

When Recorded, Return to:

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
& RESERVATION OF EASEMENTS**

For  
**SYCAMORE PLACE PHASE 1 SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SYCAMORE PLACE PHASE 1 SUBDIVISION (this "Declaration") is hereby adopted by Sycamore Place Homeowners Association, Inc. ("Association"), for and on behalf of its Members, and made effective as of the date recorded in the Weber County Recorder's Office.

**RECITALS:**

(A) This Declaration affects and concerns the real property located in Weber County, Utah and more particularly described in **Exhibit A** attached hereto ("Property"):

(B) On or about March 15, 2019, a Plat Map depicting the SYCAMORE PLACE PHASE 1 SUBDIVISION was recorded in the Weber County Recorder's Office, as Entry No. 2969929 ("Plat").

(C) The Association and its Members, consistent with the Enabling Declaration and any subsequent amendments (including any not referenced herein), hereby adopt this Declaration. This Declaration, along with any future amendment(s), shall be the sole Declaration for the Property.

(D) The Property is subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Project. Common Areas are those areas that are depicted as Common Areas in the recorded Plat Map(s), as well as any future recorded Plat Map(s), or as described in this Declaration.

**CERTIFICATION**

(E) Pursuant to Article 27 of the Enabling Declaration, Owners of record holding not less than sixty-seven percent (67%) of the total voting power of the Association, provided their approval or written consent approving and consenting to the recording of this Declaration, the attached Bylaws, and filing of the Articles.

By signing below, the President and Secretary hereby certifies that the above described approval was obtained, approving and consenting to the recording of this Declaration, Bylaws and filing of the Articles.

(F) The Association and its Members desire to subject the Property to the terms and conditions of this Declaration, the Utah Community Association Act, Utah Code Ann. § 57-8a-101 *et. seq.*, and the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101 *et. seq.* The Property does not constitute a cooperative.

(G) These Recitals are made a part of this Declaration.

## COVENANTS, CONDITIONS AND RESTRICTIONS

### ARTICLE I DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) “Act” means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) “Architectural Control Committee” or “ACC” shall mean the Architectural Control Committee created by this Declaration, the Bylaws, and/or Articles.

(C) “Assessment” shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) “Articles” shall mean the Amended & Restated Articles of Incorporation for the Association, as amended from time to time.

(E) “Association” shall mean SYCAMORE PLACE HOMEOWNERS ASSOCIATION, INC. and as the context requires, the officers or directors of that Association.

(F) “Board” or “Board of Directors” shall mean the duly elected and acting Board of Directors of the Association.

(G) “Bylaws” shall mean the Amended & Restated Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit “B.”** No amendment to the Bylaws shall be effective until it is duly approved and recorded.

(H) “City” shall mean West Haven, Utah and its appropriate departments, officials and committees.

(I) “County” shall mean Weber County, Utah and its appropriate departments, officials and committees.

(J) “Common Area(s)” shall mean all property designated on the recorded Plat(s) as Common Area(s) or described within this Declaration as Common Area(s), being owned or intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, together with all improvements or structures thereon and all of the easements appurtenant thereto, including, but not limited to:

- i) Private streets, entryway, curbing;
- ii) Open space, perimeter fence, community light poles, community mailboxes;
- iii) Sidewalks and walkways;
- iv) Community parking facilities;
- v) Utility installation and equipment serving more than one Dwelling and not maintained by the City or County; and
- vi) Detention basins, and all other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members. The Association shall maintain the Common Area(s).

(K) “Common Expenses” means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments; (F) operating the Association; and (G) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act

(L) “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for SYCAMORE PLACE PHASE 1 SUBDIVISION together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(M) “Dwelling” shall mean a structure which is designed and intended for use and occupancy as a single family residence, whether attached or detached from other residences, together with all Improvements used in conjunction with such residence, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Dwelling. Patios, decks and porch areas serving a Dwelling shall constitute part of the Dwelling. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling or serving only the Dwelling shall be part of the Dwelling.

(N) “Governing Documents” shall mean this Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(O) “Improvement” shall mean all structures, Dwelling and appurtenances of every type and kind, including but not limited to buildings, single family homes, dwellings, residences, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(P) “Harmonious” shall refer to Improvements and structures within the community that are consistent with the existing character, architectural style, colors, and theme as other Improvements in the community so as to not detract from the theme and character of the community or neighboring property values and should not draw attention as being a deviation from the existing Improvements.

(Q) “Lot” shall mean any numbered building lot shown on any official and recorded Plat(s) of all or a portion of the Project, including any Dwelling or Improvement constructed thereon. If the Project contains Dwellings that share a Party Wall, Lot may also refer to each individually, owned Dwelling.

(R) “Manager” shall mean any entity or person engaged by the Board of Directors to manage the Project.

(S) “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Weber County Recorder’s Office, including buyers under any contract for deed. However, Owner shall exclude any person or entity holding title solely for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage. Membership in the Association is appurtenant to each Lot and an Owner shall be deemed a “Member” of the Association.

(T) “Permittee” shall mean and refer to a resident, tenant, renter, lessee, invitee or guest of an Owner.

(U) “Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(V) “Plat(s)” or “Plat Map(s)” shall mean an official and recorded plat of SYCAMORE PLACE PHASE 1 SUBDIVISION in the Weber County Recorder’s Office, as it may be amended from time to time.

(W) “Private Streets” shall mean and refer to all of the roads and streets within the Project that are designated on the Plat(s) as private streets. Private Streets shall for all purposes be deemed to be Common Areas.

(X) “Project” shall mean all phases of SYCAMORE PLACE PHASE 1 SUBDIVISION and all Lots, Common Areas, and other property within the subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Y) “Property” shall have the meaning set forth in the recitals.

(Z) “Rules” mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

## ARTICLE II EASEMENTS

21 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

22 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, utility access/installation, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by the Owners of at least sixty-seven percent (67%) of the Lots. No such dedication or transfer, however, may take place without the Association first receiving written approval from City and/or County pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

23 Reservation of Access and Utility Easements. The Association hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication,

phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. 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.

24 Easements for Encroachments. If any part of the Common Area now existing upon any Lot or hereinafter constructed by Association encroaches upon a Lot, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any Common Area improvement on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon a Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

25 Easement in Favor of Association. The Lots and Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) “Landscape Easement” shall mean those areas upon each Lot other than area of the Dwelling in which the Association has retained an easement to approve, control and maintain landscaping for the benefit of all Owners of Lots within the Property.

(b) For inspection during reasonable hours of the Lots and Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;

(c) For inspection, maintenance, repair and replacement of portions of the Common Area;

(d) For correction of emergency conditions on one or more Lots or on portions of the Common Area;

(e) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge

during reasonable hours their respective rights, powers and duties;

(f) For inspection during reasonable hours of the Lots and Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

### **ARTICLE III**

#### **COMMON AREAS, DWELLINGS & MAINTENANCE RESPONSIBILITIES**

3.1 Maintenance of Common Areas by the Association. The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair and replacement of the Common Area, which generally includes the following:

- (a) Asphalt repair, maintenance and replacement of private roads and visitor parking areas within the Project;
- (b) Repair, maintenance and replacement of any entry and perimeter fencing in the Project;
- (c) Light Poles;
- (d) Community mailboxes (if any);
- (e) Walkways and sidewalks;
- (f) Private utility lines/infrastructure that serves more than one Lot that are not maintained by the City or County.
- (h) The Association shall perform general landscaping maintenance throughout the Subdivision, including Common Areas and the front, side and backyard of Lots. This will generally include mowing, edging, blowing of grass, raking and disposal of leaves. The Association shall maintain the original sprinkler system, as originally installed. Owner is responsible for any approved changes in sprinkler system, or other modifications to the landscaping from the original installation. The Association may adopt Rules to add further detail with regard specific landscape maintenance provided by the Association and those responsibilities of Owners concerning such items including, but not limited to: gardens, flowerbeds, bushes, trees, and other landscaping elements. Prior written permission must be obtained by the ACC to materially modify exterior landscaping on any Dwelling.
- (i) The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from private roads, sidewalks, and other relevant Common Areas. Owners shall be responsible for removing snow from driveways, entryways, porches, patio areas, and other applicable areas on their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. The Association shall not be responsible or liable for said third



party's discretion and removal of snow.

3.2 Association's Responsibilities for Exterior Maintenance of Dwellings. The Association shall maintain, repair and replace the following components associated to Dwelling in the Subdivision.

- (a) Roofs, rain gutters and downspouts;
- (b) Exterior walls;
- (c) Sidewalks.

Owners shall be responsible for all other maintenance of Dwellings and Improvements on Lots, not specifically listed in the paragraphs above, including but not limited to doors, doorframes and garage doors, porches, patios and decks, any preapproved awning, patio enclosure, or other approved improvement added to the exterior of the Dwelling, windows, window frames, window wells, skylights, glass, cement slabs within the Dwelling or garage, and all other components not specifically maintained by the Association. For the convenience of Owners, a Maintenance Chart is included as **Exhibit C**. In the event of a conflict between the Maintenance Chart and Article III, Article III shall control.

3.3 Repairs by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within fifteen (15) days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts may bear interest from the date advanced at the lawful judgment rate under applicable state law.

3.5 Fencing. No other fencing shall be allowed by Owners with the exception of preapproved fencing of the concrete rear patio area consistent with the style and material of existing fencing within the community.

#### **ARTICLE IV** **PARTY WALLS**

4.1 Party Wall Repair and Maintenance. Each Dwelling that shares one or more Party

Wall(s), will also share elements of a common roof, a common exterior wall, or other common exterior elements with adjacent Dwelling(s). The Owners acknowledge that certain repairs or maintenance to Dwellings with a Party Wall(s) may become necessary, which repairs or maintenance may not be able to be performed on one Dwelling only. Accordingly, Owners that have party wall should cooperate with the adjoining owner in undertaking repairs that will impact the adjoining Dwelling. Owners owe corresponding duties of care and maintenance with respect to Party Walls.

4.2 Party Wall Insurance. The existence of Party Walls within the Project requires blanket property insurance coverage as required by the Governing Documents and/or Act on all attached Dwellings.

## **ARTICLE V** **MEMBERSHIP**

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

## **ARTICLE VI** **VOTING**

6.1 Only an Owner that is current on all assessments and/or other fees shall be entitled to vote at any annual or special meeting.

The Association shall have one class of voting membership, and each Owner shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

**ARTICLE VII**  
**HOMEOWNER ASSOCIATION**

7.1     Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Project, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall serve as the organizational body for all Owners.

7.2     Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water, sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a)     The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b)     The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c)     The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

7.3     Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay

to the Association the assessments described in these covenants, together with late payment fees and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (i) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (ii) the personal, joint and several obligations of the Owner or Owners of such Unit at the time the assessment falls due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Special Assessments in excess of twenty percent (20%) of the annual assessment shall be approved by at least fifty-one percent (51%) of owners.

(c) Individual Assessment. In addition, the Association may levy individual assessments on every Unit, Owner or occupant that shall cause any damage to the Subdivision or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Unit(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work. Individual Assessment could include a charge levied by the Board against an Owner or Permittee for all expenses resulting from the act or omission:

- i. The act or negligence of any Permittee shall be deemed to be the act or negligence of the Owner responsible for the Permittee.
- ii. Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or Permittee;
- iii. The cost to repair any damage to any portion of the Project on account of loss or damage caused by such Owner or Permittee; or
- iv. the cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Owner or Permittee, or resulting from the breach by such Owner or Permittee of any provisions of the Project Documents;

- v. Any transient occupancy tax, sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner or Permittee which the Association is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied;
- vi. Administrative costs and expenses incurred by the Board in enforcing the Governing Documents;
- vii. Any other fine, charge, fee, due, expense, or cost designated as an Individual Charge in the Governing Documents or by the Board;
- viii. Attorney fees, interest, and other charges relating thereto as provided in this Declaration; and
- ix. Individual a la carte services provided, such as cable television, additional lawn, yard or garden care, the cost of insurance covering the deductible on the master Association all-risk policy, and so forth.
- x. While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association and Board also shall have all other remedies, both legal and equitable, described in this Declaration available against any Owner for nonpayment of such Owner's other monetary obligations.

(d) **Reserve Fund Assessment.** The Association may levy a reserve fund assessment, as set forth in this article.

(e) **Other Assessments.** The Association may levy other assessments or fees, as authorized by the Governing Documents.

74 **Budget.** The Board is authorized and required to adopt a budget for each fiscal year. The adopted budget shall be presented to the Owners at or before each annual meeting. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide.

75 **Reserve Fund Analysis.** The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. 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.

(a) The Board may not use money in a reserve fund:

- (i) For daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose;
- (ii) For any purpose other than the purpose for which the reserve fund was established, unless a majority of the Owners vote to approve the

alternate purpose; or

(iii) In the event that the Association experiences a surplus in any fiscal year, the Board may elect to place said surplus in the reserve fund account.

7.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

7.7 Reinvestment Fee. The Board shall have power to levy a one-time reinvestment fee when a change in ownership of a Lot occurs in the amount of \$350.00. This reinvestment fee for the Property, hereby revoking any prior recorded reinvestment fee.

7.8 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide.

7.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner and/or their Lot for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

7.10 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner(s) in accordance with the Act.

7.11 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

7.12 Payoff Information. When a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of his/her Lot, the Association may charge a fee not to exceed \$50.

7.13 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act

and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

7.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

7.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

7.16 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

7.17 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

## **ARTICLE VIII**

### **NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE**

8.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

8.2 Due Date & Late Charges. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10<sup>th</sup> of each month. The Board may charge a late fee in an amount set by the Board, but not to exceed \$50, for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances at 18% per annum or 1.5% per month. The Board may also impose attorney fees and other reasonable charges imposed by a Manager or attorney related to collections.

8.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

8.4 Foreclosure. The Association shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on

its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

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

8.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

8.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

8.8 Appointment of Trustee. The Association hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the Lot or Unit for the purpose of securing payment of assessments under the terms of this Declaration.

## **ARTICLE IX**

### **SUBORDINATION OF LIEN TO INSTITUTIONAL FIRST AND SECOND MORTGAGES**

9.1 The lien of assessments and late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

## **ARTICLE X**

### **ARCHITECTURAL RESTRICTIONS**

10.1 Architectural Control Committee (“ACC”). An Architectural Control Committee may be appointed by the Board in accordance with the Bylaws and Articles of the Association to



oversee any construction, re-construction, remodeling or altering of exterior Improvements. If no ACC is appointed, the Board will assume the duties and responsibilities of the ACC.

10.2 Approved Plans. The ACC must provide prior, written approval of all plans for construction or remodeling within the Subdivision, which plans must be Harmonious with existing Improvements and the existing character within the Subdivision. The ACC shall determine, in its sole discretion, whether the proposed Improvements will be Harmonious.

(a) The Board may adopt rules and policies with respect to the submission and review of proposed Improvements.

10.3 Dwelling Construction & Materials. The Board or ACC may adopt Rules with regard to allowed construction colors, materials, appearance etc.

10.4 Landscaping. No significant landscaping may be modified or changed, without the express written consent of the ACC.

10.5 Temporary Structures. No structure of a temporary character, trailer, recreational vehicle, tent, shack, garage, barn or other outbuilding shall be used on any Unit at any time as a residence, either temporarily or permanently.

10.6 Variances. The ACC cannot grant any variance that has the effect of modifying applicable zoning or building code regulations or directly violates the Governing Documents. The burden of obtaining a variance is entirely on the applicant.

10.7 Board and ACC Not Liable. The Board, ACC and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Project for their actions, inactions, or approval or disapproval of any set of plans submitted for review. The Owners' shall have no claim against the Board or ACC as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has an equal duty and right to enforce these covenants against every other Owner, and may seek independent redress if it believes the Board or ACC has acted improperly.

10.8 Limitations on Review. The ACC's review is limited to those matters expressly granted in this Declaration. The ACC shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ACC prior to construction.

**ARTICLE XI**  
**USE LIMITATIONS & RESTRICTIONS**

11.1 Business Use and Trade shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefore.

11.2 Family. Family shall mean one of the following: (1) a single person living alone; (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild, with an additional person or persons as domestic help or a caretaker; or (3) a group of not more than three unrelated persons living and cooking together as a single housekeeping unit and maintaining a common household, but not as a boarding or rooming house.

11.3 Recreational. Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of anykind.

11.4 Nuisance. It shall be the responsibility of each Owner to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

- (a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Townhome or the Common Areas;
- (b) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;
- (c) Unreasonable amounts of noise or traffic in, on or about any Townhome or the Common Area, especially after 10:00 p.m. and before 7:00 a.m. during the week and midnight and 8:00 a.m. during weekends; and
- (d) Drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; parties which occur frequently which bother, annoy or disturb other reasonable residents or interfere with their quiet and peaceful enjoyment of the

premises; prostitution; or other violation of U.C.A., Section 78-38-9 (1999) as amended or supplemented.

11.5 Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be deposited in sealed plastic bags or other authorized containers, shall be regularly removed from the Townhome, not being allowed to accumulate therein so as to create a sanitation, health or safety hazard, and shall be disposed of within dumpsters provided by the Association.

11.6 Subdivision of a Lot. No Lot may be subdivided.

11.7 No Severance. The elements of a Townhome and other rights appurtenant to the ownership of a Townhome, including interest in Common Areas and Facilities and Facilities, if any, are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance of less than an entire Townhome and such appurtenances. Any conveyance made in contravention of this Subsection, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

11.8 Firearms. Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

11.9 Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures, including but not limited to dog runs, storage Townhomes, tents, trailers and sheds or their equivalent, without the prior written consent of the Board; provided, however, tents may be allowed for up to forty-eight (48) hours by Townhome Owners in the Common Area, including any Common Area immediately adjacent to their Buildings.

11.10 Trees, Shrubs and Bushes: Maintenance of Proper Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or comers shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Board. The Board may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.

11.11 Energy Conservation Equipment. Unless expressly allowed by state law or City ordinance, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior express written consent of the Board.

11.12 Business Use. No Business Use and Trade may be conducted in or from any

Townhome unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all home occupation ordinances and zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) 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 residents of the Project, as may be determined in the sole discretion of the Board. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-section.

11.13 Aerials. Antennas and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter or diagonal measurement; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or ( c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is located within the Lot or another approved structure on the Property. The Board may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device in the authorized areas.

11.14 Window Coverings, Awnings and Sun Shades. No-aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Townhome. Sun shades are not allowed on the exterior of any Building, unless the color, style, construction material and uniformity of appearance is approved by the Board.

11.15 Windows. All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.

11.16 Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Townhome are allowed. All pets must be properly licensed and registered with the appropriate governmental agency, abide by all pet rules and regulations adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to the property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; ( c) it causes unsanitary conditions; ( d) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines or howls, or makes other disturbing noises in an excessive, continuous or untimely fashion; (f) it defecates in the Common Area or another Lot; (g) the owner fails to immediately clean up after his pet; or (h) it molests or harasses passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area. The Board may require a pet deposit or a pet registration fee.

11.17 Insurance. Nothing shall be done or kept in, on or about any Townhome or in the Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board, but for such activity, would pay.

11.18 Laws. Nothing shall be done or kept in, on or about any Townhome or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

11.19 Damage or Waste. No damage to, or waste of, the Common Areas shall be committed by any Owner or Resident, their guests or invitees; and each Owner and Resident shall indemnify and hold the Board and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, their guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

11.20 Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Areas shall be done or permitted by any Owner without the prior written consent of the Board.

11.21 Vehicles & Parking. All vehicles in the Project shall be in running condition, properly licensed and in compliance with City and/or County ordinances. No recreational vehicles, campers, motorcycles, atvs, trailers, boats, or similar vehicles may be parked or stored in the driveways or streets. Recreational vehicles, campers, motorcycles, atvs, trailers, boats, and similar vehicles must be parked or stored in a garage.

(a) The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, but not limited to: hours, visitor parking, the right to immediately remove or cause to be removed any vehicles that are improperly parked, and the assessment of fines to Owners and occupants who violate such Rules.

11.22 Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices or the painting or graffiti, within the Project is prohibited. The terms firearms, including but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, air soft guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size. In addition, all firearms are prohibited from the Common Areas regardless of whether an owner possesses a concealed carry or other permit.

11.23 Energy Conservation Equipment. As a result of the Associations maintenance responsibility with respect to the roofs of the Dwellings and properties surrounding Dwellings, no solar panels or other energy conservation equipment shall be installed on the Dwellings or within the Property.

11.24 Awnings. All awnings or metal patio covers must receive prior approval from the ACC prior to installing any awning or patio.

11.25 Garage Doors. Garage doors should be in good working condition and should be closed at all times when not being presently utilized to access vehicles or other items from the garage. Inoperable or damaged garage doors shall be repaired within 30 days of the damage or interruption in its operation. Garage doors may be left partially open up from the cement driveway in order to allow airflow to the area.

## **ARTICLE XII**

### **RENTAL/LEASE RESTRICTIONS**

#### **12.1 Rental/Lease Restrictions.**

- (a) Daily, nightly, weekly or monthly occupation by non-owner occupants is prohibited (whether pay or not), and Dwellings shall not be advertised or listed for short term rental on such sites as Airbnb, VRBO, HomeAway, Flipkey, Wimdu, House Trip and similar international, national or local providers.
- (b) An Owner may not lease less than the entire Dwelling for an otherwise qualifying Dwelling.
- (c) Any lease or agreement for non-owner occupancy must be in writing, must be for an initial term of at least one year, and shall provide as a term of the agreement that the resident shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-owner occupancy (whether in writing or not) does not include these provisions, these provisions shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident.
- (d) A copy of any lease or other agreement for non-owner occupancy shall be delivered to the Association at least ten (10) days prior to occupation of the Dwelling by the non-owner occupant.
- (e) The Owner(s) of a Dwelling shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner,

shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Unit expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending non-owner occupant.

- (f) Dwellings in the Subdivision may be rented or non-Owner occupied at any one time for a maximum of 30% of the total Dwelling in the community. The ability to lease a Dwelling expires upon the sale or transfer of ownership of said Dwelling, or if an Owner re-occupies the Dwelling. The Association may develop and maintain an application and waiting list for those Owners that desire to lease their Dwelling.
- (g) Violations of the provisions of this Article shall result in the imposition of a fines, as allowed by the Utah Community Association Act.
- (h) The Board of Directors may adopt Rules requiring:
  - (i) Reporting and procedural requirement related to non-owner-occupied Dwellings and the occupants of those dwelling, including requiring informational forms to be filled out by Owners and/or residents identifying non-owner occupants, vehicles, phone numbers, etc.; and
  - (ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.
- (i) Exempt Non-Owner-Occupied Dwellings. The following Dwellings may be exempt from certain rental restrictions:
  - (i) An Owner in the military for the period of the Owner's deployment.
  - (ii) A Dwelling occupied by an Owner's parent, child, or sibling.
  - (iii) An Owner whose employer has relocated the Owner for less than two years.
  - (iv) A Dwelling owned by a trust or entity that is occupied by an

individual who:

- a. Has voting rights under the organizing documents and has 25% or greater share of ownership, control and right to profits and losses of the entity; or

A trust or other entity created for the estate planning purposes if the trust or other estate planning entity was created for:

- a. The estate of a current resident of the Dwelling; or
- b. The parent, child, or sibling of the current resident of the Dwelling

### **ARTICLE XIII** **INSURANCE**

13.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

- (1) “Covered Loss” means a loss, resulting from a single event or occurrence that is covered by the Association’s property insurance policy.
- (2) “Dwelling Damage” means damage to a Dwelling.
- (3) “Dwelling Damage Percentage” means the percentage of total damage resulting in covered loss that is attributable to Dwelling Damage.

#### 13.2 Property Insurance.

(a) Hazard Insurance.

- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, facilities and attached Dwellings.

(1) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, theft, and storm water run-off, if reasonably available; and (2) all perils normally covered by “special form” property coverage.

(2) Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The



actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

13.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

13.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, 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). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, 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.

13.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

(a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and

(b) Provide coverage for theft or embezzlement of funds by:

- (i) Officers and Board of Directors member of the Association;
- (ii) Employees and volunteers of the Association;
- (iii) Any manager of the Association; and
- (iv) Officers, directors and employees of any manager of the Association.

13.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

13.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

13.8 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

**13.9 Owners' Individual Coverage. EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

**ARTICLE XIV**  
**DAMAGE & DESTRUCTION**

14.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

14.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

14.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

**ARTICLE XV**  
**DISBURSEMENT OF PROCEEDS**

15.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

**ARTICLE XVI**  
**REPAIR AND RECONSTRUCTION**

16.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**ARTICLE XVII**  
**CONDEMNATION**

17.1 Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XVIII**  
**MISCELLANEOUS PROVISIONS**

18.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies

available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

18.2 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

18.3 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Dwelling, 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 appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and 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 shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

18.4 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 MERCANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

18.5 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, Bylaws, and then the Rules.

18.6 Amendment. At any time while this Declaration is in effect, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven percent (67%) of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number

of Owners.

18.7 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Lot.

18.8 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

18.9 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine and feminine.

SYCAMORE PLACE HOMEOWNERS ASSOCIATION, INC.

\_\_\_\_\_  
By:  
Its: Board Member

STATE OF UTAH                    )  
  : ss  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did saythat he/she is a Board Member of the Sycamore Place Homeowners Association, Inc., a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

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

SYCAMORE PLACE HOMEOWNERS ASSOCIATION, INC.

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

Its: Board Member

STATE OF UTAH                    )  
  : ss  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did saythat he/she is a Board Member of the Sycamore Place Homeowners Association, Inc., a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

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

SYCAMORE PLACE HOMEOWNERS ASSOCIATION, INC.

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

Its: Board Member

STATE OF UTAH                    )  
  : ss  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did saythat he/she is a Board Member of the Sycamore Place Homeowners Association, Inc., a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

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

**Exhibit A**  
**Legal Description**

**Exhibit B**  
**Bylaws**



**Exhibit C**  
**EXTERIOR DWELLING MAINTENANCE CHART**

The following chart demonstrates the division of responsibility for maintenance, repair and replacement of Common Areas and Dwellings components between the Sycamore Place Homeowners Association, Inc. and Owners. In the event of conflict, the terms of the Declaration will control over this chart.

	<b>EXTERIOR</b>	<b>HOA</b>	<b>OWNER</b>
1	Maintenance, repair and replacement of roof shingles.	X	
2	Maintenance, repair and replacement of roof underlayment on each Dwelling (felt and plywood) due to normal wear and tear. (Any structural maintenance, repairs or replacement not included herein is the responsibility of the Owner unless otherwise covered by the Association's insurance).	X	
3	Maintenance, repair, and replacement of the exterior of each Dwelling, including stucco and brick (but excluding the backing behind each of these exterior finishes).	X	
4	Maintenance, repair, and replacement of outside secondary water spigots.	X	
5	Maintenance, repair, and replacement of driveways, front steps, porches, individual walkways, and patios.	X	
6	Maintenance, repair, and replacement of rain gutters, down spouts and heat tape.	X	
7	Maintenance, repair, and replacement of all structural components of the Dwelling, including but not limited to framing, insulation, rafters, beams, water barriers, plywood or other backing to stucco and brick.		X
8	Maintenance, repair, and replacement of doors, hinges, frames, thresholds, locks, and doorbells.		X
9	Maintenance, repair, and replacement of garage floors, garage doors, and garage door frames.		X
10	Maintenance, repair, and replacement of windows (including glass), shutters, sliding glass doors, French doors, screens, and frames.		X
11	Maintenance, repair, and replacement of window wells.		X
12	Maintenance, repair, and replacement of exterior garage lights and yard lights.		X
13	Maintenance of gas and electricity connections from the meters to each Dwelling.	X	
14	Maintenance of culinary water system from the outside entry through the foundation throughout the Dwelling. This includes outside faucets and hose bibs. Any damage caused by this portion of water system is the liability of Owner.		X
15	Maintenance, repair, and replacement of phone lines, TV cables, air conditioning, and satellite dishes.		X
16	Maintenance, repair, and replacement of all Owner Improvements, such as skylights, windows, attic vents, fans, ornamental railings, decks, deck steps, window well covers, and similar items.		X

	<b>INTERIOR</b>		
17	All interior painting, decorations, and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances, such as dishwashers, garbage disposals, ranges, refrigerators, microwaves, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and telephone and computer networks.		X
18	Maintenance, cleaning, and repair of venting and fireplaces.		X
19	Maintenance, repair, and replacement of the electrical system from the City electric meter to the breaker panel and to all outlets, including switches and light fixtures.		X
20	Maintenance, repair, and replacement of plumbing fixtures, such as sinks, basins, toilets, and an interior pipes and valves.		X
21	Repair of cracks or other damage to interior walls, floors, or ceilings caused by normal unit settling.		X
22	Repair of damage resulting from static water or seepage of water from any underground source, except water from sprinkler system failures.		X
23	Repair of damage resulting from surface water.		X
24	Repair of damage resulting from seepage of water from sprinkler system failures.	X	
25	Damage Amounts under the Association's insurance deductible		X

	<b>GROUND</b>	<b>HOA</b>	<b>OWNER</b>
26	Maintenance of lawn and the maintenance and replacement of original trees, shrubs and lawn curbing.	X	
27	All flowers abutting a Dwelling		X
28	Maintenance and utilization of sprinkler system within the Association.	X	
29	Snow removal: individual walkways and Common Area walkways.	X	
30	Snow removal: driveways, patios, porches and decks		X

	<b>OTHER</b>	<b>HOA</b>	<b>OWNER</b>
31	Maintenance and repair of water system and sewer system from the city water meter to the entrance to the exterior wall of each Dwelling.	X	
32	Any damage to a Dwelling or Common Area caused by a contractor hired by an Owner.		X
33	Any damage in, on, or to a Dwelling is the sole responsibility of the Owner, except as otherwise stated herein.		X
34	Drainage system, including the sub-surface drainage system serving the Common Areas.	X	