (5) any and all other improvements, natural areas, and other areas on the Owner's Lot. The Owner is further responsible for the removal of snow on the Owner's Lot, including from the driveways and sidewalks within or appurtenant to the Owner's Lot. The Board may adopt a standard of maintenance for any area which is the responsibility of the Owner, including landscape maintenance, and shall set forth such standard in the Rules.
- (b) Each Owner is responsible for keeping the Lot, and all porches, patios, driveways, landscaping (including the grass, trees, shrubs, bushes, flowers, plants, similar improvements, and sprinkling or other irrigation systems) located within the boundaries of the Lot, and other exterior areas of a Lot in a clean and sanitary condition, free of pests and rodents, and in good condition, appearance, and repair. The Board may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, installed, or placed on the exterior of any Lot, which may include a prohibition on leaving, installing, or storing any items or animals in such places.
- (c) Each Owner is responsible for maintaining, repairing, and replacing all pipes, wires, conduits, public utility lines and fixtures, water or sewer laterals, or any other similar fixtures lying outside the designated boundaries of a Lot but only to the extent that they service only that Lot. Notwithstanding the foregoing and anything to the

contrary in this Declaration, the Owner of a Lot is not obligated to maintain any utility or utility system or component which is maintained by any municipality.

5.2 Maintenance of Common Area.

- (a) Except as maintenance obligations are otherwise assigned to Owners in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Area as that area is defined in this Declaration and identified on the Plat. This includes the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Association retains the absolute right to remove and replace any structure, item, or condition in the Common Area.
- (b) The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the Common Areas, including the following: (1) the lawn, trees, shrubs, and other plants and landscaping within the Common Areas; (2) roadways, curbs, gutters, and any future structures or amenities that may be constructed and are located outside the boundaries of the Lots; (3) any streetlights located within the Common Area; (4) any sprinkler system in and servicing the Common Areas; (5) any sidewalks located outside the boundaries of the Lots; (6) the gates for the entrances to the Project and the related water features and security cameras; and (7) French drains and other drainage equipment and apparatus to remove or drain water from the Common Areas. Notwithstanding the foregoing and anything to the contrary in this Declaration, the Association is not obligated to maintain any utility or utility system or component which is maintained by any municipality.
- (c) Snow Removal. The Association shall take reasonable efforts to remove snow from any Common Area and roads as necessary to allow vehicle and pedestrian access.
- (d) Standard of Maintenance. The Board may determine, in its sole discretion, the appropriate maintenance standard for the Common Area, so long as those areas are maintained in the best interests of the Owners.
- (e) Assessment of Maintenance Expenses to Specific Owner. If the need for maintenance, repair, or replacement is caused by an Owner or an Occupant, the Association shall assess to the particular Owner, who is also responsible for the Occupant's actions, the actual cost of such maintenance, repair, or replacement, to the extent the costs are not paid for by any applicable insurance.

- 5.3 **Landscape Maintenance.** The Association is responsible for maintaining, repairing, replacing, and caring for the Common Area. Owners are responsible for maintaining, repairing, replacing, and caring for the landscaping on their respective Lots. As set forth in this Declaration and the Rules, landscaping plans for Lots must be approved by the Architectural Review Committee. Landscaping, as described in the Rules, must be completed in the front, rear, and side yards for each Lot. The Association may adopt Rules further regulating the landscape maintenance for the Lots including standards for repairs, weed control, species and number of plants, etc. Unless otherwise set forth in the Rules, weeds on an unimproved Lot may not be more than six (6) inches in height, and in the event

that weeds do grow more than six (6) inches in height then the Association may take action against the Owner as authorized under the Association's Governing Documents, including, but not limited to, issuing warning letters, fines, and performing the maintenance on the Lot and assessing the Owner for the costs incurred.

- 5.4 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Lot according to the maintenance standard set forth by the Association and as required in the Governing Documents, (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the Board's judgment to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Lots in the Project, or (3) comply with the architectural approval process set forth in Governing Documents or the approved timelines for certain construction and modifications to a particular Lot (including but not necessarily limited to initial construction, remodeling, and landscaping installation and improvements), then the Association may take any action allowed for a failure to comply with the Governing Documents and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required and requesting that the same be carried out within a period of not less than forty-eight (48) hours, which length of time may be determined by the Board under the particular circumstances. This notice is a remedy available to the Association in addition to levying a fine or taking other allowed enforcement action against the Owner as allowed under the Governing Documents and Utah law. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Association may take any action allowed for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing any landscape maintenance, snow removal, repairs, or replacements) and may assess the Owner for all costs associated therewith as a special Assessment as set forth in Article 8 herein.

5.5 **Architectural Review; Construction on and Modifications to Lots.**

- (a) Association Approval for Modifications to Lots. Without the Association's prior approval, an Owner may not: (1) install or build any new structure (which may include, but is not limited to, a shed, garage, pool house, treehouse, etc.), fence, or Dwelling; (2) make alterations, upgrades, additions, or modifications to any part of the exterior of any Dwelling or any other structure on a Lot; or (3) install, remove, or alter any exterior feature such as a driveway, walkway, front yard landscaping, pool, court (i.e. basketball, tennis, or sports court), or anything else that alters the exterior appearance of the Lot. This provision is intended to be read as broadly as possible to require approval before commencing any exterior work to the Dwelling, any structure, or any other improvements on the Lot, including changes to landscaping. The Board may adopt Rules to further identify with specificity the items and improvements on and to a Lot that are subject to the Association's architectural review and approval, including providing for certain conditions that need no advance approval or that are deemed approved under conditions established by the Association in the Rules.
- (b) Architectural Review Committee.
 - (1) Unless and until the Board creates a separate Architectural Review Committee (or "ARC"), which shall have as a member at least one Board Member, the Board shall act as the ARC and shall have all authority provided for the ARC in the Governing Documents. The ARC shall review and

regulate the external design, appearance, and location of any new structure, fence, Dwelling, pool, court, and other improvement on any Lot and any alterations, upgrades, additions, or modifications to previously existing improvements on the Lot, all so as to enforce the architectural provisions of the Declaration and any Architectural Design Guidelines. Unless the ARC is made up only of Board Members, all decisions of the ARC shall be in the form of a recommendation to the Board, to be acted on and with any final decision to be made by the Board.

- (2) Failure of Architectural Review Committee to Act. If the ARC fails to act upon any written request submitted to it within ninety (90) days after a complete submission of documents in a form acceptable to the ARC, such request will be deemed to have been approved as submitted, and no further action will be required. The ninety (90) day period does not start to run if the ARC has requested, or requests, additional information in support of the Owner's request.
- (3) Enforcement of Architectural Design Guidelines. The ARC shall enforce the Architectural Design Guidelines, which may include, but are not limited to, restrictions on: minimum and maximum square footage, building height, exterior siding and roofing materials, and landscaping.
- (4) Submission of Plans to the ARC for Approval.
 - (i) New Structures. No structure of any kind may be erected, placed, moved onto, or commenced without the prior written approval of the ARC. The Board may adopt Rules relating to obtaining such prior written approval that may contradict or supersede the provisions for approval in this Subsection 5.4(b)(4)(i); however, unless and until the Board adopts such Rules, the following provisions will apply: An Owner shall submit such plans and specifications as the ARC may reasonably require, and shall in all cases include the following:
 - (A) A complete set of plans and specifications;
 - (B) A site plan showing the location of all proposed and existing structures on the Lot;
 - (C) Exterior elevations for the proposed structures;
 - (D) Specifications of materials, color scheme, and other details affecting the exterior appearance of the proposed structures. (Samples of materials and colors are recommended in the initial submission and may be requested by the ARC.); and
 - (E) A detailed description of the plans for landscaping and grading.
- (c) Initial Dwelling Construction on a Lot and Delay in Construction. Lot Owners shall commence construction of the initial single-family Dwelling structure within one (1) year from the purchase date of the Lot, unless a longer delay is permitted in writing by the Board. Any such permission shall require landscaping of the Lot as required herein. If construction has not commenced upon any Lot within one (1) year after

acquisition by the Owner, the Owner shall landscape the Lot in accordance with plans submitted to and approved by the ARC, in its discretion. The Owner shall irrigate (through a sprinkler system) and maintain the landscaped Lot as required by the Governing Documents. The ARC may waive this requirement, in writing, if it determines that construction will commence within a reasonable time. In any case, all unimproved Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds, and other debris, and any grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard. The construction of any Dwelling and other structures on any Lot, including painting and all exterior finishes, shall be completed within twenty-four (24) months from the commencement of construction so as to present a finished appearance when viewed from any direction. The exact time for completion will be established by the Board at the time the plans for construction are approved by the Association. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Board. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. Construction work shall not be performed on Sundays, unless written permission is granted by the Association. The Board may adopt additional Rules to further address construction and landscaping activities on the Lots.

- (d) Modifications to Lots. Any exterior remodeling, other changes to the exterior of a Dwelling, or improvements to the Lot outside of the Dwelling, including any changes in a Lot's landscaping plan, must be completed within twelve (12) months or as otherwise set forth by the Board. The exact deadline for completion will be established by the Board at the time plans for improvements and/or other changes are approved.
- (e) Speculative Homes Not Allowed. Without permission of the Association, Dwellings shall not be constructed on Lots with the intent that the Person constructing the Dwelling will sell the Lot during construction or after it is constructed and before it has been occupied.
- (f) Construction Deposit. The Association may require an Owner to provide a ten thousand dollars (\$10,000) construction deposit to be held by the Association until the approved construction and landscaping is completed on a Lot. The deposit may be forfeited due to any failure to comply with the Governing Documents and applied to any charges or assessments related to any such failure or any other outstanding amounts due under the Governing Documents related to the Lot, all in the discretion of the Board. If the Owner completes the construction and landscaping as approved by the Association and within the required time period (and the Owner is otherwise current on all Assessment obligations), then the Association shall refund the construction deposit to the Owner.
- (g) Specification of Materials. The Board may adopt Rules designating the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alterations. Such designations will be for the purpose of achieving uniformity of appearance and preservation of property values. The Board may adopt Rules relating to obtaining such prior written approval.

- (h) Interior Modifications. No approval is required from the Association for interior modifications that do not affect the exterior of the Dwelling, although the Board may require notice, submittals, and approval for such work and may further adopt Rules to monitor and control the impacts of such work such as related to the staging of materials, parking of construction vehicles, removal of debris, and hours of work.
- (i) Landscaping, Grading, Slopes, and Drainage. The Owner shall submit a landscaping, grading, and drainage plan for a Lot to the ARC prior to commencing or changing any landscaping, grading, slopes, or drainage patterns on the Lot. The ARC may require that such plans include a roof drainage pipe. The Board may adopt Rules designating specific types of and the number of trees, shrubs, and/or other plants that may be used in the landscaping of Lots and any setback requirements from the Lot boundary lines. Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes, and course related thereto over any Lot or Common Area without the express written permission of the Association, and then only to the extent and in the manner specifically approved. No structure, plantings, or other materials shall be placed or permitted to remain on or within any grades, slopes or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion, or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels. The initial landscaping on a Lot must be completed within four (4) months of the issuance of the certificate of occupancy for the Dwelling; however, the calculation of the four (4) months shall exclude the months of November through February. The Association may approve additional time for a particular Lot due to extreme weather conditions during any particular season/year.
- (j) Any fence or wall erected along the side or rear property line of such Lot must be constructed so as to not prevent or inhibit the flow of surface water from adjoining land where such flow is in accord with the established drainage pattern. The Owner of such Lot shall continuously maintain the sloped areas of the Lot and all improvements in them, except for those improvements for which a public authority, utility company, or the Association is responsible.
- (k) Conformity with Applicable Law. All improvements on a Lot must be made, constructed, and maintained, and all activities on a Lot must be undertaken, in conformity with all building codes and the laws and ordinances of the City of Orem, Utah County, and the State of Utah, including all zoning and land use ordinances.
- (l) Variances. The Association may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplement thereto, including restrictions on height, size, floor area, placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require. To be valid, such variances must be in writing and must be signed by all members of the then current Board of the Association. (The Board must be fully constituted with no vacancies.) If a variance is granted, no violation of the Governing Documents will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance does not waive any Terms and Conditions of the Association's Governing Documents, other than those specifically identified in the variance, nor does it affect an Owner's obligation to comply with all governmental laws and regulations.

- (m) Prior Approval Required. All improvements must be submitted to the ARC in writing to permit ARC to review the size, placement, floor plan, and exterior materials. Approvals must be in writing and obtained prior to the beginning of construction.
- (n) Failure to Comply. The Association may take enforcement action against an Owner who fails Owner to comply with the requirements set forth in this section. Such enforcement action includes any remedies allowed under the Governing Documents and Utah law.

5.6 **Architectural Design Guidelines.** All Lots and Dwellings in the Project are subject to the Architectural Design Guidelines in this Section 5.5. The Association may adopt additional Architectural Design Guidelines which shall be considered Association Rules regardless of how they are designated.

- (a) A site for a Dwelling shall consist of at least one Lot or parcel composed of two or more adjacent Lots, which Lots may be combined in accordance with Section 5.7.
- (b) Each Lot shall have a least one five thousand (5,000) square foot single-family residential Dwelling (net of the square footage of any garage, patio, breezeway, porch, or similar attached or unattached structure). No main floor footprint shall be less than two thousand five hundred (2,500) square feet (net of the square footage of any garage, patio, breezeway, porch, or similar attached or unattached structure).
- (c) All garages attached to a single-family Dwelling shall be side-loading garage house plans (not facing the street) and shall have a minimum of three (3) covered and enclosed garage spaces.
- (d) Every roof shall be constructed and consist of high grade wood, slate, stone, tile, or luxury grade composite materials made to simulate the foregoing. No architectural asphalt shingles or TPO roofing shall be allowed without the express prior written permission of the Association. If TPO roofing is approved by the Board, the roofing must not be visible from the street elevation of any street within the Project. Any roof not in compliance with this section at the time this Declaration is recorded will be grandfathered in and considered in compliance; however, if the roofing material is later replaced then it will lose such grandfathering status and the newly installed roofing materials must comply with this section.
- (e) Solar panels or other solar energy system must be approved by the Association and must comply with applicable health, safety and building requirements of Orem City, Utah County, and the State of Utah, including obtaining any required permits which must be provided to the Association. If the solar energy system will be used to heat water, then it must be certified by: (i) the Solar Rating and Certification Corporation; or (ii) a nationally recognized solar certification entity. If the solar energy system will be used to produce electricity, then it must comply with safety and performance standards established by: (i) The National Electric Code; (ii) the Institute of Electrical and Electronics Engineers; (iii) Underwriters Laboratories; (iv) an accredited electrical testing laboratory; or (v) the State of Utah or a political subdivision of the State of Utah. If the solar energy system is mounted on a roof of a Dwelling or other structure then the solar energy system: (i) may not extend above the roof line; or (ii) its panel frame, support bracket, or visible piping and wiring is similar in color or texture to the existing roof materials. If the solar energy system is mounted on the ground, then it may not be visible from the street which the Lot

fronts.

- (f) The exterior walls of all structures on a Lot, including those of outbuildings and guest houses, shall consist of a minimum of eighty percent (80%) brick, rock, or a material with an equivalent quality and appearance, and must be designed in an aesthetically pleasing manner in the sole discretion of the ARC. The remaining twenty percent (20%) shall be stucco or other materials approved by the ARC. Measurements for purposes of this paragraph shall not include doorways, windows, and garage doors. Any structure in addition to a Dwelling on any Lot shall conform to this requirement and be designed to use the same material and have a similar design and appearance as the Dwelling built on that Lot. The Board may further adopt Rules to clarify the requirements of this paragraph and to specify particular styles, materials, and colors which may be used on the exterior walls of the structures and how such percentages of the materials may be calculated.
- (g) All fences must be approved by the Association before being installed and shall be constructed of iron, aluminum precast, rhino rock, masonry, or other materials approved by the ARC. No wood fences are allowed. Fences shall not exceed the height (currently six feet) or location allowed by Orem City Code. No fences shall have a gate opening onto or granting any access, ingress or egress to property on the exterior border of the Project, unless prior written approval is granted by the Association.
- (h) All mailbox posts and structures must be constructed of masonry. No iron, vinyl, wood, aluminum, or other types of mailboxes are allowed. Any mailbox not in compliance with this section at the time this Declaration is recorded will be grandfathered in and considered in compliance. However, if the mailbox is later replaced, then it shall lose such grandfathering status and must be replaced with a masonry mailbox.
- (i) Basketball standards must be installed permanently into the ground with concrete level with the ground, driveway, or court. Movable or portable basketball standards are not permitted.
- (j) Subject to any variance granted by both the Association and Orem City, each Lot shall be subject to the maximum height and setback requirements as established by Orem City zoning ordinances and the Architectural Design Guidelines adopted by the Association.
- (k) Unless waived in writing by the Association, all Dwellings and improvements shall be constructed using a licensed general contractor approved by the Association.
- (l) Consent or approval by the Association to any matter proposed to it shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

5.7 Expenses and Fees for Review of Plans. The Association may assess an Owner for any actual costs or expenses incurred by the Association related to the review, analysis and approval of any request, plans, or specifications submitted by the Owner to the Board or ARC related to construction, landscaping, or other improvements to be made on the Lot. The costs and expenses incurred by the Association may include, but are not necessarily limited to, engaging any professionals such as an engineer, architect, attorney, or other third-

party professional to review, analyze, and opine on the Owner's submitted plans and conformity with the Association's Governing Documents.

- 5.8 **Combining Lots.** A Lot Owner may combine Lots with the written consent of the Association's Board and by complying with any local municipal code and ordinances to combine the Lots, which may include the recording of an amended plat for that combined Lots. The Owner of any combined Lots shall retain the Allocated Interest of each Lot that existed prior to the Lots being combined and the Owner shall pay the Assessments equivalent to such Allocated Interests for as long as the Lots are combined. (For example, if an Owner combines two Lots, which are the only Lots that the Owner owns in the Association, then the Association shall have an Allocated Interest equivalent to two Lots for as long as the Lots are combined.)
- 5.9 **No Subdividing of Lots.** No Lot or Dwelling may be split, subdivided, separated, or timeshared into two (2) or more Lots or Dwellings or property interests (whether temporally or spatially), and no Owner of a Lot is permitted to sell or lease only a part thereof.
- 5.10 **Boundary Line Adjustments.** Owners of adjoining Lots may agree to boundary line adjustments related to their respective Lots with the written consent of the Association's Board and by complying with any local municipal code and ordinances related to such boundary line adjustments.
- 5.11 **Utilities.** With the exception of utilities for the Common Areas, which are paid as Common Expenses, all utilities are metered separately to each Lot and such utility charges are the responsibility of each Lot Owner.

ARTICLE 6: RIGHTS RESERVED TO DEVELOPER OF PLAT S

- 6.1 **Plat S Developer Period of Administrative Control.** The developer of Plat S (the "Plat S Developer") is Open Range, LLC. The period that the Plat S Developer has rights in this Article 6 shall be the period of administrative control for the Plat S Developer as that term is defined in the Act and shall allow the Plat S Developer to exercise the rights assigned in this Article 6. The Plat S Developer has no other rights related to the Association other than those rights in this Article 6 and the rights as an Owner of a Lot or of Lots to the extent the Plat S Developer owns a Lot or Lots.
- 6.2 **Easements and Rights-of-Way for Sale and Development.** The Plat S Developer, its employees, agents, representatives, contractors and their subcontractors and employees, all have an easement and right-of-way as is reasonably necessary to complete the installation of improvements on Plat S and as is reasonably necessary for the marketing and sale of Lots in Plat S (the "Plat S Lots"):
 - (a) On, over, and across all or part of the Common Areas in the Project for: (1) access, both vehicular and pedestrian, and (2) installation, repair, and upgrade of all lines, wires, utilities, pipes, pumps, facilities, and other things necessary for all such utility, communication, and other services reasonably necessary for the development of Plat S and sale of the Plat S Lots, provided that potential purchasers must be accompanied by a real estate agent.
 - (b) On, over, and across all or part of the Common Areas and Lots in Plat S for: (1) the construction, excavation, grading, landscaping, parking, and/or storage of building materials and other items, (2) the maintenance and operation of a sales office whether in a free standing trailer, temporary structure, or in an existing home on a

Plat S Lot, and (3) the installation and display of signs and other marketing devices to aid in the sale of the Plat S Lots.

- (c) Subject to the Plat S Developer's obligation to minimize the use and travel of heavy equipment on the roadways in the Project, when reasonably possible.

6.3 Further Modifications to Declaration or Plats. Notwithstanding the amendment provisions in Article 15 of this Declaration, the Plat S Developer shall have the following rights to amend the Plat and this Declaration in the future:

- (a) To the extent reasonably necessary to complete the installation of improvements in the area identified on Plat S and to sell the Plat S Lots, and with the approval of the Association, the Plat S Developer, and owners of fifty percent (50%) of the Lots in the Project, the Association may execute and record amendments to the Plat and this Declaration to: (1) facilitate the development or sale of Plat S Lots, (2) to correct errors, ambiguity, or omissions in the any existing Plats in the Project or in this Declaration related to the development of Plat S and the inclusion of the Plat S Lots and Plat S Common Area into the Subdivision, or (3) to accomplish whatever other purpose is desired by the approving parties.
- (b) The Plat S Developer shall have the right to amend Plat S to modify the boundaries of Lots and the Common Area identified in Plat S for the following reasons and subject to the following limitations and any approval required by Orem City:
 - (i) To resolve a boundary dispute among any neighboring property owner;
 - (ii) To join any two Plat S Lots into one building Lot (which shall not be considered an increase in Lot size for purposes of subsections 6.3(b)(iii) and (iv));
 - (iii) To change the size of any Lot or Lots; however, to change the size of any Lot by more than thirty percent (30%) requires the approval of the Association;
 - (iv) To change the configuration of any Lot so long as any such change does not change the configuration of Common Areas and so long as no Lot increases or decreases in size by more than thirty percent (30%); and
 - (v) To make minor and non-material changes to the configuration of Common Area in Plat S.
- (c) Except for the approval required by subsection 6.3(b)(iii) (if a lot size is changed by more than thirty percent (30%), under which the Association may withhold in its discretion), the Association shall approve of any amendment to the Plat consistent with the rights granted to the Plat S Developer in this Section 6.3. With ten (10) days' advance notice to the Association of the amendment to this Declaration, the Plat S Developer may record, without the approval of any Lot Owner or the Association, an amendment to this Declaration for the sole and limited purpose of making necessary adjustments to this Declaration if Lots are joined as permitted under subsection 6.3(b)(ii) and as necessary to comply with the Assessment requirements of Section 8.3. These adjustments shall be limited to only those necessary to correct this Declaration to reflect the accurate number of Lots, the proper Assessment of any combined Lots, and related necessary changes.
- (d) No Plat may be amended pursuant to any right in this Article 6 to amend the border of any Lot without the approval of that Lot Owner.

- (e) In any Plat amendment allowed or approved as provided for in this Section 6.3, each and every Lot Owner shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such Plat regardless of whether the particular Owner approved of or consented to the change in the Plat. The Board of Directors is appointed and hereby authorized by the Owners to execute the Owner's names on any such amendment or document in the event that an Owner does not sign, consent to, or execute the required documents within a reasonable time of any request.
- 6.4 **Termination of Plat S Developer Rights.** The rights granted to the Plat S Developer in this Article 6 shall terminate upon the Plat S Developer's sale to third parties of all of the Plat S Lots.
- 6.5 **Assignment of Plat S Developer Rights.** The Plat S Developer may assign the rights under this Article 6 with a written and recorded assignment of rights only upon the consent of the Association, which consent will not be unreasonably withheld. In the case of any assignment of rights under this provision, the Association, Plat S Developer, and the assignee of the Plat S Developer's rights shall each without the consent of any other have the right to record a copy of the Subdivision Expansion and Development Agreement for The Berkshires, dated July 12, 2015 (the "Development Agreement"), between the Plat S Developer and the Association. Any assignee of the Plat S Developer's rights under this Declaration shall be bound by the terms of the Development Agreement for Plat S, recorded or not. If recorded, any Development Agreement shall be recorded against only those Lots that have not been sold to a third party.
- 6.6 **Amendment to this Article 6.** Until the termination of the Plat S Developer's rights as provided for in Section 6.4, the Plat S Developer and any assign of the Plat S Developer's rights must approve of any amendment to: (1) this Article 6 or (2) this Declaration, the Bylaws, or Articles of Incorporation that would (a) impair or limit any rights of the Plat S Developer or (b) materially change any rights of the Association or the Owners of Lots in Plat S.
- 6.7 **Provisions in this Article 6 Control over all Others in Conflict.** The provisions in this Article 6 control over all others to the contrary or in conflict in this Declaration, the Bylaws, Rules, Articles of Incorporation and any other Governing Documents as that term is defined in the Act. In addition, to the extent that there is any conflict between other provisions of this Declaration and the Development Agreement, the terms of the Development Agreement shall control.
- 6.8 **Work Hours, Staging, and Cleanup.** For the installation of improvements in Plat S, the Plat S Developer shall comply with work hours of 7:00 a.m. to 7:00 p.m. and no work shall be conducted beyond those hours or on Sundays without advance approval of the Association's Board.
- 6.9 **Developer Assessments & Transfer/Reinvestment Fees.** The Plat S Developer shall not be charged or required to pay any reinvestment fee upon the platting or any amendment to the Plat of any Lot.

**ARTICLE 7:
GENERAL RIGHTS & RESPONSIBILITIES OF THE ASSOCIATION**

- 7.1 **Rights and Responsibilities of the Association.** The Association has the rights and responsibilities specifically set forth in this Article 7 in addition to any others set forth in the Governing Documents or provided by law.
- 7.2 **Maintenance.** The Association shall make provisions for completing all its maintenance, repair, and replacement requirements, including the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the Project, in accordance with the general purposes specified in this Declaration.
- 7.3 **Capital Improvements.** Capital improvements are governed by and subject to the following conditions, limitations, and restrictions:
- (a) Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Board alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis or sports court, playground equipment, or parking area. Landscaping alterations and the addition or removal of signs, small structures, or Common Area cameras are not material unless they cause other material changes such as those listed above.
 - (b) Any capital improvement which would materially alter the nature of the Project and costs greater than ten thousand dollars (\$10,000), prior to being constructed or accomplished, must be authorized by the consent of Owners holding at least thirty percent (30%) of the Allocated Interests and must be approved by the Board of Directors. Notwithstanding anything to the contrary, no material alteration that changes the boundary line of any Lot is permitted without the written consent of the Owners of any affected Lot.
- 7.4 **Paying Expenses.** The Association shall provide for the payment of Common Expenses and any other obligations incurred by the Association.
- 7.5 **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 7.6 **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If Rules are adopted, the Association shall consistently and uniformly enforce them. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in other Governing Documents so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules will be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 7.7 **Entering Lots.** After having given the appropriate notice as required in Article 17, the Association has the right at all times and upon reasonable notice (and at any time in case of

an emergency) to enter into any Lot to abate any infractions, to make repairs, to correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant. Notwithstanding the foregoing, the Association shall not enter into any Dwelling located on the Lot unless (a) the Owner or Occupant grants permission; (b) a Court order authorizes such entry; or (c) such entry is necessary in the case of an emergency relating to (i) the health or safety of any Owner or Occupant of the Dwelling, or (ii) imminent damage to the Dwelling and adjacent property, such as, but not necessarily limited to, a broken water pipe causing flooding in the Dwelling or localized fire in the Dwelling.

- 7.8 **Management and Limitations on Management Contracts.** The Association may hire a professional management company (the "Manager") to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board has the right to approve Association budgets, fines to Owners, and regular and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. The Board has no authority to enter into any management agreement or contract inconsistent with the terms of the Association's Governing Documents or that provides for any termination fee or requirement for termination only for cause.
- 7.9 **Other Necessary Rights.** The Association has any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- 7.10 **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants if Owners fail to pay Assessments; and (3) take any other action or seek any other remedy allowed by the Act or other applicable Utah law, including but not limited to seeking injunctive relief.
- 7.11 **Discretion in Enforcement.**
- (a) Subject to the discretion afforded in this Section 7.11, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - (b) The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents and may include in this analysis: (1) whether to compromise a claim made by or against the Board or the Association; and (2) whether to pursue a claim for an unpaid Assessment.
 - (c) The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3) a technical violation has or may have occurred and the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

- (d) Subject to Subsection 7.11(e), if the Board decides under Subsection 7.11(c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
 - (e) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
- 7.12 **Reserve Fund.** The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required in this Declaration and the Act.
- 7.13 **Service Providers and Vendors.** The following provisions apply to the Association hiring and contracting with service providers and vendors.
- (a) **Conflicting Interest Transaction.** In an effort to comply with Utah Code § 16-6a-825(1), unless 7.13(b) applies, the Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any Board Member; (2) any relative of any Board Member, Manager, or of any officer, employee, or an owner of the Manager; (3) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a one percent (1%) ownership or beneficial interest; or (4) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. A relative is any natural individual known to be related by blood (to the third-degree) or marriage. The provision of services and materials for purpose of this provision includes Managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.
 - (b) **Exceptions to Conflicting Interest Transaction.** Notwithstanding Section 7.13(a), pursuant to Utah Code § 16-6a-825(4)(b), the Association may enter into a conflicting interest transaction if:
 - i. The material facts of the relationship or interest as to the conflicting interest transaction are disclosed to the disinterested Board Members, and the Board authorizes, approves, or ratifies the conflicting interest transaction by an affirmative vote of a majority of the disinterested Board Members, even if the disinterested Board Members are less than a quorum;
 - ii. The material facts of the relationship or interest as to the conflicting interest transaction are disclosed to the Owners entitled to vote on that transaction, and the conflicting interest transaction is specifically authorized, approved, or ratified by a vote of the Owners entitled to vote thereon; or
 - iii. The conflicting interest transaction is fair as to the Association.
 - (c) **Process for Contracting Service Providers and Vendors.** Prior to the Association's retention of and entering into a contract with any service provider or vendor, the Association should engage in a competitive bid process. If an Owner in the Association is an agent of a service provider or vendor then the Association must engaged in a competitive bid process that includes at least three bids or quotes. The Board may establish Rules setting forth the procedure for such competitive bid process. The Board must approve each service provider or vendor hired by a vote of the majority of the Board Members.

- 7.14 **Establishing Hearing Procedures.** The Board has the authority to create a reasonable hearing process applicable in case the Association takes adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board is not under any obligation to offer a hearing process, except as required by law or by the Governing Documents and in any such process has the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. The Board may rely on any reasonable information and evidence in determining whether a violation of the Rules has occurred both initially and after a hearing.
- 7.15 **Annual Meeting.** The Association shall arrange for and conduct an annual meeting each year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as are properly requested pursuant to the Governing Documents or the law.
- 7.16 **Project Air Space, Drones, and Unmanned Aircraft.** The Association has the right in the Rules to regulate, ban any use, and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property. To the extent allowed by state and federal law, the Association also has the right to regulate, ban, and impose restrictions or requirements on the flying of any device including unmanned aircraft or drones (any remotely controlled or autonomous flying device): (1) within all airspace over the Property, and (2) in any airspace within 1,000 feet of the Property if the device is caused to be flown by an Owner, Occupant, or Person within the Project. Any Rules adopted by the Association that do not prohibit or allow the flying of devices in the Project's airspace will not subject the Association to liability for damages to persons or property relating to the operation of such a device. Any Owner or tenant causing a flying device to be flown within the airspace over the Property or in violation of any Rule adopted by the Association shall: (1) be responsible for any damage caused by the device, and (2) indemnify and defend the Association, its manager, and all officers and directors (past or present), from any claims related to the device. The Association has the power to establish Rules implementing this section that may include, and are not limited to, the following: (1) requiring Owners to provide information about and/or photographs of the device to the Association, (2) requiring flying devices to be marked with the Owner's name or other information, (3) establishing certain areas, hours, minimum or maximum height limitations, or banning flying of devices completely, (4) banning altogether or designating required commercial drone delivery landing sites, and (5) any other reasonable Rules related to the flying of devices.
- 7.17 **Reinvestment Fee Covenant upon Sale or Transfer of Lot.** The Board may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46 in an amount up to one half of one percent (0.5%) of the value of the Lot, including any Dwellings constructed thereon, at the time of the transfer. A transfer is any change in the ownership of the Lot as reflected in the office of the county recorder, regardless of whether it is pursuant to the sale of the Lot or not. Until otherwise set forth in the Rules by the Board, the amount of the reinvestment fee shall be one half of one percent (0.5%) of the value of the Lot up to a maximum amount of two thousand five hundred dollars (\$2,500) being charged as the reinvestment fee. Any different amount that is set forth by the Board of Directors in the Rules must be consistent with Utah Code § 57-1-46.

- (a) The value of the Lot for purposes of this Section is the higher of: (1) the value of the Lot, including any Dwelling that has been constructed thereon, as determined by the property tax assessor on the date of the transfer of title, (2) the purchase price paid for the Lot, including any Dwelling thereon, related to the transfer, or (3) the value of the Lot and any Dwelling thereon on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board of Directors) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five (5) appraisers selected by the Association.
- (b) This reinvestment fee covenant may not be enforced against: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (5) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed two hundred fifty dollars (\$250) or such other amount as may be established by law.
- (c) The Association has authority to record any notice required by law to effectuate this provision. The Association has the authority to enact Rules that may include: (1) an exception to the imposition of a Reinvestment Fee for the Owner's conveyance of a Lot into an *inter vivos* trust; (2) requirements for Owners to provide sales and transfer documents; (3) requirements for the timing of responses to requests such as the selection of the appraiser; (4) default provisions if no selection is made such as allowing the Association to select the appraiser; and (5) other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

ARTICLE 8: BUDGETS & ASSESSMENTS

- 8.1 **Purpose of Assessments.** The Association shall use the money it collects for: the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 8.2 **Budget and Regular Assessment.**
 - (a) The Board shall adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Board may revise that budget from time to time as the Board deems appropriate.
 - (b) The budget must estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which must be broken down into reasonably detailed expense categories. The budget must include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board deems appropriate.
 - (c) The Board shall make a copy of the budget available to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.

- (d) The Board shall determine the amount of the regular Assessments to be paid by the Owners of each Lot by dividing the total budgeted amount by the number of Lots (as originally platted before any Lots are combined) in the Association.
 - (e) Owners may disapprove a proposed budget pursuant to the terms of Section 57-8a-215 of the Act.
- 8.3 **Payment of Regular Assessments.** Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in one annual installment.
- 8.4 **Adjustments to Regular Assessments.** In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board, each Owner must thereafter pay to the Association the Owner's adjusted regular Assessment.
- 8.5 **Personal Obligation for Assessment.** Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it is so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs, and attorney fees, is also the personal obligation of the Owner of such Lot at the time the Assessment becomes due.
- 8.6 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than special Assessments to individual Lots) will be allocated to all Owners based on the Allocated Interest of each Lot.
- 8.7 **Rules Regarding Billing and Collection Procedures.** The Board may adopt Rules or policies setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a certificate of payment) does not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 8.8 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. For any valid request, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith. The fee for providing this written statement is twenty-five dollars (\$25). The Rules may establish a different fee amount, but such fee must not exceed the maximum amount allowed pursuant to Utah Code § 57-8a-311.
- 8.9 **Account Payoff Information.** The Association may charge a fee for providing payoff information related to amounts owed by an Owner to the Association in connection with the closing of an Owner's financing, refinancing, or sale of a Lot. The fee for providing the

payoff information is fifty dollars (\$50). The Rules may establish a different fee amount, but such fee must not exceed the maximum amount allowed pursuant to Utah Code § 57-8a-106.

- 8.10 **Drainage and Flooding Assessments.** Assessments for drainage and flooding related expenses incurred by the Association shall be assessed to all Owners for Assessment purposes. For purposes of this subsection, drainage and flooding expenses shall include: (1) any Association expenses to repair, replace, compensate, or defend any claim arising from any damage from improper drainage or flooding; (2) any Association expense to repair, install or modify any structures, systems, utilities, or other physical structures in the Project to address flooding or drainage; and (3) any other Association expenses relating to drainage and flooding of the Project or any Lot therein. Such drainage and flooding Assessments may be included in the Association's budget as a regular Assessment or may be levied as a special Assessment.
- 8.11 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment is deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 8.12 **Special Assessments to Individual Lot.** Special Assessments may be levied by the Association against a particular Lot and its Owner for:
 - (a) Costs of providing services to the Lot upon request of the Owner;
 - (b) Costs incurred in bringing an Owner or the Owner's Lot or Dwelling into compliance with the provisions of the Governing Documents;
 - (c) Fines, late fees, collection charges, and interest;
 - (d) Any other charge designated as pertaining to an individual Lot in the Governing Documents; and
 - (e) Attorney fees, costs, and other expenses relating to any of the above.
- 8.13 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Lots, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Lot, at the Board's discretion.
- 8.14 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves, credit the excess against future Assessments, refund the excess to the Owners in proportion to the Allocated Interests of each Lot, or take other action with the funds permitted under this Declaration, as the Board deems appropriate. The Board's decision is binding and conclusive. In addition, the Association is not obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 8.15 **No Offsets.** All Assessments are payable at the time and in the amount specified by the Association, and no offsets against such amounts by Owners are permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and

power, a claim in the nature of offset or that the Association owes the Owner money, or a claim that the Association is not complying with its obligations as provided for in the Governing Documents.

- 8.16 **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments are applied to the earliest (or oldest) charges first. Owners have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 8.17 **Loans.** Upon approval of the Board, the Association may borrow money and may provide such security as necessary for the loan, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Lot will be security for any loan to the Association without that Owners' consent.

ARTICLE 9: NONPAYMENT OF ASSESSMENTS & LIABILITY

- 9.1 **Delinquency.** Assessments not paid within the time required are delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article.
- 9.2 **Collection Charges and Interest.** The Board may adopt Rules governing the collection of Assessments. If the Board does not otherwise adopt or establish billing and collection procedures, those in this section apply. Assessments are due and payable on the due date stated on the notice levying the Assessment, on the date established by the Board for the annual Assessment, as may be set forth in the budget, or on the date otherwise established in the Rules. Assessments will be considered past due thirty (30) days after the due date. If no payment is received after (30) days from the due date, the Association may charge a late fee of five percent (5%) of the annual Assessment amount. This late fee is charged just one time for the unpaid Assessment. In addition to the late fee, interest may accrue on all unpaid balances, which balances may include the unpaid Assessments, late fees, previously accrued interest (resulting in compounding of interest), attorney fees and costs, and any collection charges or other charges by a Manager to the Association related to the delinquent account. Such interest shall accrue at the rate of one and one-half percent (1.5%) per month, compounded monthly on all outstanding balances.
- 9.3 **Joint and Several Liability of Owner and Future Owners.** The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after that Owner has lawfully transferred the Lot to another Owner who has knowingly and voluntarily accepted title to the Lot. The recording of a deed to a Person that has not agreed to take ownership of the Lot is not considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Lot.
- 9.4 **Lien.** The Association has a lien on each Lot for all Assessments, which include but are not limited to interest, collection charges, late fees, attorney fees, court costs, and other costs of collection (which include all costs and are not limited by those costs that may be awarded under the Utah Rules of Civil Procedure). Pursuant to the Act, this lien will arise and be perfected as of the date of the recording of the Enabling Declaration and will have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount

of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien for fines will arise when (1) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (2) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien will have priority over every other lien and encumbrance on a Lot except only: (1) a lien or encumbrance recorded before this Declaration is recorded; (2) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.

- 9.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy will not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort will be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorney fees and costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 9.6 **Foreclosure Sale.** The Association has all rights of foreclosure granted by the Act, 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 Lot constitutes a simultaneous conveyance of the Lot into trust, with power of sale, to John D. Morris, 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 by executing and recording a substitution of trustee form.
- 9.7 **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 9.8 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association has a right to demand and collect rent from any Occupant in a Dwelling for any delinquent Assessment balance more than sixty (60) days late. Each Occupant, 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 must be paid to the Association.
- 9.9 **Attorney Fees Incurred as a Result of a Default.** In addition to any collection fees and costs incurred by the Association due to an Owner's failure to timely pay Assessments, the Association is entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any

bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 or chapter 11 plan for the duration of the plan; (7) file any motions, objections, or other adversary proceedings in a bankruptcy matter and all related activities including seeking and responding to discovery; taking depositions or examinations; introducing evidence, hiring and paying expert witnesses; filing motions, pleadings, and other papers; attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

- 9.10 **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it is not bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to any failure to pay Assessments.

ARTICLE 10: PROPERTY RIGHTS IN LOTS & COMMON AREA

- 10.1 **General Easements to Common Area and Lots.** Subject to Terms and Conditions of the Association's Governing Documents:
- (a) Each Owner has an easement and the right and a nonexclusive license for use and enjoyment of the Common Area, subject to any other restrictions related to such use. Such right and nonexclusive license is appurtenant to and passes with title to each Lot and in no event will such appurtenant rights be separated therefrom. Occupants have the same access and use rights to the Common Area and facilities as an Owner. All such rights are subject to any Rules established by the Board.
 - (b) The Association has nonexclusive easements with the right of access over and across each Lot, to make inspections, to prevent or mitigate damage to Common Area, and to maintain, repair, replace, or effectuate the restoration of the Common Area and facilities that the Association is responsible for maintaining which are accessible from such Lot. The Association shall exercise such rights only after providing the notice required in this Declaration.
 - (c) The Association has a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project.
 - (d) The Association has a nonexclusive easement on all Common Areas for underground installation and maintenance of power, gas electric, water, and other utility and communication lines and services and any such easement shown on any Plat.
 - (e) The Association has an easement over Lot 1 in Plat S for the maintenance and replacement of the wall, entrance gate, and any related structures to the extent they

are located, in whole or in part, on Lot 1 in Plat S. To the extent they are not located within Lot 1, Plat S, no easement is created by this section for any future installation.

- (f) The Board has the authority to grant additional easements that, if granted, are subject to all other terms of the Governing Documents.

10.2 Easements for Lots 1, 7, 8, 9, 10, and 11 in Plat S. A permanent easement shall exist for each of Lots 1, 7, 8, 9, 10, and 11 in Plat S (the “Easement Lots”) for:

- (a) Each Lot Owner’s use of any Common Area between the border of that Lot facing a roadway on 1080 East Street and 1450 South Street and the Lot-side edge of the Common Area curb and gutter bordering the existing roadway (the “Owners Easement Area”). Each Easement Lot Owner shall have permanent and exclusive use and enjoyment of the Owners Easement Area immediately adjacent to and between that Lot and the Common Area curb and gutter, as identified on Plat S. The Easement Lot Owners shall maintain, insure, and replace all landscaping and other structures in the Owners Easement Area to the same extent as if the easement area were part of the Owner’s Lot. The Association shall maintain any Common Area structures, utilities, or other infrastructure in the Owners Easement Area to the same extent such maintenance would be the Association’s responsibility if the Owners Easement Area were part of the Lot.
- (b) The Association over the Easement Lots and for other property adjacent to those Lots bordering the roadways on 1080 East Street and 1450 South Street to the extent that property is encroached on by curb, gutter, and roads of the existing roadway (the “Association Easement Area”). The Association shall have permanent and exclusive use and enjoyment of the Association Easement Area, which shall be treated in all respects as Common Area, pursuant to this Declaration. The Association shall exclusively maintain, insure, and replace all curb and gutter, roadways, and other structures in and under the Association Easement Area to the same extent as if the easement area were part of the platted Common Area. The Lot Owners of the adjacent lots shall maintain any structures, utilities, or other infrastructure in the Association Easement Area to the same extent such maintenance would be the Lot Owner’s responsibility if the Association Easement Area were part of the platted Common Area.

10.3 Drainage Easements. The Association has an easement over any and all Lots for the purpose of repairing, replacing, and maintaining the drainage equipment, systems, and apparatus installed in the Project, which include the French drains located in the Project and the drainage pipes and related equipment that run through the Lot 19 located at 1489 South 1140 East. Owners shall not construct, erect, or place any Dwelling, structure, or fence on a Lot that would interfere with the Association’s ability to repair, replace, and maintain the drainage equipment, systems, and apparatus. In the event that the Association damages, displaces, or removes any previously approved landscaping on a Lot while completing repairs and maintenance on the drainage systems and related equipment, the Association shall be responsible to repair and replace such landscaping to a similar condition that existed prior to the repairs and maintenance taking place.

10.4 Recorded Easements. Any and all recorded easements are subject to all other terms of the Governing Documents.

10.5 Public Easements and Rights-of-Way. Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines,

fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, Lots, or Lot Owners in the Project are hereby established and dedicated; provided, however, use of said easements and rights-of-way must not unreasonably interfere with the use of the Common Area and facilities and the Lots by the Owners or Occupants. The Association has the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Area and facilities or Lots for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating, gas lines or pipes, and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through, or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Lot.

- 10.6 **Easements for Encroachments.** If any portion of the Common Area or any subdivision improvement encroaches upon any Lot, or if any Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the subdivision improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, will exist for the life of the improvement or structure.
- 10.7 **Limitation on Easement.** An Owner's rights and license for the use and enjoyment of the Common Area is subject to any other limitation in the Governing Documents and the right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or open area contained within the Project for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.
- 10.8 **Views.** Views from a Lot and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Project.

ARTICLE 11: USE LIMITATIONS & CONDITIONS

- 11.1 **Rules.** The Association has authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of § 57-8a-218, Subsections (1) through (13), except Subsection (1)(b)(ii), are hereby modified not to apply to the

Association to afford the Board the authority to adopt Rules more tailored to the specific needs of the Project.

- 11.2 **Signs & Decorations.** The Association may regulate and restrict Signs and Decorations in the Project, to the extent permitted by law, in the Rules. Signs and Decorations are prohibited from being hung or displayed on a Dwelling or Lot except as permitted by the Board in the Rules or by the Board in writing. "Signs" shall refer to any temporary or permanent medium, display, or device (including banners, placards, decals, posters, billboards, flags, stickers, wraps, brochures, and yard signs) that visually communicates or identifies any message, symbol, icon, endorsement, idea, concept, logo, insignia, business, group, team, event, or other thing or concept, or that is intended to communicate or identify any of the same. "Decorations" shall refer to any temporary medium, display, or fixture anywhere in the Project except on the interior of any structure.
- (a) Displaying the American Flag. Notwithstanding the foregoing section 11.2, Occupants may display a reasonably sized American flag on the Lot consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. The flag must also be displayed in accordance with the provisions of United States Code Title 4, Chapter 1.
- 11.3 **Nuisance.** Noxious or offensive activity is prohibited within the Project, as is any activity that might be or become an unreasonable annoyance or nuisance to the Owners or Occupants and/or interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner, Occupant, or guest of any Owner or Occupant may engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, city, county, state, or federal body. The Board may adopt rules that further describe the activities that are deemed to be nuisances within the Project. A Nuisance includes but is not limited to:
- (a) Any unclean, unhealthy, unsanitary, unsafe, unsightly, untidy, or unkempt condition or any condition unreasonably offensive to the senses including, but not limited to, any condition that emits any unreasonably foul, unpleasant, or noxious odors, sights vibrations, sounds, or lights or any condition that causes any unreasonable noise or other unreasonable condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other Occupants at the Project;
 - (b) Actions or activities tending to cause unreasonable embarrassment, discomfort, annoyance, distress, or a disturbance to any other Occupant, their guests or invitees, particularly if police or the sheriff must be called to restore order;
 - (c) The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions; and
 - (d) The failure to regularly remove rubbish, trash, refuse, waste, dust, debris, and garbage from a Lot.
- 11.4 **Outside Speakers and Amplifiers.** Exterior speakers and amplifiers are permitted in the Project subject to any conditions set forth in the Rules. Unreasonable noise originating from a Lot or Dwelling between the hours of 10:00 p.m. and 8:00 a.m. will be deemed a nuisance.
- 11.5 **Firearms.** The use of firearms within the Project is prohibited except as may be otherwise specifically allowed by law for self-defense purposes. The term firearm includes but is not limited to all BB guns, pellet guns, rifles, pistols, paint guns, sling shots, bows, wrist-

rockets, blow-dart guns, and other similar devices of all types.

- 11.6 **Repairs.** Repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, are permitted within an enclosed garage and permitted as may be established by the Board in the Rules. Notwithstanding the foregoing, minor repair work may be completed in a driveway; however, the Board, in its sole discretion, may determine what constitutes repair work of a minor nature. Winterizing of recreational vehicles, including boats, trailers, mobile homes, OHVs, etc., is not permitted in the Project.
- 11.7 **Vehicles in Disrepair.** No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Areas or on any street for more than twenty-four (24) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the Owners or Occupants of the Project. Should any Owner fail to remove such vehicle, the Association, after giving notice, may have the vehicle removed from the Property at the Owner's expense.
- 11.8 **Holiday Decorations.** The Board may adopt Rules regulating the use and display of holiday decorations, to the extent permitted by law. Unless and until the Board has adopted Rules, decorations may be displayed on the outside of Dwellings for a period of sixty (60) days before and after the related holiday.
- 11.9 **Unightly Items.** The Board may adopt Rules regulating the removal, accumulation, and placement of any rubbish, debris, or unsightly material, conditions, or items. Unless and until the Board has adopted Rules, the following apply: (a) it is prohibited to construct, reconstruct, repair, or abandon a vehicle, boat, or equipment within the Project, except for work done in accordance with Section 11.7; (b) Owners or Occupants shall cause all rubbish, debris, unsightly materials, or similar objects of any kind to be regularly removed from Lots and to not accumulate therein or thereon; (c) refuse containers and machinery and equipment not a part of the Lot are prohibited on the Lot unless obscured from view of neighboring Lots, or unless otherwise approved by the Board; (d) Owners or Occupants shall store all curb-side picked up trash containers within a garage or behind the front wall of the Dwelling, except within twenty-four (24) hours of collection; (e) clotheslines are permitted in backyards so long as they are not visible from the streets within the Project; and (f) new plantings and landscaping placed on the property must be properly nurtured and maintained.
- 11.10 **Animals.** Owners may only keep animals in accordance with State, County, and City laws and ordinances. Domestic animals generally kept in households such as dogs, cats, birds, fish, and hamsters may be kept in the Project subject to the rules and requirements of this Declaration or the Rules adopted by the Board. No livestock or poultry may be kept on any Lot.
 - (a) Notwithstanding the foregoing portion of Section 11.11, no animal may be kept within a Lot which: (1) is raised, bred, kept, or maintained for any commercial purposes; (2) causes a nuisance; or (3) in the good faith judgment of the Board, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. The Owner must immediately clean up all fecal matter in the Project. The Board may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including, but not

limited to, requirements for registration, specific fees or deposits for Owners of Lots that have animals, the use of leashes, and noise and barking limitations. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal and shall indemnify and hold harmless the Association and any other Owner from any loss, claim, or liability of any kind arising from or related to such pet or animal. Incessantly barking dogs are not permitted and their presence will result in fines.

- (b) Owners and Occupants may not permit their dogs to roam unattended in the Project. Dogs must be kept in a Dwelling, dog run, or kennel. All outdoor pet enclosures must be approved by the Association and must not be visible from the street. When not confined on a Lot or in a Dwelling, all dogs must be leashed and under the direct control and supervision of an Owner.

11.11 Residential Occupancy. No trade or business may be conducted in or from any Lot unless:

- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Dwelling or Lot;
- (b) The business activity conforms to all zoning and legal requirements for the Project and the business activity;
- (c) The business activity does not involve an unreasonable number of Persons coming onto the Project who do not reside in the Project;
- (d) The business activity does not involve the solicitation of Occupants or Owners of the Project;
- (e) The business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners and Occupants of the Project;
- (f) The business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Dwelling or Lot for such activity, and a description of any impact on the Project;
- (g) The business activity will not result in the increase of the cost of any of the Association's insurance;
- (h) The Owner or Occupant of the Lot resides in the Dwelling in which the business activity is proposed for the entire time any business activity is conducted; and
- (i) The Board's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.

11.12 No Recording of Plat or Covenants by Owners. Owners or other Persons shall not record any Plat for the Project's subdivision or any covenants, conditions, or restrictions related to any Lot, any Dwelling, or the Project unless the Board and any Owners (if Owner approval is required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section will be null, void, and of no legal effect.

11.13 Lighting. The Board may adopt Rules setting forth exterior lighting standards and regulation. If such rules are adopted, then exterior lighting fixtures and walkway and landscaping lights are allowed only to the extent approved by the Board.

- 11.14 Energy Conservation Equipment.** The Board may adopt Rules relating to the solar panels to the extent permitted by law, including, but not limited to, the type, style, reflectivity, size, or color of the solar panels. The Board may also adopt Rules related to the installation and maintenance of the solar panels, including, but not limited to, the method of installation, adopting a list of approved installers and disallowing unapproved installers, and setting a level or standard of maintenance. Solar energy collection panels, other energy conservation equipment or attendant hardware that is constructed or installed on the ground must not be visible from the street fronting the Lot on which the equipment is installed. Maintenance and required upkeep of solar energy collection panels, other energy conservation equipment or attendant hardware, to include those portions of the Property or dwelling roofing that are affected by said equipment, shall be the sole responsibility of the Property Owner. Section 5.3 of these documents applies in the event any Owner is failing to perform any of its obligations under this Declaration. The Board has the right to review any and all plans for energy conservation equipment prior to construction or installation, including proposed location. Pursuant to Section 5.4(g), the Board may assess an Owner for any actual cost or expense incurred to review the Owner's application to install solar energy equipment, including for any review, report, or analysis performed by a solar engineer, legal counsel, or other third-party professional. The Board may adopt Rules requiring an Owner to pay a deposit in advance for such actual costs or expenses. All Owners are required to obtain any permits with the governing municipality and comply with building code requirements and zoning restrictions.
- 11.15 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial effect or other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance will be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears after reasonable investigation under the circumstances that the Owner is incapable of paying the Assessment and the Lot is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.
- 11.16 Hazardous Substances.**
- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two (2) sentences do not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Lot or the Project.

- (b) No one shall permit anything to be done or kept on a Lot or Dwelling which will result in the cancellation of insurance or which would be in violation of any public law, ordinance, or regulation.
- (c) Except as incidental to the storage of camping equipment, vehicles, and other normal maintenance equipment and items, no one shall use or permit to be brought into the Dwellings or Lots any flammable oils or fluids such as gasoline, kerosene, naphtha, benzene, other explosives, or other such articles that are abnormally hazardous.
- (d) Unless otherwise set forth in the Rules, fireworks are permitted in accordance with governing municipal, county, or state law.
- (e) Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from, or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity applies: (1) when the release of the Hazardous Substance(s) was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of Hazardous Substance(s) on the Project. The obligations of each Owner under this Section survive any subsequent sale by an indemnifying Owner.
- (f) As used in this Section, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law including but not limited to: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

ARTICLE 12: INSURANCE

- 12.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. The Association may obtain different policies from different insurance carriers and may purchase stand-alone policies instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 12.2 **Annual Insurance Report.** The Board may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that

coverage, and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "THE ASSOCIATION HAS NOT OBTAINED EARTHQUAKE INSURANCE;" and (4) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "THE ASSOCIATION HAS NOT OBTAINED FLOOD INSURANCE." The report may also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the Owners' protection in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the Board of Directors shall provide the most recent annual insurance report to any Owner upon request.

12.3 **Property Insurance.** The Association shall maintain a policy of property insurance covering the Common Area, including all buildings and improvements, building service equipment and fixtures thereon to the extent that any structure that is normally insured under a property insurance policy is installed or erected on the Common Area and is the Association's obligation to maintain.

- (a) The blanket policy must exclude land and other items not normally and reasonably covered by such policies. The blanket policy must be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and must include insurance for any fixture, improvement, or betterment installed in or to or otherwise permanently part of or affixed to Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.
- (b) At a minimum, the blanket policy must afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
- (c) The blanket policy must be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property must be determined by using methods generally accepted in the insurance industry.
- (d) The blanket policy must include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable Property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost, but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
- (e) Each property policy that the Association is required to maintain must also contain or provide for the following: (1) "Inflation Guard Endorsement," if available; and (2) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction).
- (f) The Association shall set aside an amount equal to the amount of the Association's

property insurance policy deductible or, if the policy deductible exceeds ten thousand dollars (\$10,000), an amount not less than ten thousand dollars (\$10,000).

- 12.4 **Earthquake Insurance.** The Association may purchase earthquake insurance as the Board deems appropriate.
- 12.5 **Flood Insurance.** If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, the Board may purchase flood insurance covering the Project or that portion of the Project located within the Special Flood Hazard Area. If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- 12.6 **Comprehensive General Liability (CGL) Insurance.** For so long as the Association has any obligation to maintain Common Area, the Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owners' membership in the Association. The coverage limits under such policy must not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance must contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 12.7 **Directors' and Officers' Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board Members, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy must: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) have a minimum coverage limit of two million dollars (\$2,000,000). In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 12.8 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association may obtain insurance covering the theft or embezzlement of funds that will provide coverage for: (1) an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (2) theft or embezzlement of funds by: (a) Officers and Board members; (b) employees and volunteers of the Association; (c) any Manager of the Association; and (d) officers, directors, and employees of any Manager of the Association.
- 12.9 **Workers' Compensation Insurance.** If the Association has any employees, the Board shall purchase and maintain in effect workers' compensation insurance for all employees, if any, of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.
- 12.10 **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy: (a) are payable to an Insurance Trustee (defined in Section 12.11) if one is designated, or to the Association; and (b) are not

be payable to a holder of a security interest. An Insurance Trustee, if one is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds must be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds must be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary and is related to the property has been paid for, must be distributed to the Owners and lien holders, as their interests remain with regard to the Lots. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: (1) the collection, receipt of, and appropriate disposition of all insurance proceeds; (2) the execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, is irrevocable, and is binding on any heirs, personal representatives, successors, or assigns of an Owner.

- 12.11 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding fifty percent (50%) or more of the Allocated Interests, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) may require related to a loss and receipt or potential receipt of insurance proceeds.
- 12.12 **Certificates.** Any insurer that has issued an insurance policy to the Association must issue a certificate of insurance to the Association and, upon written request, to any Owner or Lender.
- 12.13 **Named Insured.** The Association must be the named insured under any insurance policy. Each Owner must also be an insured under all property and CGL insurance policies.
- 12.14 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on the Association's behalf and under the Association's direct authorization to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 12.15 **Waiver of Subrogation Against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any Person residing with a Lot Owner if an Owner resides in the Lot, and the Association's agents and employees.
- 12.16 **Right of Action.** Nothing in this Declaration prevents an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against any Person or entity at fault for the loss.
- 12.17 **Applicable Law.** This Declaration specifically subjects the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations apply to this Association.

ARTICLE 13: EMINENT DOMAIN

- 13.1 **Taking of Common Area.** If a portion of the Common Area and Facilities is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration must be added to the general funds of the Association.
- 13.2 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration will apply.
- 13.3 **Total Taking of a Lot.** If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Lot and Allocated Interest regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Lot's Allocated Interest will automatically be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration that accomplishes the adjustment required for this Section.
- 13.4 **Partial Taking of a Lot.** Except as provided in Section 13.3, if part of a Lot is taken by eminent domain, or sold under threat thereof, so that such Lot may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Lot. Upon such a taking, that Lot's Allocated Interest in the Common Area will remain the same.
- 13.5 **Priority and Power of Attorney.** Nothing contained in this Article entitles an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of any condemnation award allocated to such Lot. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area or any part thereof. In the event the taking involves all or part of any Lot or the Common Area, the award or proceeds are payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, is irrevocable, and is binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14: TERMINATION

- 14.1 **Required Vote.** Except as otherwise provided in Article 13.2, the Project may be terminated only by the approval of Owners holding at least sixty-seven percent (67%) of the Allocated Interests and the applicable City and County governments
- 14.2 **Termination Agreement.** An agreement to terminate must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, must be recorded with the Utah County Recorder's office and is effective only on recordation.
- 14.3 **Sale of Project Following Termination.** A termination agreement may provide that the Association's entire interest in the Project be sold following termination. If, pursuant to such

agreement, any real estate in the Project is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

- 14.4 **Association Duties.** The Association, on the Owners' behalf, may contract for the sale of real estate in the Project (other than Lots unless such Lots are owned by the Association) on the termination of the Project or related to the approval of the sale of the Project. The contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold, immediately upon approval of the sale of the Property by the Owners or the approval of the Owners of Termination of the Project, title to that real estate will immediately vest in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had notwithstanding any termination. Unless otherwise specified in a termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have a right to occupancy of the Common Areas in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration. Unless voluntarily relinquished by each Owner, Owners of Lots shall retain easements across any roadways regardless of any Termination of the Association.
- 14.5 **Proceeds of Sale.** The proceeds of any sale of real estate or assets of the Association shall be held by the Association as trustee for Owners and Lenders as their interests may appear. The Association shall distribute proceeds of the sale to Owners and Lenders according to their Allocated Interest. The Association shall not distribute the interest of any Owner in such proceeds except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Lots that were recorded before termination may enforce those liens in the same manner as any lien holder.
- 14.6 **Allocation upon Termination.** Unless provided otherwise herein, in a termination agreement, or in an approved contract for the sale of the Property (other than Lots), upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements, or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation must be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders.

ARTICLE 15: AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended by the affirmative vote of Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest. The approval required to amend the Declaration may be obtained by ballot, vote, or any other means allowed by law. The vote of approval for any one Owner of a Lot is sufficient if there are multiple Owners of the Lot, and so long as any other Owner of the Lot does not vote inconsistently.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend must be broadly construed to permit any change to the rights, restrictions,

obligations, and other terms in the Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association or if the application is unclear, without incorporating other provisions of the Act that are not otherwise applicable to the Association.

- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein must be executed by the Board, through its agent, who must certify that the amendment has been approved and adopted and that the Association has complied with the procedures and requirements necessary to amend the Declaration. The amendment will be effective when it is recorded with the Utah County Recorder's office.
- 15.4 **Changes to Plat or Boundaries of the Association.** Unless otherwise required by Section 4.4, the Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot or Lots upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Lot, the Owner of the modified Lot must consent in writing. If the approval required herein is obtained, each and every Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; (2) grants the Association power of attorney to sign necessary documents on each Owner's behalf as necessary for the agreement, amendment, or correction; and (3) consents that the president of the Association, on behalf of the Association and its Board, has the authority to execute any such amended Plat, supplemental Plat, or correction to the Plat on behalf of the Association and all Lot Owners in the Project.
- 15.5 **Amendment to Conform to Law.** The Board may, without the approval of the Owners, amend this Declaration to conform the Declaration to any legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA, or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has significant experience and a regular practice in the area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Section.
 - (b) The Board must unanimously agree to the amendment at the time it is recorded.
 - (c) The Board must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this section of this Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit Owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (a) notifies the Owners that it

intends to amend this Declaration pursuant to this section, (b) provides notice to the Owners of their the right to object to the amendment within thirty (30) days, and (c) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.

- (d) Within forty-five (45) days of providing the information to the Owners required by this Section, no more than thirty percent (30%) of the Owners have objected to the amendment. If more than thirty percent (30%) of the Owners have objected under this section, no further amendment under this section may be sought for the following one year.
- (e) Having otherwise complied with all of the requirements of this section, the Board Members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment will be effective upon the recording of the instrument with the Utah County Recorder's office.

ARTICLE 16:

INTERPRETATION, CONSTRUCTION, & APPLICATION OF DECLARATION

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion is not a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest is the order set forth in Utah Code § 57-8a-228, which is: the Act, the Utah Revised Nonprofit Corporation Act, the Declaration and the Plat (read together), the Articles, the Bylaws, and then the Rules.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Act governs the Project, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act controls and this Declaration is deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none are exclusive of any other, and the Association and the Owners have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.
- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order in no way affects any other Terms and Conditions, all of which remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration must be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been inserted for

convenience only and are not considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents must not be interpreted for or against the Association, any Owner, or any other Person subject to their terms.

- 16.7 **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration are not applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents requires, the singular includes the plural, and vice versa, and the masculine includes the feminine and the neuter, and vice versa.
- 16.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like applicable thereto. The Association has no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

ARTICLE 17: NOTICE

- 17.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents must be in writing and must be delivered as follows:
- (a) Notice to an Owner from the Association.
 - (I) Notice to an Owner will be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which will be effective upon delivery.
 - (ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address has been furnished, then to the street address of such Owner's Lot. Unless otherwise provided by law, such as provided in Utah Code § 16-6a-103(4), any notice so deposited in the mail will be deemed effective five (5) days after such deposit.
 - (iii) By Electronic Transmission to an Owner which includes:
 - (A) By email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent

by email will be deemed effective when received or five (5) days after it is sent, whichever is earlier.

(B) By facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Unless otherwise provided by law, any notice sent by facsimile will be deemed effective when received or five (5) days after it is sent, whichever is earlier.

(C) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message will be deemed effective when received or five (5) days after it is sent, whichever is earlier.

(iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.

(2) Notwithstanding subsection (1) of this section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.

(3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association is not required to give more than one notice per Lot, whether electronic or not. In case any two (2) co-Owners receive conflicting notice demands, notice is proper if mailed by first-class mail to the Lot address.

(4) In case posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the primary Dwelling and the Association may remove any such posting the sooner of either: (a) two (2) days after the event or action for which notice was given; or (b) ten (10) days after the posting.

(b) Special Notice Prior to Association Entry.

(1) Emergency. In case of an emergency or condition requiring immediate entry onto the area of a Lot that is not part of the interior of a Dwelling, as determined by the sole discretion of the Board or its authorized agent, before entry the Association shall: (i) knock on the door of the Dwelling and attempt to obtain permission to enter the Lot from an Occupant or Owner; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Lot on behalf of the Association, then wait one (1) minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entering the Lot to inform them of the entry.

- (2) The Association may only enter a Lot or Dwelling for the purposes permitted in this Declaration. If the Association determines that it needs to enter a Lot or Dwelling, then before entering, the Association shall:
 - (i) Give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (a) that the Association or its authorized Persons will enter, (b) the date and time of the entry, (c) the purpose of entering, (d) a statement that the Owner or Occupant can be present during the time the Association is on the Lot or inside the Dwelling, (e) the full names of any Person who will be entering, and the phone numbers and addresses of the Persons entering or of the company by whom the Persons entering are employed for the purpose of entering, and (f) any other information the Association deems appropriate to include; and
 - (ii) Post the written notice described above on the front door of the Dwelling on the Lot at least seven (7) days prior to entry.
- (c) Notice to a Lender. If a Lender has requested notice, notice to a Lender must be delivered by first-class U.S. Mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address has been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot will be deemed an office of the Lender. Any notice so deposited in the mail will be deemed effective when received, or five (5) days after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association will be effective upon the satisfaction of any of the following delivery methods:
 - (1) By a written notice delivered personally to a Board Member, which will be effective upon delivery;
 - (2) By a written notice placed in the first-class U.S. Mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail will be deemed effective when received, or five (5) days after such deposit, whichever is earlier;
 - (3) By written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email will be deemed effective when received, or five (5) days after it is sent, whichever is earlier;
 - (4) By facsimile (whether to a machine or by other means) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile will be deemed effective when received, or five (5) days after it is sent, whichever is earlier; or

- (5) By text message to a phone number provided by the Association for the purpose of Association communications, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message will be deemed effective when received or five (5) days after it is sent, whichever is earlier.

**ARTICLE 18:
ATTORNEY FEES AND COSTS**

18.1 Legal Costs Associated with Disputes with Owners.

- (a) Owner Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term “costs” as used in this Section includes, but is not limited to, copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. “Costs” is specifically defined in this Declaration to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.
- (c) Exception to Owner’s Liability for Fees and Costs. If, related to (1) any dispute with an Owner; (2) any challenge by an Owner to a position of the Association on a Term and Condition; or (3) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (i) the Association could not establish an initial position on without having incurred the fees and costs, or (ii) results in a substantial modification to a prior position taken by the Association, then the Association shall pay those fees or costs and shall not assess those fees or costs to any Owner. This exception does not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

**ARTICLE 19:
RESERVES**

19.1 Requirement for Reserves. The Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area, pursuant to the following provisions:

- (a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Board.
- (b) Amount. In formulating the Association’s yearly budget, the Association shall include a reserve fund line item in an amount the Board determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association’s annual budget that identifies the amount to be placed into the reserve fund.
- (c) Owner Veto. In compliance with Utah Code § 57-8a-211(7), within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the allocated

voting interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

- (d) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (e) Segregation of Reserves. In accordance with Utah Code § 57-8a-211, the Association shall segregate money held for reserves from regular operating and other accounts.
- (f) Reserve Analysis. In accordance with Utah Code § 57-8a-211, the Board shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Board shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis must include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates must project a minimum of thirty (30) years into the future.
- (g) Qualifications for Person Preparing Reserve Analysis. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis. The Person preparing the reserve study must have: (1) experience in current building technologies, (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferable qualifications include the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (h) Summary and Copies of Reserve Analysis. In accordance with Utah Code § 57-8a-211, the Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to any Owner requesting a copy.

**ARTICLE 20:
LEASING AND NON-OWNER OCCUPANCY**

- 20.1 **Restriction on Leasing and Non-Owner Occupancy.** Subject to the exceptions in this Article 20, Lots and Dwellings are to be used for residential housing purposes only and Owners may rent their Lots for these purposes.
- 20.2 **Definitions.** For the purpose of this Article 20:
- (a) “Non-Owner Occupied” means:
 - (1) For a Dwelling owned in whole or in part by a natural individual or individuals, the Dwelling is occupied by someone when no individual Owner occupies the Dwelling as the individual Owner’s primary residence, or
 - (2) For a Dwelling owned entirely by one or more entities or trusts, the Dwelling is occupied by anyone.
 - (b) “Family Member” means:
 - (1) The parent, sibling, or child of an Owner; or
 - (2) In the case of a Dwelling owned by a trust or other entity created for estate planning purposes, a Person occupying the Lot if the trust or other estate planning entity that owns the Dwelling was created for (1) the estate of a current Occupant of the Dwelling, or (2) the parent, child, or sibling of the current Occupant of the Dwelling.
- 20.3 **Permitted Rules.** The Board of Directors may adopt Rules requiring:
- (a) Reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this Article, including requiring informational forms to be filled out by Owners and/or residents identifying non-Owner Occupants, vehicles, phone numbers, etc.
 - (b) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration. The Association may charge a reasonable fee for the administration of non-Owner occupancy reporting and monitoring, but at no time will such fee be more than the actual costs incurred by the Association for such administration.
- 20.4 **Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Dwellings must comply with the following provisions:
- (a) If required in the Rules or if requested by the Board, the Owners shall deliver a copy of any lease or other agreement for non-Owner occupancy to the Association within the time period provided for in the rules or regulations or in the Board’s request.
 - (b) Any lease or agreement for otherwise allowable non-Owner occupancy must be in writing and must provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply will be a default under the lease or agreement. The minimum initial lease term in every lease shall be six months. If a lease or agreement for non-Owner occupancy (whether in writing or not) does not include these provisions, they are nonetheless deemed to be part of the lease or agreement and binding on the Owner and the resident.

- (c) No Owner may lease less than the entire Dwelling unless the Owner resides in the Dwelling.
- (d) Except as a non-paying guest of an Owner, daily and weekly occupancy by non-Owner Occupants is prohibited.
- (e) Any Lots that are Non-Owner Occupied at the time this Declaration is recorded with the County Recorder's office will be grandfathered and allowed to remain Non-Owner Occupied, subject to the provisions herein, until such time as the ownership of the Lot is conveyed or the Lot becomes Owner-Occupied. All grandfathered Lots must conform to all other provisions in this Article.

20.5 **Exceptions for Family Members.** If only Family Members occupy a Dwelling, then notwithstanding anything contrary herein, the following applies:

- (a) Subsections 20.4(b)-(e) do not apply to that occupancy;
- (b) No written agreement regarding occupancy needs to be created between the Occupant and the Owner; and

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

20.7 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Dwelling is responsible for the Occupant's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for non-compliance with this Declaration, after reasonable notice, the Association has the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending non-Owner Occupant. The Association, the Board, and any Manager are not liable for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and any Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

20.8 **Demanding Rental Payments from Tenant.** Pursuant to Utah Code § 57-8a-310, the Association has the right to demand and collect rent from any tenant in any Dwelling for which an assessment and/or other charges owed to the Association is more than sixty (60) days late.

ARTICLE 21: GENERAL PROVISIONS

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

21.2 **No Liability of Officials.** To the fullest extent permitted by applicable law, neither the Board nor any officer of the Association is liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence.

- 21.3 **Use of Funds Collected by the Association.** The Association shall hold all funds it collects, including Assessments and contributions to the Association paid by the Owners, if any, in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds will inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for, and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 **Owner Liability and Indemnification.** Each Owner is liable to the remaining Owners and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Dwelling, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Lot, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Lot and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent that: (1) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (2) the injury or damage occurred by reason of the intentional act of the Association.
- 21.5 **Consent, Power of Attorney, and Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance will be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, is irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and is not affected by the disability of any such Owner or Occupant.
- 21.6 **Security.** The Association must in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area and Facilities that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Lot in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 21.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area and Facilities, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section is not a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

IN WITNESS THEREOF, the undersigned officer of the Association hereby certifies that the Board of Directors has obtained the affirmative vote of the requisite number of votes of the Owners to satisfy the requirements of the Association's Governing and the Act to approve and adopt this Declaration. This SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, AND LIENS FOR AND RESPECTING THE BERKSHIRES, A PRIVATE, GATED COMMUNITY is executed as of the day and year written below.

DATED as of the 8 day of may, 2019.

**THE BERKSHIRES
HOMEOWNERS ASSOCIATION, INC.**

By: Kimble Smith, President

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

On this 8, day of May, 2019, personally appeared before me Kimble Smith, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the President of The Berkshires Homeowners Association, Inc. (the "Association"), and that said document was signed by him/her on behalf of the Association with all necessary authority, and acknowledged to me that said Association executed the same.

Emmeline Watts
Notary Public

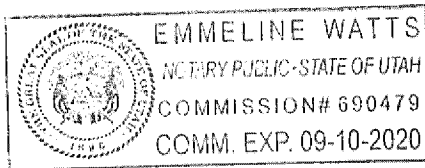


EXHIBIT A

LEGAL DESCRIPTION

Legal Description: The Berkshires Subdivision contains approximately fifty-two (52) acres, with fifty-five (55) described lots, with the following descriptions:

Plat	Lot Number	Serial Number	Plat	Lot Number	Serial Number
D	1	35:401:0001	J	22	35:479:0022
D	2	35:401:0002	J	23	35:479:0023
D	3	35:401:0003	K	1	35:480:0001
D	4	35:401:0004	K	2	35:480:0002
D	5	35:401:0005	K	3	35:480:0003
D	6	35:401:0006	L	1	35:594:0001
D	7	35:401:0007			
D	10	35:401:0010	S	1	35:683:0001
D	12	35:401:0012	S	2	35:683:0002
D	13	35:401:0013	S	3	35:683:0003
D	14	35:401:0014	S	4	35:683:0004
D	15	35:401:0015	S	5	35:683:0005
D	16	35:401:0016	S	6	35:683:0006
D	17	35:401:0017	S	7	35:683:0007
D	18	35:401:0018	S	8	35:683:0008
D	19	35:401:0019	S	9	35:683:0009
E AMD	1	35:442:0001	S	10	35:683:0010
H	1	35:460:0001	S	11	35:683:0011
H	2	35:460:0002			
I	18	35:476:0018			
I	19	35:476:0019			
I	20	35:476:0020			
J	1	35:479:0001			
J	2	35:479:0002			
J	3	35:479:0003			
J	4	35:479:0004			
J	5	35:479:0005			
J	6	35:479:0006			
J	7	35:479:0007			
J	8	35:479:0008			
J	9	35:479:0009			
J	10	35:479:0010			
J	11	35:479:0011			
J	12	35:479:0012			
J	13	35:479:0013			
J	14	35:479:0014			
J	15	35:479:0015			
J	21	35:479:0021			

EXHIBIT B

**BYLAWS
FOR**

**THE BERKSHIRES
HOMEOWNERS
ASSOCIATION, INC.**

BYLAWS
OF
THE BERKSHIRES HOMEOWNERS ASSOCIATION, INC.

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**AMENDED AND RESTATED BYLAWS
OF
THE BERKSHIRES HOMEOWNERS ASSOCIATION, INC.**

These Amended and Restated Bylaws of The Berkshires Homeowners Association, Inc. (these “Bylaws”) are hereby adopted and established as the Bylaws of The Berkshires Homeowners Association, Inc. (“the Association”). These Bylaws and any amendments thereto apply to the Association upon their recording and bind all present and future Owners and Occupants.

**ARTICLE I:
DEFINITIONS**

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, AND LIENS FOR AND RESPECTING THE BERKSHIRES, A PRIVATE, GATED COMMUNITY (the “Declaration”), as amended, have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws will be accomplished as provided for in the Declaration.

**ARTICLE II:
OWNERS**

- 2.1 **Annual Meetings.**
- (a) Requirement. The Association shall hold an annual meeting of the Owners no less than once each calendar year.
 - (b) Date and Time. Unless changed by the Board, the annual meeting of Owners will be held in November of each year, the specific date and time of which will be set by the Board. The Board may from time to time change the date and time for the annual meeting of the Owners.
 - (c) Purpose. The annual meeting will be held for any, or all, of the following purposes:
 - (1) Electing Board Members;
 - (2) Discussing the most recent financial report(s), budget statement, and reserve study; and discussing reserves;
 - (3) Review and discussion of the Rules;
 - (4) Discussing insurance issues and coverage; and
 - (5) Transacting such other business as may properly come before the meeting, which is limited to those matters for which Owners have the authority to

vote on and decide as provided for in the Governing Documents and by law.

- (d) Election of Board Members. If Board Member elections cannot be held on the day designated for the Owners' annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.
- (e) Minutes of Meetings. The minutes of each annual meeting, not previously approved, must be approved by a majority of the Board Members in attendance at the following annual meeting.

2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by a majority vote of the Board of Directors or by the President. Special meetings must be called upon the written request of Owners holding not less than fifty percent (50%) of the Allocated Interest of the Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners must include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and must be delivered to the Manager, or the President, who shall then call a special meeting, provide notice of the special meeting, and conduct a special meeting within sixty (60) days of receipt of the request that must address the purpose identified on the request, but no other issues.
- (c) Cancellation. A request for a special meeting of the Owners called by Owners may be cancelled by a written request for cancellation delivered to any board member in the Association any day before the meeting date or to any person presiding over the meeting on the date set for the meeting and before the time set to start the meeting, with such request signed by at least twenty percent (20%) of the people who gave written notice to request a meeting.

2.3 **Place of Meetings.** The Project is the place for any annual or special meeting unless special circumstances make it unavailable, in which case the meeting must be held within ten (10) miles of the location of the Project.

2.4 **Notice of Meetings.** The Board of Directors shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than sixty (60) nor less than ten (10) days prior to the meeting.

2.5 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board of Directors may designate a record date, which must not be more than sixty (60) days nor less than ten (10) days, prior to the meeting. If no record date is designated prior to sending notice

of the meeting, the first date on which a notice of the meeting is sent will be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Persons or entities appearing in the Association's records on such record date as the Owners of record of Lots on the Property will be deemed to be the Owners of record entitled to notice of and to vote at the Owners' meeting.

- 2.6 **Quorum.** At any Owners' meeting, the presence (in person or by some other means allowing for participation) of thirty percent (30%) of the Allocated Interest of the Owners at any duly called meeting of the Association will constitute a quorum for the adoption of decisions. The vote of the Owners representing a majority of the Allocated Interest of the Owners in attendance (in person or by some other means allowing for participation), will decide any question brought before the meeting. Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration, or these Bylaws require a fixed percentage of Owners or Allocated Interest to approve any specific action (i.e., amending Governing Documents or changing voting rights), that percentage will be required to approve such action.
- 2.7 **Proxies.** At each Owners' meeting, each Owner entitled to vote is entitled to vote in person or by proxy; provided, however, that the right to vote by proxy exists only where the instrument authorizing such proxy to act has been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owners' attorney when duly authorized in writing. Such instrument authorizing a proxy to act must set forth the specific matters or issues upon which the proxy is authorized to act and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument must be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Association's Secretary/Treasurer or to such other officer or Person who the Association has authorized to accept proxies at the meeting.
- 2.8 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting has the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration. The affirmative vote of Owners holding the majority of the Allocated Interests entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present is necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one (1) Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) or more conflicting votes by co-Owners of one Lot, no vote will be counted for that Lot but it will be counted for the purposes of establishing a quorum. In no event will fractional votes be exercised in respect to any Lot.
- 2.9 **Ballots and Written Consent.** The Association may, consistent with the requirements of the Utah Revised Nonprofit Corporation Act, utilize (1) written consents to take action without a meeting; or (2) mailed ballots. Any Owner may deliver written consent by electronic transmission. A written consent delivered by electronic transmission is considered to be written, signed and dated for purposes of action without a meeting if the

written consent is delivered with information from which the Association can determine that the written consent was sent by the Board Member and the date on which the written consent was transmitted.

- 2.10 **Minutes of Meetings.** The Secretary/Treasurer shall take minutes of all Owners' meetings. The minutes must include, at a minimum, (1) the identification of the Persons present at the meeting in person and by proxy; (2) the date of the meeting; (3) the identification of any issue that is voted on or decided in the meeting; (4) the number of votes cast for and against any issue decided upon; and (5) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting.
- 2.11 **Meetings by Telecommunication.** Owners may participate in any annual, regular, or special meeting of the Owners or the Board by, or the meeting may be conducted through the use of, any means of communication by which all Persons participating in the meeting may hear each other during the meeting. An Owner or Board Member participating in a meeting by a means permitted under this section is considered to be present in person at the meeting. The Board may establish procedures and rules related to this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.
- 2.12 **Electronic and Other Means of Voting.** The Association may utilize online, telephonic, electronic, email, remote, and any other means of Board Member voting and meetings, including those means allowed under Utah's Uniform Electronic Transactions Act, to the extent not prohibited by the Act and the Revised Nonprofit Corporation Act.

ARTICLE III: BOARD OF DIRECTORS

- 3.1 **Number, Tenure, Qualifications, and Election.**
 - (a) Number of Members. The Board of Directors is composed of three (3) Persons meeting the qualifications stated in the Declaration and these Bylaws. In accordance with Utah Code § 57-8a-502(3)(a), a majority of the Board Members must be Lot Owners.
 - (b) Board Member Requirements.
 - (1) To be eligible to serve on the Board of Directors, a Person must be an Owner or the spouse of an Owner, and over the age of eighteen (18) years. If an Owner is an entity or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a Board Member, provided that Person resides on the Lot owned by the entity or trust. Only one Owner of Lot, or spouse of an Owner, is permitted to be present on the Board at any time. Any Person shall, upon a request by an Owner, produce sufficient documentation establishing that Person's right to serve on the Board.

- (2) To be eligible to serve on the Board and prior to being included as a candidate in any election, the candidate must indicate in a writing delivered to the Secretary/Treasurer before the meeting in which an election is held, or orally in person at the meeting at which the election is held, that the Person is willing to serve on the Board.
- (3) Any candidate whose election or appointment would contravene the requirements in these Bylaws is ineligible for election or appointment.
- (c) Term. The term of each Board Member will be three (3) years. The terms of the Board Members will overlap so that one (1) Board Member will be elected one year, one (1) the next year, and one (1) the following year, and so on.
- (d) Election. At each of the Association's Annual Meetings, an election must be held to fill any vacancies on the Board. Board Members will be elected by a simple majority of Owners present at the annual meeting. If two (2) candidates have equal votes, then the issue will be resolved by a coin toss.
- (e) Removal. At any annual or special meeting of the Association duly called, any one or more of the Board Members may be removed with or without cause by a majority vote, in person or by proxy, of the Owners, and a successor must be elected at that meeting to fill the vacancy created. The notice of any such meeting must state that removal is to be considered, and any Board Member whose removal has been proposed must be given an opportunity to be heard at that meeting.

3.2 Meetings.

- (a) Regular Meetings. The Board shall hold regular meetings, the frequency of which will be determined at the discretion of the Board.
- (b) Who is Entitled to Attend. All regular meetings must be open to all Owners. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session.
- (c) Notice to Owners. Any Owner may request notice of Board meetings by requesting such notice from either a Board Member or the Manager and providing a valid email address at which the Board Member will receive notice. Any Owner who has requested notice of Board meetings must be given notice along with the Board Members.
- (d) Owner Comments at Board Meetings. At each special or regular meeting of the Board, the Board shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Board may select a specific time period during the meeting and limit Owner comments to such a time period. The Board may set a reasonable length of time that each Owner may speak.
- (e) Attendance by Telephone or Other Electronic Means. The Board may allow attendance and participation at any meeting of the Board by telephone or any

other electronic means that allows for the Board Members to communicate orally in real time, including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Board meets by electronic communication, the Board must provide information necessary to allow any Owner who has requested notice of Board meetings the ability to participate by the available means of electronic communication. A Person participating by these means is considered to be present in person at the meeting.

- (f) Special Meetings. Special meetings of the Board may be called by the Secretary/Treasurer at the written request of any two (2) Board Members, or by the Association President. Notice of any special meeting must be given at least forty-eight (48) hours prior thereto to each Board Member and must state the time, place, and purpose for such meeting. No notice of special meetings is required to be provided to Owners, unless an Owner previously requested to be notified of all Board meetings. Owner may attend any special meeting in the same manner as the Board members may attend.
- (g) Quorum and Manner of Acting. Two (2) Board Members constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members will be the act of the Board. The Board Members shall act only as a Board, and individual members have no powers as such.
- (h) Place and Notice of Meetings. The Board may designate any place in Utah County within five (5) to ten (10) miles of the Project as the place of meeting for any regular meeting called by the Board but shall in good faith attempt to hold meetings at the Project or in as close a proximity to the Project as reasonably possible. All Board Members and Owners must be given at least ten (10) days' notice of regular meetings.
- (i) Executive Session.
 - (1) The Board may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.
 - (2) The discussions in executive session must be confidential and must not be disclosed to anyone outside of the meeting except as authorized by the Board.
 - (3) Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
 - (4) The minutes of the meeting at which an executive session is held must include:

- (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: “To discuss the terms of a management contract with XYZ Company,” or “To discuss the pending litigation with XYZ.”
 - (ii) Any decisions made during executive session.
- (5) Care must be taken so that attorney-client privileged information is not disclosed in minutes that are made available to anyone outside of Board Members.
- (6) Executive sessions may be held to discuss and make decisions related to the following matters:
 - (i) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including, but not limited to, meetings with the Association’s counsel;
 - (ii) Contracts and purchases related to the Association, including, but not limited to, the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
 - (iii) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
 - (iv) Rule violations by Owners, including, but not limited to, the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.

3.3 **Informal Action and Action by Board Members without a Meeting.**

- (a) Any action required or permitted by law or the Governing Documents to be taken at a Board meeting may be taken without a meeting if notice is transmitted in writing by letter or electronic transmission to each Board Member and either:
 - (1) Each Board Member consents in writing (i.e. via letter or electronic transmission); or
 - (2) Each Board Member by the time stated in the notice takes one of the following actions:
 - (i) Signs a writing for such action; or signs a writing against such action, abstains in writing from voting, or fails to respond or vote; or
 - (ii) Fails to demand in writing that action be taken at a meeting
 - (3) The affirmative votes in writing for the action received by the Association, and not revoked, equal or exceed the minimum number of votes that

would be necessary to take such action at a meeting at which all of the Board Members were present and voted; and

- (4) The Association has not received a written demand by a Board Member that the action be taken at a meeting.
- (b) Failure to demand that the action not be taken without a meeting by the time in the notice constitutes waiver of the right to demand a meeting.
- (c) The notice for action without a meeting must state: (1) the action to be taken; (2) the time by which a 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 action not be taken without a meeting; and (4) any other matters the Association determines to include.
- (d) Action without a meeting, without unanimous consent, will be effective at the time stated in the notice, unless the notice specifies a different time for voting and for the action to occur.
- (e) Action by unanimous consent is taken when the last Board Member to consent signs a writing describing the action taken, unless, before that time, any Board Member revokes a previously given consent by sending a writing signed by that trustee to the secretary or Person the Board authorized to receive the revocation. The Board may choose a different effective date and time.
- (f) For purposes of this section:
 - (1) “Signed” or “signature” is any indication on the document, whether paper or electronic, that the document is from and consented to by the Person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
 - (2) “Writing” refers to an email, letter, facsimile, or any other physical or other electronic transmission.
 - (3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
 - (4) Any response to any electronic communication must be:
 - (i) To the address of the sender using the same address and means of communication as was used to send the request for consent of an action, such as email, facsimile, or hand delivery; or
 - (ii) To any address in regular use, electronic, telephonic, or physical, by the Person sending the request.

- (g) A communication satisfies the requirement to “describe the action taken” if:
 - (1) It is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
 - (2) It is in the form of a facsimile and it includes, either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
 - (3) The writing from the Board Member sufficiently describes or restates the proposed action.

3.4 **Compensation.** No Board Member may receive compensation for any services that the Board Member, in the capacity of Board Member, may render to the Association; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of the Board Member’s duties to the extent such expenses are unanimously approved by the Board.

3.5 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation will take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of a majority of the Allocated Interest of the Association. This vote must be taken at a special meeting of the Owners called for that purpose. Any Board Member whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting and prior to the vote. If the Owners vote to remove all of the Board Members, those present shall immediately thereafter and at the same meeting elect new Board Members using the procedures normally applicable for election of Board Members at an annual meeting. No vote to remove all Board Members shall be effective until the proper election of new Board Members. If the Owners vote to remove less than all of the Board Members of the Board of Directors, the Owners may vote to elect replacement Board Members at the special meeting. If the Owners vote to remove less than all of the Board Members and either due to inadvertence or choice do not elect replacements at the special meeting, the remaining Board Members, by majority vote, shall appoint replacement Board Members for the remainder of the term of the Board Members who were removed.

3.6 **Vacancies Other Than by Removal by Owners.** If vacancies occur in the Board of Directors by reason of the death, resignation, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies must be filled by a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of that Board Member’s predecessor.

ARTICLE IV: OFFICERS

- 4.1 **Officers.** The officers of the Association include a President, Vice President, and Secretary/Treasurer.
- 4.2 **Election, Tenure and Qualifications.** The Board shall choose the Association's officers annually at the first meeting of the Board following the annual meeting and thereafter at any time by the Board. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be Board Members of the Board during the entire term of their respective offices.
- 4.3 **Resignation and Removal.** Any officer may resign any officer position at any time by delivering a written resignation to any Board Member. Unless otherwise specified therein, such resignation will take effect upon delivery. At any time, the Board of Directors may appoint new or different officers, with or without cause, upon the affirmative vote of the majority of the Board.
- 4.4 **Vacancies and Newly Created Offices.** If any vacancy occurs in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office is created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.
- 4.5 **The President.** The President shall preside at meetings of the Board and at meetings of the Owners. At all meetings, the President has all authority typically granted to the Person presiding over a meeting, including, but not limited to: (1) the right to control the order of the meeting; (2) the right to arrange for the removal of any disruptive Persons who may include but not be limited to any Person who (a) refuses to abide by rules or requests of the presiding Person related to the order of the meeting and when speaking is permitted; or (b) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (4) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President has the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President has authority in case of emergency to take action without Board approval as is necessary and prudent to preserve and protect property and to protect against personal injury. The President is responsible for the duties of any other office while that office is vacant.
- 4.6 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's resignation, absence, inability, or refusal to act. The Vice President shall perform such other duties as required by the Board.

- 4.7 **The Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such Person to keep. The Secretary/Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Secretary/Treasurer has the authority and obligation to generally implement the requirements of Governing Documents as it relates to the funds of the Association, including any requirement to obtain a review of the Association's financial records by an independent accountant and the preparation and filing of appropriate tax returns. The Secretary/Treasurer shall also act in the place and stead of the President in the event of the President and Vice President's resignation, absence, inability, or refusal to act. The Secretary/Treasurer shall perform such other duties as required by the Board.
- 4.8 **Compensation.** No officer will receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE V: COMMITTEES

- 5.1 **Creation and Termination of Committees.** The Board may from time to time create such committees (each a "Committee"), including an Architectural Review Committee ("ARC") as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Committee designated hereunder may include Board Members, other Owners, the spouses of Owners, Occupants, or other people. The Board may terminate any Committee at any time.
- 5.2 **Powers of Committees.** A Committee will not have any powers, duties, or responsibilities beyond an advisory capacity or beyond those specifically assigned by the Board in the minutes or resolution creating a Committee. A Committee may not be delegated any powers, duties, or responsibilities of the Board for final decision, and shall act only as an advisory committee to the Board, unless the Committee is made up only of Board Members. The Board may create a Committee made up of less than all Board Members that is assigned final decision-making authority.
- 5.3 **Proceedings of Committees.** Each Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Committee may from time to time determine. If required by the Board, each such Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 5.4 **Quorum and Manner of Acting.** Unless otherwise established by the Board, procedural or quorum requirements for voting by the Committee shall be as provided for in the Nonprofit Act. The members of any Committee designated by the Board hereunder shall act only as a Committee, and the individual members thereof have no powers, as such.

- 5.5 **Resignation and Removal.** Any Committee member may resign at any time by delivering a written resignation to any Board Member or any presiding officer of the Committee. Unless otherwise specified therein, such resignation will take effect upon delivery. The Board may at any time, with or without cause, remove any member of any Committee.
- 5.6 **Vacancies.** If any vacancy occurs in any Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members, until the filling of such vacancy by the Board, constitute the then total authorized membership of the Committee and, provided that two (2) or more members are remaining, may continue to act.

ARTICLE VI: INDEMNIFICATION

- 6.1 **Indemnification.** No Board Member, officer, or member of a Committee is personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, or Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each Person who serves at any time as a Board Member, officer of the Association, or a member of a duly formed Committee, as well as such Person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such Persons become subject, by reason of that Person having heretofore or hereafter been a Board Member, officer of the Association, or member of a Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Board Member, officer, or Committee member, and shall advance and reimburse any such Person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association has the right, in its sole discretion, to defend such Person from all suits or claims; provided further, however, that no such Person will be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such Person's intentional misconduct. The rights accruing to any Person under the foregoing provisions of this section do not exclude any other right to which such Person may lawfully be entitled, nor does anything herein contained restrict the right of the Association to indemnify or reimburse such Person in any proper case, even though not specifically provided for herein or otherwise permitted. To the extent allowed by law, the Board may adopt a resolution to indemnify the Association's Manager and the limits of such indemnification.
- 6.2 **Other Indemnification.** The indemnification herein provided will not be deemed exclusive of any other right to indemnification to which any Person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided will continue as to any Person who has ceased to be a Board Member, officer, Committee member, or employee, and will inure to the benefit of the heirs, executors, and administrators of any such Person.

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

ARTICLE VII: AMENDMENTS

- 7.1 **Amendments.** Except as otherwise provided herein or by the Act, these Bylaws may be amended by the affirmative vote of Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest. The vote must occur in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a Lot is sufficient if there are multiple Owners of the Lot and no other Owner of the Lot votes inconsistently.
- 7.2 **Execution of Amendments.** Upon obtaining the required vote, an amendment must be signed by the President or Secretary/Treasurer of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration will be effective when the amendment has been recorded in the Utah County Recorder's office.

ARTICLE VIII: WAIVER OF IRREGULARITIES

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions, or in the method of accepting or counting votes will be deemed waived under the following circumstances:
- (a) If the objecting Person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
 - (b) If the objecting Person was not in attendance at the meeting but was entitled to and had proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within thirty (30) days of the date the meeting is held.
 - (c) If the objecting Person was not in attendance at a meeting, was entitled to and did not have proper notice of the meeting but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue was made within thirty (30) days of the date of the meeting.
 - (d) If the objecting Person was not in attendance at the meeting and was entitled to but did not have actual and proper notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within sixty (60) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.

- (e) For any action, vote, or decision that occurred without a meeting or at a meeting to which the objecting Person was not entitled to notice, they are waived if no objection to the particular procedural issue is made within ninety (90) days of receiving actual notice of the occurrence of the action, vote, or decision.

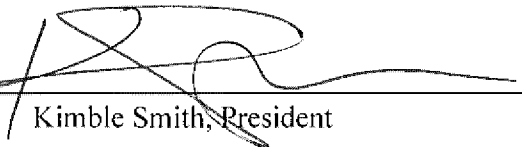
8.2 **Requirements for Objections.** All objections except those made at a meeting must be in writing. Whenever made, objections must be specific and include identification of the specific provision of the Governing Document or other law that is alleged to have been violated and a brief statement of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

8.3 **Irregularities That Cannot Be Waived.** The following irregularities cannot be waived under the prior subsection:

- (a) Any failure to comply with the provisions of the Declaration;
- (b) Any failure to obtain a proper quorum; and
- (c) Any failure to obtain the proper number of votes, consents, or approvals required to take a particular action.

IN WITNESS WHEREOF, these Bylaws were adopted and approved on the 8 day of May, 2018.

**THE BERKSHIRES HOMEOWNERS
ASSOCIATION, INC.**

By: 
Kimble Smith, President