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AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
OF THE  
STOKER GARDENS TOWNHOMES P.R.U.D.

in Davis County, Utah

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**AMENDMENT & RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
STOKER GARDENS TOWNHOMES**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE STOKER GARDENS TOWNHOMES ("Declaration") is made and executed on the date shown below after being voted on and approved by the Owners in accordance with the governing documents for the Stoker Gardens Homeowners Association, Inc.

**RECITALS**

- A. The capitalized terms in this Declaration are defined in Article I below.
- B. The Declaration of Covenants, Conditions and Restrictions of the Stoker Gardens Townhomes P.R.U.D. ("Enabling Declaration") was recorded on October 30, 2012, in the office of the Utah Recorder as entry number 2697329.
- C. The subdivision that is the subject of this Declaration is known as Stoker Gardens Townhomes P.R.D. ("Stoker Gardens"), and is situated in and upon that certain real property ("Subject Land") located in Davis County, State of Utah, as specifically described in Exhibit A attached hereto and incorporated herein by this reference.
- D. A Plat for Stoker Gardens has been recorded in the office of the Davis County Recorder, State of Utah, There are sixty-six (66) Lots in Stoker Gardens, as shown on the Plat.
- E. The name of the Association is the Stoker Gardens Homeowner Association ("Association"), which has been created as a Utah nonprofit corporation by filing articles of incorporation with the Utah Division of Corporations and Commercial Code. The Association is the governing body of Stoker Gardens and is to be operated in accordance with this Declaration, the Articles of Incorporation for the Stoker Gardens Homeowners Association ("Articles of Incorporation"), and the Bylaws of the Stoker Gardens Homeowners Association. The Bylaws are attached hereto as Exhibit B.
- F. The purpose and intent of this Declaration is to restate, replace and amend the Enabling Declaration, and all prior recorded declarations, amendments, and Bylaws, which shall collectively be referred to herein as the "Governing Documents", and to subject all Lots and Lot Owners within Stoker Gardens to one set of covenants, conditions and restrictions as set forth in this Declaration.

NOW, THEREFORE, to accomplish the Owners' objectives, this Declaration is hereby adopted. The Governing Documents are hereby restated, replaced, and amended by this Declaration. It is the intent of the Owners that this Declaration replace all prior Governing Documents and that this Declaration be

the sole set of restrictive covenants governing Stoker Gardens. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat (as defined herein), the submission and dedication of the real property described in Exhibit A to the provisions of this Declaration; the ratification, approval and incorporation for Stoker Gardens Homeowners Association, a Utah nonprofit corporation, and, any other provision, paragraph, or section that is required to maintain the legal status of the Project which, if repealed, would nullify or impair the legal status of the Project.

It is hereby declared that the property within Stoker Gardens shall be held, sold, conveyed, leased, rented, encumbered and used, subject to this Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners of all or any part of the property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as being accurate and shall constitute part of this Restated Declaration.

## **ARTICLE I DEFINITIONS**

The capitalized terms used in this Declaration shall have the meanings set forth in this Article. Unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

- 1.1. **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.
- 1.2. **Architectural Control Committee or ACC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article XI.
- 1.3. **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.
- 1.4. **Assessments** shall mean any monetary charge or fee imposed or levied by the Association against Owners as provided in this Declaration or other Governing Documents.
- 1.5. **Association** shall mean and refer to the Stoker Gardens Homeowners Association, a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.
- 1.6. **Board or Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.
- 1.7. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit B.

- 1.8. **Common Areas** shall mean land, and the improvements situated thereon, within the Project that are designated as Common Areas or Open Space on the Plat or other recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee, which may include without obligation or limitation, Association signs or monuments, open space, landscaped areas outside of the Limited Common Areas, lighting detached from Living Units, sidewalks, and other similar improvements; any real property or improvements within the Project that the Association has the obligation to maintain, repair, or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation, all utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Living Unit, whether located on a Lot or lying inside of the exterior boundaries of the Living Unit; and any utility and service lines located on a Lot, but outside of a the exterior walls of a Living Unit.
- 1.9. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.
- 1.10. **Declaration** shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Stoker Gardens Townhomes, as may be amended from time to time.
- 1.11. **Design Guidelines** shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Project as adopted by the Board or ACC as provided herein.
- 1.12. **Director** shall mean and refer to an individual member of the Board of Directors.
- 1.13. **Governing Documents** shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.
- 1.14. **Limited Common Areas** shall mean and refer to those Common Areas designated on the Plat as "Common Area" or "Open Space" or as described in this Declaration as being reserved for the use and benefit of a designated Lot or Living Unit to the exclusion of other Owners. Whether or not indicated on the Plat, the Limited Common Areas include the driveways appurtenant to each Living Unit and the patios on the rear of each Living Unit.
- 1.15. **Living Unit** or **Unit** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements

located on or with respect to the Lot concerned which are used in connection with such residence. The Living Unit shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, and foundations. The Living Unit shall also include any mechanical equipment and appurtenances located within any one Living Unit, or located without said Living Unit but designed to serve only that Living Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Living Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Living Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Living Unit is located shall be deemed to be a part of the Living Unit.

- 1.16. **Lot** shall mean and refer to each of the individual Lots within the Project, as shown on the Plat, with the exception of the Common Areas. A Lot shall include any Living Unit or other improvement constructed thereon. There shall be sixty-six (66) Lots within the Project.
- 1.17. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.
- 1.18. **Member** shall mean and refer to a Lot Owner.
- 1.19. **Mortgage** shall mean and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.
- 1.20. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.
- 1.21. **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents
- 1.22. **Owner** shall mean the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
- 1.23. **Party Wall** shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a sound board between two or more Living Units.
- 1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

- 1.25. **Plat** shall mean and refer to the official subdivision plat(s) of the Stoker Gardens Townhomes P.R.U.D., filed and recorded in the official records of the Davis County Recorder's Office.
- 1.26. **Project** or **Development** shall include the real property described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the Stoker Gardens Townhomes P.R.U.D.
- 1.27. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 1.28. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board. The Association's initial Rules are attached hereto as Exhibit C.

## **ARTICLE II PROJECT DESCRIPTION**

- 2.1. **Submission.** The Owners hereby confirms that the real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Owners hereby declares that the Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, successors, and assigns.
- 2.2. **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Stoker Gardens P.R.D. The Project is not a cooperative.
- 2.3. **Description of Improvements.** The major improvements contained in the Project will include townhome buildings that are divided into Lots, each with a Living Unit. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements in the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.
- 2.4. **Common Areas.** The Common Areas of the Project are identified on the Plats or defined in Article I above.
- 2.5. **Limited Common Areas.** The Limited Common Area of each Lot shall consist of the areas identified on the Plat as Limited Common Area, if any, that are spatially associated with that Lot. If not otherwise identified on the Plat, the Limited Common Areas of each Lot shall generally include the porches and driveways that are outside the boundaries of the Lot. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership

of the Lot. All installations or modifications of Limited Common Areas shall be approved by the Association and shall be subject to the provisions in this Declaration and the Design Guidelines. The Board shall have the power and discretion to determine the Limited Common Area boundaries if the Governing Documents are found ambiguous.

- 2.6. **Lots**. Subject to further specification herein, each Lot consists generally of all structures on or within the boundary of the Lot, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Lot, the Lot shall extend to the center of the wall, which shall form the boundary of the Lots sharing that wall. Subject to dividing lines between Lots, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Lot is part of the Lot if it: (1) is part of and an integral part of the Lot's structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Lot structure); or (2) was constructed as part of the original construction of the Lot. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot, shall be part of the Lot. All exterior and interior doors, door jams, windows, windowsills, window frames and all components therein, skylights, garages, and garage doors, in or on the boundary of any Lot are part of the Lot
- 2.7. **Registered Agent**. The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

- 3.1. **Membership**. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event an Owner fails or refuses to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.
- 3.2. **Voting Rights**. Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to one (1) vote per Lot owned.
- 3.3. **Multiple Ownership Interests**. If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by



written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.

- 3.4. **Record of Ownership.** Every Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of Article V.
- 3.5. **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, signed by the Owner, and is presented to those Association officers conducting such vote or as may be further provided in the Bylaws.

#### **ARTICLE IV EASEMENTS AND RIGHTS IN COMMON AREAS**

- 4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. This right of easement shall only extend to the Limited Common Area appurtenant to the Lot and not to other Limited Common Areas.
- 4.2. **Delegation of Use.** An Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Project. The rights and privileges of such delegatee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in the preceding Section.
- 4.3. **Association Easement.** The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.
- 4.4. **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and

replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

- 4.5. **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.
- 4.6. **Party Walls.** Each wall which is built as a part of the original construction of Living Units upon the Project and placed on the dividing line between two Living Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Living Unit may share one or more party wall, a common roof, a common exterior back wall, and a common exterior front wall, with an adjacent Living Unit. The Owners acknowledge that certain repairs or maintenance to the roof or exterior walls of the Units may become necessary, which repairs or maintenance cannot be performed on one Unit only, but may necessarily involve the other attached Unit. Therefore, all repairs to the roof and to the surface of the exterior walls of all Units will be made by the Association out of Association funds.
- 4.7. **Destruction of Party Wall, Common Roof or Exterior.** If a party wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired by the Owner (unless the damage is covered by the Association's and Owner's insurance) to a condition equal to or better than immediately prior to the damage, and the negligent Owner or Owner at fault shall pay for any and all costs incurred to cure the damage. Should a party wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the Owners of the two affected Units, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired by the Association to a condition equal to or better than immediately prior to the damage, at the expense of the Association, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units.
- 4.8. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions and shall be jointly and severally liable for any fines for violations thereof.

## ARTICLE V BUDGET AND ASSESSMENTS

- 5.1. **Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and other areas maintained by the Association, and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available to the Owners within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.
- 5.2. **Covenant to Pay Assessments.** After the construction of a Living Unit on a Lot, the issuance of a Certificate of Occupancy for the Living Unit on a Lot, and the closing of a sale to a purchaser of a completed Living Unit on a Lot, each Owner of a Lot with a completed, closed Living Unit, by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.
- 5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas and the exteriors of Living Units; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.
- 5.4. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount. From and after January 1 of the calendar year immediately following the conveyance of the first Lot/Unit to an Owner, the maximum Annual Assessment may be increased by the Board each calendar year thereafter (non-cumulatively) by not more than twenty-five percent (25%) above the maximum Annual Assessment for the previous year, without the vote of Owners Entitled to cast a majority of the Association votes at an annual or special meeting of the Association.

- 5.5. **Special Assessments**. The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over two-thousand dollars (\$2,000) in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.
- 5.6. **Individual Assessments**. In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Living Unit and its Owner into compliance with the Governing Documents; (d) costs of providing services to the Lot upon request of the Owner; and (e) attorney fees, court or collection costs, fines, and other charges relating to any of the foregoing, regardless of whether a lawsuit is filed. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Owner's or his/her Occupants' negligence.
- 5.7. **Allocation of Assessments**. Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents.
- 5.8. **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 apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the

Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

- 5.9. **No Offsets**. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.
- 5.10. **Certificate Regarding Payment**. Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee as permitted in the Act.
- 5.11. **Personal Obligation and Lien**. All Assessments, together with any interest, late fees, collection costs, and attorney fees shall constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.
- 5.12. **Billing and Collection Procedures**. The Board shall have the right to adopt Rules setting forth procedures for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.
- 5.13. **Due Date and Delinquency**. Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is

delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

- 5.14. **Collection Charge**. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. The Board shall have authority, without the need to amend this Declaration, to increase the twenty-five dollar late fee. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. The Association may compound interest. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid.
- 5.15. **Collection Action at Law**. The Association may exercise any or all of the following remedies to collect delinquent Assessments:
- 1) The Association may suspend such Owner's voting rights.
  - 2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Davis County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
  - 3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
  - 4) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of

such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

- 5) The Association may terminate utilities paid out of the Common Expense, if any, and the right to use the Common Areas.
  - 6) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.
  - 7) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.
- 5.16. **Power of Sale.** The Association shall have 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 in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 5.17. **Reserve Account.** The Board shall establish a reserve account to fund long- term maintenance of Common Areas and the exteriors of Living Units. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law.
- 5.18. **Account Payoff Fees.** The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.
- 5.19. **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees 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 a failure to pay Assessments.
- 5.20. **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.

## **ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION**

- 6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.
- 6.2. **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.
- 6.3. **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:
- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
  - 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
  - 3) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
  - 4) The powers, duties, and obligations not reserved specifically to Owners; and
  - 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.



6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- 1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- 2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.
- 3) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(19), the requirements of Utah Code §§ 57-8a-218(1), (2), (6), and (8) through (14), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.
- 5) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association. The Association may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Act.
- 6) **Title to Common Areas.** The Association shall hold title to all Common Areas and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- 7) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of one (1) year, renewable by agreement of the parties for a successive one (1) year term, and shall be terminable by the Association upon no more than sixty (60) days' advanced notice. The Board

has no authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.

- 8) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. Other than litigation required for the collection of past due Assessments, the Association shall not commence any litigation without prior approval of a majority of the Members, if the litigation shall exceed the anticipated cost of five thousand dollars (\$5,000.00) either in attorney fee expenses or in costs (including any expert reports).
  - 9) **Bulk Service Agreements.** The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.
- 6.5. **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall defend, indemnify and hold harmless such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.
- 6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth requirements for serving on the Board. Without limiting the generality of the foregoing, the Board may appoint one or more "Committees", and such Committees (which may consist of one or more Members, as determined by the Board) shall have such authority and duties as may be determined from time to time by the Board relating to the budgeting, operation, financial management and administration of the Project ("Delegated Duties"). While any Committee established by the Board shall report to the Board regularly regarding its activities, the Board may by express directive relinquish and transfer all authority and responsibility with respect to such Delegated Duties to an applicable Committee.
- 6.7. **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.

- 6.8. **Management.** The Project may be managed by a professional manager selected by the Board to assist in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.

## **ARTICLE VII MAINTENANCE**

- 7.1. **Association Maintenance.** The Association shall maintain, repair, and replace the Common Areas together with all improvements thereon and all easements appurtenant to the Common Areas, including private utility lines located outside of the exterior walls of a Living Unit, landscape and drainage easements, and personal property owned by the Association. The Association shall maintain, repair and replace the following exterior surfaces of the Living Units: (a) each Living Unit's exterior brick, hardie board or other material that directly makes up the exterior of a Living Unit (but not including the backing to which the exterior material is affixed) and (b) the roof of each Living Unit, including only the roof shingles and the felt and plywood undersurface to which the shingles are attached, and (c) gutters and down spouts. Maintenance, repair, and replacement of all other structural parts of the Living Units, including but not limited to attic space, foundations, patio posts, floor joists, and garage doors, shall remain the responsibility of the Unit Owner, unless repair or replacement is covered by the Association's insurance. Exterior maintenance by the Association shall not include glass surfaces, entry doors or garage doors. The Association shall have no responsibility to maintain or repair public streets within the Project. A maintenance allocation chart has been attached hereto as Exhibit D, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. The Association shall maintain any fence dividers that are installed when the Project was initially constructed.

The maintenance allocations provided in this Article shall clarify, expand upon, and supersede any maintenance provisions contained in the Plat or other Governing Documents. The Common Areas and building exteriors shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Board in its sole discretion shall determine the maintenance standard of the Common Areas and the exteriors of the Living Units. The Association shall have no obligation to perform any maintenance or repair to the interior of any Living Unit or any landscaping installed by an Owner without the Association's express agreement for such maintenance.

- 7.2. **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Project, including, without limitation, landscaping, and garbage/trash removal services (unless provided by the city) for all Lots.

- 7.3. **Owner Maintenance.** Except for the areas maintained by the Association as outlined in Section 7.1 above, each Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Living Unit. Each Owner shall have the maintenance responsibilities regarding the Owner's Living Unit as set forth in the Maintenance Chart Attached hereto as Exhibit D, including the responsibility to maintain any attic space, foundation, patio posts, floor joists, and garage doors that are part of a Living Unit. Such maintenance shall also include repair or replacement of window glass on such Owner's Living Unit and the repair or replacement of the portion of any utility lines that only serve that Living Unit and are located within the Living Unit. The Association shall have no obligation regarding maintenance or care of the interior of any Unit except as expressly covered by insurance or in the Maintenance Chart attached as Exhibit D, or elsewhere in this Declaration. No Owner shall attach anything to the exterior their Living Unit without the prior written consent of the Board. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Limited Common Area.

Notwithstanding the foregoing the Association shall be responsible to maintain the landscaped areas of the Limited Common Areas. However, the Association shall not be responsible to maintain any unapproved landscaping not included within the original construction of the Project, except at the discretion or approval of the Board.

Owners shall be responsible to maintain, repair, and replace non-perimeter fences installed by a Lot Owner, and which are not part of the Project's original construction. In the event, the backyard portion of a Lot or Limited Common Area is not enclosed by a fence upon initial construction, the Association may grant permission for an Owner to enclose such area with approved fencing; but, such approval must be made in writing at the discretion of the Board. No approval to enclose the Limited Common Area shall be granted unless the Owner agrees to cover the cost of construction and any necessary alterations to the existing area, as the Board so determines; and, includes a gate to enable the Association to maintain landscaping within the bounded area as provided herein. In the event an Owner fails to provide unrestricted access to the landscaped area within an enclosed fence, the Association shall have no obligation to maintain, repair, or replace such areas while access is restricted, or to maintain, repair, or replace landscaping, irrigation systems, or any other unmaintained or damaged property arising out of or resulting from the Owner's failure to provide unrestricted access.

The cost and responsibility to maintain, repair, and replace any portion of such non-perimeter fence, which serves, benefits, or bounds one Lot or backyard Limited Common Area shall be borne exclusively by the Owner bounded thereby. When such non-perimeter fences serve, benefit, or otherwise mark a boundary of two or more Lots or backyard Limited Common Areas, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne pro rata by all Owners of backyard Limited Common Areas bounded thereby.

Further descriptions of Owner maintenance, repair, and replacement responsibilities are contained in the maintenance allocation chart attached as Exhibit D.

- 7.4. **Owner Maintenance Neglect.** The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon; but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. All costs incurred by the Association shall be assessed to the Owner as an Individual Assessment. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot as provided in Article V.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all the provisions of this Declaration and such Rules.

- 7.5. **Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas or Limited Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

## **ARTICLE VIII INSURANCE**

**NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.**

- 8.1. **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. 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. Insurance premiums shall be a Common Expense.
- 8.2. **Property Insurance.**

- 1) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
  - a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.
  - b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
  - c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
  - d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (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.
- 2) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
  - a) The Association’s policy provides primary insurance coverage, and:
    - i) the Owner is responsible for the Association’s policy deductible; and

- ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
  - b) An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit ("Living Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("Living Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and
  - c) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.
- 3) **Claims Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible:
- (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible;
  - (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and
  - (c) the Association need not tender the claim to the Association's insurer.
- 4) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- 5) **Personal Property.** The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.
- 6) **HO-6 Policy.** As more fully described in § 57-8-43 of the Utah code, a Unit Owner who owns a Unit that has suffered damage as part of a loss covered by the

association's property insurance policy is responsible for an amount calculated by applying the Unit damage percentage for that Unit to the amount of the deductible under the Association's insurance policy. For that reason, each Unit Owner is required to obtain his or her own insurance policy in the form of an HO-6 policy. An HO-6 policy ensures a unit owner against the costs associated with paying all or a portion of the associations deductible.

- 8.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.
- 8.4. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, 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 shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for 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.
- 8.5. **Theft and Embezzlement Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, (c) officers, directors, and employees of any Manager of the Association, and (d) coverage for acts.
- 8.6. **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.
- 8.7. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.



- 8.8. **Named Insured.** The named insured under any policy of insurance shall be the Association; Each Owner shall also be an insured under all property and CGL insurance policies.
- 8.9. **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. 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 remaining proceeds 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 Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; 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 representatives, successors, or assigns of the Owner.
- 8.10. **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 8.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 8.12. **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 affiliates, agents, and employees.
- 8.13. **Applicable Law.** This Declaration is specifically subjecting 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 shall apply to this Association.

## ARTICLE IX USE RESTRICTIONS

- 9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.
- 9.2. **Use of Lots and Living Units.** All Lots are intended to be improved with single-family Living Units and are restricted to such use. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family Living Unit. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that: only normal residential activities would be observable outside of the Living Unit; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.
- 9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Living Units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof.
- 9.4. **Recreational Vehicles.** Without prior Board approval, no boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like belonging to Owners or other Occupants of the Project shall be parked within the Project for a period exceeding forty-eight (48) hours unless parked within the Owner's enclosed garage. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot or Common Areas, except for emergency repairs to vehicles. The Board is authorized to adopt Rules that vary or expand upon the restrictions set forth in this Section.
- 9.5. **Pets.** No more than two (2) pet may be kept on any single Lot. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to restrictions on the types of pets, additional requirements for registration with the Association, and noise limitations. All pets must

be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules 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 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 or Limited Common Area of another Owner 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; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area or Limited Common Area of another Member and shall be leashed or restrained whenever outside a Living Unit. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet, including burn spots in the lawn from urine.

- 9.6. **Machinery and Equipment**. No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.
- 9.7. **Nuisances**. No resident shall create, maintain, or permit a nuisance in, on or about the Project. For purposes of this Section a “nuisance” includes any behavior which annoys, disturbs, or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes, but is not limited to, the following:
- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
  - 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
  - 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
  - 4) The storage of any substance, thing, or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
  - 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invites, particularly if the police or sheriff must be called to restore order;
  - 7) 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 that diminishes or destroys the enjoyment of the Association by other residents, their guests, or invitees;
  - 8) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;
  - 9) Too much traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;
  - 10) Allowing a pet to be unleashed while outside of the Living Unit or fenced backyard;
  - 11) Continuous barking, meowing, or other animal noises; and
  - 12) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.
- 9.8. **Smoking**. No Owner, family member of an Owner, tenant, lessee, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to as "Resident") shall smoke cigarettes, electronic cigarettes, cigars, or any other tobacco product, marijuana, illegal substance, or any other substance that emits smoke, including vaping, anywhere within the Association's Common Area, Limited Common Area, or in any other outdoor area within the Project. This prohibition shall include but not be limited to Common Areas, enclosed Common Areas within the Project and all porches, patios, and parking areas. The term "smoke", "smoking" or "tobacco" as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, vaping, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.
- 9.9. **Signs**. The Association may regulate and restrict signs in the Project to the extent permitted by law. The Board may adopt Rules for the regulation of signs. No Owner may place a sign on the Common Area or without first obtaining consent from the Board.
- 9.10. **Trash Containers and Collection**. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection. Garbage cans may be placed in the street for collection the afternoon or evening prior to the day of collection and must be removed from the street within twelve (12) hours of collection. The Association may adopt additional Rules for the storage and concealment of trash containers.

- 9.11. **Parking**. No Occupant of the Project may park their vehicle in any of the guest parking stalls within the Project. No vehicle may be parked in the guest parking area for more than 12 consecutive hours. Common Area parking stalls (if any) shall be subject to and governed by Association Rules and may be assigned by the Board. The Association may charge a fee for the use of any Common Area parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.
- 9.12. **No Patio Storage**. No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the ACC.
- 9.13. **Leases**. The leasing of Living Units is permitted, so long as the leasing complies with the restrictions contained in Article X below. The Board may adopt Rules to regulate the leasing of Living Units which may include, but are not limited to: requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.
- 9.14. **Solar Energy Systems**. Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Project. Notwithstanding the foregoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, Living Unit, or townhome buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the ACC as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy

system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The ACC or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

- 9.15. **Satellite Dishes and Antennas.** All satellite, dish and television antennas must be placed within the enclosed area identified on the Association's Satellite Dish Antenna Policy which is set forth in Exhibit E, attached hereto.
- 9.16. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) either that the restriction 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 restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Owners of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall 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.

## **ARTICLE X RENTAL RESTRICTIONS**

- 10.01 **No Rentals.** No Living Unit within the Project may be Leased or Rented to a non-owner unless (a) the owner of the Living Unit has previously resided in the Living Unit for a term of at least one (1) year, or (2) the Owner of the Living Unit qualifies for one of the exceptions listed in Section 10.2 below.
- 10.02 **Exceptions. The restrictions herein shall not apply:**
- 1) To an Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Living Unit during the period of temporary military deployment. The Owner who is temporarily deployed may lease their Living Unit during the period of temporary military deployment. However, if the Owner moves from the Living Unit due to a permanent change of station (PCS) the rental restrictions shall continue to apply to that Living Unit and Owner;
  - 2) To a parent, grandparent, or child who is an Owner and leases their Living Unit to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
  - 3) To an Owner who moves for a period of less than two years at least 40 miles away from the Living Unit by reason of being relocated by the Owner's employer, if relocation of the

Owner is necessary for purposes of employment;

- 4) To an Owner who moves at least 40 miles away from their Living Unit due to temporary (less than three years) humanitarian, religious or charitable activity or service and leases their Living Unit with the intent to return to occupy the Living Unit when the humanitarian, religious or charitable service has concluded;
- 5) To a Living Unit owned by an entity that is occupied by an individual who has voting rights under the entity's organizing documents; and has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- 6) To a Living Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: the estate of a current resident of the Living Unit; or the parent, child, or sibling of the current resident of the Living Unit;

10.03 **Grandfather Clause.** Those Living Units that are occupied by non-Owners at the time this Declaration is recorded at the Davis County Recorder's Office may continue to be occupied by non-Owners until the Owner sells, conveys or transfers the Living Unit to another party, occupies the Living Unit, or an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Living Unit, transfers the Living Unit to another party or occupies the Living Unit.

10.04 **Transfer of Living Unit.** For purposes of section 10.03, a transfer occurs when one or more of the following occur:

- 1) there is a conveyance, sale, or other transfer of a Living Unit by deed;
- 2) the granting of a life estate in the Living Unit; or
- 3) if the Living Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

10.05 **No Partial or Short-Term Rentals.** Renting or Leasing less than 100% of the Living Unit is Prohibited. An Owner may not rent or lease a portion of a Living Unit, or an individual room, on a short-term basis (for less than six-months), even if the Owner continues to occupy a portion of his or her Living Unit. No short-term, Airbnb, or overnight type rentals are permitted within the Project. Even when renting a Dwelling under one of the exceptions outlined in 1.2, all short-term rentals of less are prohibited within the Project. Nothing contained in this Article shall be read to permit short-term rentals at any time.

10.06 **Power of Attorney.** In the event an Owner fails to comply with the terms of this Article, then upon the Association sending no less than two (2) letters to the Owner(s) demanding that the Owner(s) take remedial action against its tenant, such Owner(s) hereby appoints the Association as its limited power of attorney for the purposes of filing and prosecuting any proceeding in Unlawful Detainer/Eviction that the Association elects to commence

pursuant to the terms of this Article.

- 10.07 **Notification of Lease.** Immediately upon entering into a lease, the Owner shall furnish the management company and/or the Board with the following: (a) a copy of such lease, (b) the telephone number of the lessee, and (c) any change in address or telephone number of the Owner. The Governing Documents shall be binding on the lessee. Failure of the Owner to provide the information required in this section shall be deemed a default by such Owner.
- 10.08 **Governing Documents.** The Owner, lessees, and the lease itself shall be subject to the conditions and provisions of the Declaration, Bylaws, and Rules and Regulations of the Association. The Owner, at his own expense, shall provide a copy of the Governing Documents to his future lessees as a condition of leasing.
- 10.09 **Violation.** Any Owner who violates this Article shall be subject to a complaint for damages and/or an injunction and Order seeking to terminate the Lease in violation of this Article. If the Association is required to retain legal counsel to enforce this Article, with or without the filing of legal process, the violating Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Association, in enforcing this Article. Failure of an Owner to make repayment of said costs within thirty (30) calendar days after receipt of written demand, shall entitle the Board to (a) levy and add to the assessment against such Owner all expenses incurred by the Association, (b) foreclose the assessment lien according to Utah State Law; and (c) to file suit to collect the amounts due and owing or both.
- 10.10 **Guest Permitted.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from residing in his or her Living Unit, while the Owner is present.
- 10.11 **Definitions.**
- 1) **Rent Defined.** As used herein, "Rent" (or any variation of the word) or "Lease" (or any variation of the word) means a Living Unit that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the Living Unit as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is leasing a Living Unit. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Living Unit is a Living Unit. The terms "Rent" and "Lease" shall also include short term or overnight, Airbnb style rentals, even if an Owner continues to occupy the Living Unit while renting out a portion of the Living Unit.
  - 2) **Non-Owner Defined.** As used herein, "Non-Owner" means an individual or entity that does not hold any interest in the title to the Living Unit as shown on the records of the Davis County Recorder.
  - 3) **Occupied Defined.** As used herein, "Occupied" means to reside in the Living Unit for 14 or more days in any thirty (30) day period. A Living Unit is deemed to be Occupied by Non-Owner if the Living Unit is Occupied by an individual(s) other than the Owner and the Owner is not occupying the Living Unit as the Owner's primary residence.



## ARTICLE XI ARCHITECTURAL CONTROLS

- 11.1. **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. The ACC need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC.
- 11.2. **Architectural Controls.** To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the ACC. In the event of any reconstruction of an improvement or a residential Living Unit due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the ACC. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the ACC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the ACC. Once approved by the ACC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit, as needed, from the city.

No construction, reconstruction or modification of a home or landscaping may commence without approval by the ACC of the working drawings including, but not limited to, the following:

- 1) A site plan to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- 2) Detailed floor plans showing dimensions and measurements.
- 3) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- 4) Detailed sections, cross and longitudinal.
- 5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ACC will base its approval of construction

plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, any other design guidelines adopted by the Association. Any costs incurred by the Association in reviewing plans, specifications, or the like shall be assessed against the requesting Owner as an Individual Assessment. The ACC may also establish a reasonable fee for reviewing plans and specifications.

- 11.3. **Design Guidelines**. The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the project.

- 1) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and ACC. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.
- 2) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

- 11.4. **Variances**. The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the ACC (or Board if acting as the ACC). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

- 11.5. **Liability for Damages**. The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article.

## **ARTICLE XII ENFORCEMENT**

- 12.1 **Enforcement of Governing Documents**. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Occupants,

guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

### **ARTICLE XIII RULES AND FINES**

- 13.01 **Fines; Authorization.** The Board is authorized to assess a fine against Owners who violate provisions in this Declaration, the Bylaws, or rules and regulations (collectively referred to herein as “Rules”). The assessment of a fine shall be in accordance with the provisions of the Utah Community Association Act, Utah Code Annotated, section 57-8a-208, the provisions of these community rules, and the rules and regulations adopted by the Board.
- 13.02 **Written Warning of Violation.** Before assessing a fine, the Board shall provide a written warning of the violation to the Owner informing the lot owner that a fine will be imposed if the violation is not cured as stated in the written warning. The written warning shall:
- 1) describe the violation;
  - 2) state the Rule or provision of the governing documents that the Owner’s conduct violates;
  - 3) state that the board may, in accordance with the Utah Community Association Act, Utah Code Annotated, section 57-8a-208, assess fines against the Owner if (i) the violation is not cured (within the time required for a continuing violation), or (ii) if a similar violation is committed again within one year after the day on which the board gives the Owner the written warning or assess a fine against a Owner, and
  - 4) for a continuing violation, state a time that is not less than 48 hours after the day on which the Board gives the lot owner the written warning by which the lot owner shall cure the violation.
- 13.03 **Repeat Violations.** If a violation is temporarily cured or stopped, but the same violation is repeated by the same Owner or their tenant within one year from the date a written warning is first served or fine is assessed on the Owner or tenant, the Board shall not be required, prior to assessing a fine or an additional fine, to serve another written warning upon the Owner or tenant within the one year period, but may rely upon the notice provided in the first written warning.
- 13.04 **Time to Cure.** For a continuing violation, the violation must be cured within a time that is not less than 48 hours of the written warning that is delivered to the Owner or the tenant, unless such time period is extended by the Board for good cause. The member of the Board or their agent that serves the written warning on the Owner shall write on the notice the (a) date and time the written warning was served on the Owner or tenant, and (b) the date and time by which the violation must be cured (if the violation is a continuing

violation). If a lot owner repeats the violation within one year after receiving the written warning or fails to cure a continuing violation within the time required but less than one year after receiving the warning, the Owner may be assessed a fine.

- 13.05 **Fines.** The Board may assess a fine against an Owner if (a) within one year after the day on which the Board gives the Owner a written warning, the Owner commits another violation of the same rule or provision identified in the written warning, or (b) for a continuing violation, if the Owner does not cure the violation within the time period that is stated in the written warning. If the violation is fully and completely cured within the time provided in the written warning, and is not repeated within one year of the time the written warning is first served on the Owner, no fine may be assessed by the Board.
- 13.06 **Additional Fines.** The Board may, without providing an additional written warning, assess an additional fine against an Owner each time an Owner (1) commits a violation of the same rule or provision within one year from the day on which the board assesses a fine against an Owner for a violation of the same rule, or (2) allows a violation to continue for 10 days or longer after the day on which the Board assesses the fine. Additional fines shall be assessed according to the amount stated in the Rules for multiple violations.
- 13.07 **Manner of Providing Written Warning and Fine.** The written warning of a violation of the Rules of the association and the written notice of a fine imposed by the Board may be provided to the Owner in any one or more of the following ways:
- 1) Delivering a copy to the Owner personally; or
  - 2) Sending a copy through first class mail, certified or registered mail (at the discretion of the Board), addressed to the Owner at his or her place of residence, in which case an additional 48 hours shall be allowed to cure the violation; or
  - 3) Leaving a copy with a person of suitable age and discretion at the Owner's Lot; or
  - 4) Affixing a copy in a conspicuous place on the Lot; or
  - 5) If the person committing the violation is a tenant of the Owner, by delivering a copy to the owner and the tenant residing in the lot in any manner described in the preceding four subparagraphs.
- 13.08 **Non Owner Occupied Lots: Renters & Guests.** In cases where the lot is not occupied by the Owner and the violation of the Rules is committed by a tenant residing in the lot, the Owner shall be responsible for the failure of the tenant to cure a violation of the Rules. For purposes of the lease between the Owner and the tenant, the provisions of the Rules and these community rules shall be incorporated by reference into the terms of the lease and the Owner may collect from the tenant any fines the Owner becomes obligated to pay by virtue of the tenant's actions. The Owner is responsible for bringing a separate action to collect any such fines from the tenant.
- 13.09 **Board Action.** Any action by the Board involving a written warning or a notice of fine

may be taken by the Association's managing agent or by any officer of the Board if so authorized or later ratified by a quorum of the Board, consisting of 50% or more of the Board present at a meeting either in person or by telephone conference, or if not present at a meeting, members consenting to the action after conferring with other members of the Board.

- 13.10 **Violations for Which a Fine May be Assessed.** A fine may be assessed for the violation of a provision in the Association's Rules, any amendments thereto, or for a rule describe in Exhibit C, which is attached and incorporated by this reference. The list of violations of a rule or regulations listed on Exhibit C may be modified by the Board without amending this Declaration, pursuant to their power to enact rules governing conduct within a community association as contained in the Utah Community Association Act, Utah Code Ann. 57-8a-101 et seq. Exhibit C may be used to incorporate provisions in the Rules for which a violation may be assessed. For Rules which are not set forth in the attached Exhibit C, the amount of each fine shall be the amount set forth in Exhibit C.
- 13.11 **Continuous Violations.** Each 10-day period during which a violation of the governing documents of the Association, the Rules of the Association, or the rules listed on Exhibit C, continues after the time period expires during which the Owner is required to cure the violation, constitutes a separate violation and is subject to a fine in the amount listed in Exhibit C. The violation of a provision in the Rules or a provision listed on Exhibit C, which is temporarily cured within the time period required in the written warning, but which is repeated or violated again within one year of the date the original written warning was served or fine was assessed, is deemed to be a continuous violation for which another written warning is not required to be served.
- 13.12 **Amount of Fines.** The amount of a fine for a violation of the governing documents or the Rules or the provisions listed on Exhibit C.
- 13.13 **Late Fees on Fines not paid.** Fines not paid within 10 days of their due date shall accrue interest at the rate of 1.5% per month until paid and a late fee of \$10.00 for each month the fine remains unpaid. An additional late fee shall be assessed for each and every 30 day period the fine remains unpaid after it is due. No interest or late fees may accrue until 10 days after a hearing (if requested by the Owner) has been conducted and a final decision has been rendered by the Board.
- 13.14 **Protesting the Fine.** An Owner or tenant who is assessed a fine may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed (which is the date written on the notice of fine). The Owner protesting the fine shall request the informal hearing by delivering a written request to any member of the Board stating the grounds for the protest or dispute and setting forth in detail the following:
- 1) the grounds for the protest, including any unusual circumstances justifying a reduction in the standard fine;
  - 2) the facts relied upon by the protesting Owner with respect to the violation or non-violation of the Rules.

- 3) the amount of the fine the Owner claims should be paid and the reasons supporting that claim; and
- 4) any errors made by the Board in calculating, assessing, or collecting the fine.

13.15 **Informal Hearing.** Within 21 days of receiving the written request for hearing, the Board shall schedule an informal hearing at which time the requesting Owner or tenant will be given an opportunity to present evidence and witnesses supporting the Owners position. The Board shall allow the Owner, committee members, or any other person involved in the hearing to participate in the hearing by means of electronic communication. No formal rules of evidence will be required, and the Board can receive the evidence submitted by the requesting Owner and determine the probative value of such evidence. If it chooses and if it would be of benefit to the requesting Owner, the Board may also produce evidence supporting its decision to fine the Owner. However, the intent of the hearing is to listen to the violating Owner's explanation for his or her behavior or activities and not to have a trial. The Board may terminate the hearing at any time if any individual present becomes unruly, inconsiderate or rude.

13.16 **Decision of the Board.** The Board may, after the requesting Owner has had the opportunity at the hearing to present the evidence desired, may either:

- 1) leave the amount of the fine as originally stated;
- 2) reduce the fine to an amount agreed upon by a majority of the Board present at the hearing;
- 3) reduce the fine to an amount agreed to by the offending Owner with the agreement that the offending Owner will pay the fine within 10 days and not appeal the fine in district court;
- 4) suspend all or a portion of the fine conditioned on the Owner not repeating the violation for one year; or
- 5) forgive the fine.

The Board shall render its written decision no later than ten (10) days after the date of the hearing.

13.17 **Appeals.** An Owner may appeal a fine by initiating a civil action within 180 days after:

- 1) a hearing has been held and a final decision has been rendered by the Board, or
- 2) the time to request an informal hearing has expired without the Owner making such a request.

13.18 **Lien.** A fine assessed which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same

standards as a lien for the nonpayment of common expenses under U.C.A. § 57-8a-301.

#### **ARTICLE XIV RIGHTS OF FIRST MORTGAGEE**

- 13.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all Assessments levied while it holds title to the Lot.
- 13.2. **Notice of Default by Owner.** In the event an Owner neglects, for a period of sixty (60) days or more, to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.
- 13.3. **Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

#### **ARTICLE XV RIGHT OF ENTRY**

- 14.1 **Right to Enter Lots and Living Units.** The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least forty-eight (48) hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in a Living Unit, the smell or sight of smoke in a Living Unit, abnormal or excessive noises, and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall defend, indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from intentional or willful misconduct.

**ARTICLE XVI  
REINVESTMENT FEE**

- 15.1. **Adoption of Reinvestment Fee.** The Association hereby adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall not exceed 0.5% of the value of the unit being sold. The Reinvestment Fee shall be paid by the purchaser of a unit whenever a unit is sold, transferred, or conveyed to a new owner.
- 15.2. **Amount of Reinvestment Fee.** The amount of the Reinvestment Fee shall initially be \$1,500. By written resolution, the Board is authorized to increase or decrease the amount of the Reinvestment Fee, but in no event shall the Reinvestment Fee exceed the amount of 0.5% of the value of the unit being transferred.
- 15.3. **Increases.** If the Board determines that an increase in the amount of the Reinvestment Fee is justified, it shall file for record in the office of the Davis County Recorder an amendment to this Article, in the form of a Board Resolution, setting forth the amount of the new Reinvestment Fee.
- 15.4. **Runs with the Land.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit A, and is intended to bind successors in interest and assigns of the real property described in Exhibit A, attached hereto. The Association is hereby authorized to record a separate Notice of Reinvestment Fee against all Lots.
- 15.5. **No Additional Reinvestment Fees.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit A, attached hereto.
- 15.6. **Duration.** The duration of the Reinvestment Fee covenant is for a period of 50 years.
- 15.7. **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the Association's Common Areas and the other areas the Association is required to maintain.
- 15.8. **Exceptions.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
- 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, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property in an amount of \$250.



## **ARTICLE XVII AMENDMENTS**

- 16.1. **Amendments by Association.** This Declaration may be amended upon the affirmative vote of at least fifty-one percent (51%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Davis County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required.

## **ARTICLE XVIII DISPUTE RESOLUTION**

- 17.1. **Introduction.** It is in the best interest of the Members, the Association, the Board, and the officers (the "Parties") to encourage the amicable resolution of disputes arising out of the legal rights and obligations described in this Declaration without the emotional and financial costs of litigation. The Board, the Association and each Member agrees that before filing suit in any court it will first submit to the Alternative Dispute Resolution Procedures set forth below, (the "ADR Procedures"), with respect to any claim, grievance or dispute arising out of or relating to the Declaration, Bylaws, or rules and regulations (the "Claims").
- 17.2. **Exceptions.** Notwithstanding the foregoing, the ADR Procedures shall not be required for the following Claims unless all Parties to the matter agree to submit the matter to the ADR Procedures:
- 1) any suit between Members which does not include the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Association;
  - 2) any suit in which any indispensable party is not bound by this Article 17;
  - 3) any collection activity, action or suit brought by the Association against an Owner involving the collection of delinquent Assessments or fines;
  - 4) actions by the Association to collect Assessments or other amounts due from any Owner; and
  - 5) actions brought by the Association to obtain a temporary restraining order, preliminary injunctive relief, or other preliminary equitable relief and such ancillary relief as the Association may deem necessary in order to enforce the provisions of this Declaration (an "Enforcement Action").

17.3. **Procedure for Disputes Between Members.**

- 1) **Good-Faith Discussion.** The aggrieved Party ("Complainant") shall attempt to resolve the Claim with the other Party ("Respondent") through good-faith discussion.
- 2) **Submission of Complaint.** If the Claim is not resolved through good-faith discussion, Complainant shall provide the Board and each Respondent with a written statement of the material facts of the Claim (the "Complaint"). The Complaint shall include the following:
  - (a) the nature of the Claim, including the parties involved and the Respondent's role in the Claim;
  - (b) a brief description of the discussions of the parties and their attempts to resolve the Claim informally;
  - (c) copies of relevant documents supportive of Complainant's position; and
  - (d) Complainant's proposed resolution or remedy.

The Complaint must include all Claims that exist between the Parties at that time. Any Claim not included in the Complaint is expressly waived by the Complainant. Respondent shall have fifteen (15) days from receipt of the Complaint to file a response (the "Response") with the Complainant and the Board. The Response must include any Claim that the Respondent has concerning the Complainant at the time that the Response is submitted to the Board. Any Claim that is not included in the Response is expressly waived by the Respondent. The Response shall include any documents, descriptions, explanations or other material supporting the Response.

- 17.4. **Review by Board.** The Board shall undertake a reasonable review of the Complaint and the Response and shall issue a written decision, including an explanation of the reasons for the decision, within thirty (30) days of receipt of the Response. A copy of the decision shall be sent to the Parties promptly via first class mail. The Board's decision shall be the final and binding resolution of the Claims submitted in the Complaint and the Response unless within thirty (30) days from the date that the decision is mailed either Party delivers to the Board and all other Parties a Notice of Objection to the Board's Decision and Intent to Submit to Mediation.

17.5. **Mediation.**

- 1) Within thirty (30) days of receipt of the Notice of Objection to the Board's Decision and Intent to Submit to Mediation, the Board shall contact the Parties with proposed mediation dates and a list of potential mediators. A neutral third-party or professional mediator that has been agreed to by the Parties shall conduct the mediation.
- 2) The mediation shall be held in the State of Utah at a location agreed upon by the Parties. Unless otherwise agreed by the Parties, the mediation shall take place no later than three (3) months from the date of the Board's decision. If the Parties do

not agree to extend this period and mediation does not occur within this time period, then this requirement is deemed to be satisfied.

- 3) Unless otherwise agreed by the Parties, all fees and costs of the mediation shall be borne by the Party submitting the Notice of Objection to the Board's Decision and Intent to Submit to Mediation.
- 17.6. **Litigation.** All Claims between the Parties not otherwise resolved through the procedures identified above may be litigated in the applicable state or federal court. The prevailing Party in any litigation shall be awarded its reasonable attorney fees and costs associated with the dispute. Punitive damages, however, shall not be awarded in any dispute.
- 17.7. **Procedure Subject to Change by Board.** The procedures outlined in this Article 17 may be amended from time to time by the Board without the consent of the Owners, as the Board deems necessary, in light of experience, to better accomplish the amicable resolution of disputes arising out of the legal rights and obligations described in the governing documents; provided, such modifications shall not take effect until three months after a copy of the new procedures is delivered to the Owners.
- 17.8. **Procedure for Disputes Between the Association and Members.** Subject to the provisions of Section 17.2, any Member who has a dispute with the Association, the Board, or an officer, or any officer of member representing one of these groups, and who is not satisfied with the decision of the Association or the Board, shall follow the procedures outlined in Section 17.3 above.

## **ARTICLE XIX MISCELLANEOUS**

- 18.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.
- 18.2. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.
- 18.3. **Dissolution.** The Association may be dissolved by the affirmative assent in writing from 90% of the Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made

or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V.

- 18.4. **Interpretation and Severability**. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
- 18.5. **Covenants to Run with Land**. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration.
- 18.6. **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 facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 18.7. **No Waiver**. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 18.8. **Condemnation**. If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. 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, then that Lot's interest

in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

- 18.9. **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that the Association and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND 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 SECURITY OF THE PROJECT.
- 18.10. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Davis County Recorder.

[Certification on Next Page]

It is hereby certified that owners holding more than fifty percent (50%) of the voting interests within the Project have voted to approve this Declaration.

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## **EXHIBIT A**

### **LEGAL DESCRIPTION**

The real property included in the **Stoker Gardens Townhomes P.R.U.D.**, pursuant to this Declaration, located in Davis County, Utah, is described as follows:

**ALL OF UNITS 1 THROUGH 66 INCLUDING ALL BUILDINGS IN THE STOKER GARDENS TOWNHOMES P.R.U.D, SYRACUSE CITY, DAVIS COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.**

**[12-765-0001 through 12-765-0066]**

## **EXHIBIT B**

### **BYLAWS OF STOKER GARDENS HOMEOWNERS ASSOCIATION**

These BYLAWS OF STOKER GARDENS HOMEOWNERS ASSOCIATION are effective upon recording in the Davis County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

#### **RECITALS**

- A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
- B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as the Stoker Gardens Townhomes P.R.U.D. and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

#### **ARTICLE I DEFINITIONS**

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Covenants, Conditions, and Restrictions for the Stoker Gardens Townhomes P.R.U.D.

#### **ARTICLE II APPLICATION**

All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Living Units or the mere act of occupancy or use of any said Living Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

#### **ARTICLE III OWNERS**

- 3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial



reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting.

- 3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request.
- 3.3 **Place of Meetings.** The Board may designate any place in Davis County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association or its Manager.
- 3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.
- 3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

- 3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Lots in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.
- 3.7 **Quorum.** Ten percent (10%) of the members of the Association shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two (2) days nor more than thirty (30) days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association present at the meeting either in person or by proxy, shall decide any question brought before the meeting; provided, however, if the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.
- 3.8 **Proxies.** At each Owner meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. 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 the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.
- 3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have 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 a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be

necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

- 3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.
- 3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707 or § 16- 6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.
- 3.12 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (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 exact 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. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

#### **ARTICLE IV BOARD OF DIRECTORS**

- 4.1 **Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.
- 4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of either three (3)

or five (5) persons, as determined by the Board. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. No two (2) Board Members may reside in the same Living Unit or be business partners if the business is related to their ownership of a Lot. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate.

- 4.3 **Election**. The Board Members shall be elected by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.
- 4.4 **Term of Office**. The Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected. There are no term limits for Board Members.
- 4.5 **Regular Meetings**. The Board shall hold meetings at least quarterly or more often at the discretion of the Board.
- 4.6 **Special Meetings**. Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.
- 4.7 **Meeting Notice**. The person or persons authorized to call Board meetings may fix any place, within Davis County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message at least two (2) business days in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.
- 4.8 **Quorum and Manner of Action**. A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.
- 4.9 **Owner Attendance**. Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in

number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

- 4.10 **Open Meetings.** Except as provided below in (a) through (f), Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- 1) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- 2) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- 3) Discuss a labor or personnel matter;
- 4) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- 5) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- 6) Discuss a delinquent assessment.

- 4.11 **Board Meetings Generally.** The Board may designate any place in Davis County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. If a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

- 4.12 **Board Action.** Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

- 4.13 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

- 4.14 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member elected by the Owners may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.
- 4.15 **Vacancies.** If vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor.  
Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.
- 4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.
- 4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.
- 4.18 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.
- 4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

## **ARTICLE V OFFICERS**

- 5.1 **Officers**. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board.
- 5.2 **Election, Tenure, and Qualifications**. The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until the next ensuing meeting of the Board following the Annual Meeting of the Owners and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.
- 5.3 **Subordinate Officers**. The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.
- 5.4 **Resignation and Removal**. Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.
- 5.5 **Vacancies**. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.
- 5.6 **President**. The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the 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 Owner or person, (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." 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.
- 5.7 **Vice President**. The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board of Directors.

- 5.8 **Secretary**. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.
- 5.9 **Treasurer**. The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.
- 5.10 **Compensation**. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

## **ARTICLE VI COMMITTEES**

- 6.1 **Designation of Committees**. The Board may designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.
- 6.2 **Proceeding of Committees**. Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 6.3 **Quorum and Manner of Acting**. At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.
- 6.4 **Resignation and Removal**. A committee member may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect



upon delivery. The Board may at any time, with or without cause, remove any committee member.

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

## **ARTICLE VII INDEMNIFICATION**

- 7.1 **Indemnification.** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct 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 shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to defend, indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.
- 7.2 **Other Indemnification.** The defense and indemnification herein provided shall not be deemed exclusive of any other right to defense and indemnification to which any person seeking indemnification may be entitled under the Acts or under any 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. It is the intent that all Board Members, officers, and committee members be and hereby are defended and indemnified to the fullest extent permitted by the laws of the State of

Utah and these Bylaws. The defense and indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

- 7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to defend or indemnify such person against liability under the provisions of this Article.
- 7.4 **Settlement by Association.** The right of any person to be defended and/or indemnified shall be subject always to the right of the Association through the Board, in lieu of such defense and/or 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 VIII RULES AND REGULATIONS**

- 8.1 **Rules.** The Board shall have the authority to adopt and establish by resolution such Association Rules as it deems necessary for the maintenance, operation, management, and control of the Project. The Association's initial Rules, along with the fines for violating each Rule, are attached hereto as Exhibit C. The Board may from time to time, by resolution, add to, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all additions or changes to the Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

## **ARTICLE IX AMENDMENTS**

- 9.1 **Amendments by Association.** The Bylaws may be amended by the Owners upon the affirmative vote of more than fifty-one percent (51%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Davis County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote

of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any Owner signature shall be required.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

- 10.1 **Waiver**. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.
- 10.2 **Invalidity; Number; Captions**. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.
- 10.3 **Conflicts**. These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

## EXHIBIT C

### AMOUNT OF FINE\*

1ST Offense	2ND Offense within 1 year	3ND Offense within 1 year	4TH or more Offense within 1 year	<b>RULES</b> (the following activities are prohibited)
Warning	\$50	\$100	\$150	<ul style="list-style-type: none"> <li>• parking in the common area where parking is restricted</li> <li>• parking in another owner's driveway or reserved parking area</li> <li>• parking on any sidewalk</li> <li>• parking in areas marked with "no parking" signs</li> <li>• violation of any parking rule contained in the declaration, bylaws, or Association rules</li> <li>• parking recreational vehicles or boats on Lot for more than 2 days in any 14-day period without Board approval</li> <li>• parking unregistered or inoperable vehicles in the common area</li> <li>• parking in a way that blocks access to other lot's driveway</li> </ul>
				<ul style="list-style-type: none"> <li>• performing maintenance or mechanical work on vehicles (including motorcycles &amp; ATV's) in a driveway or in the common area</li> </ul>
				<ul style="list-style-type: none"> <li>• leaving trash, garbage, or clutter on the unit's driveway, patio or doorstep, or otherwise maintaining the driveway, patio or doorstep in an unsightly, unclean, or unsanitary condition</li> <li>• obstructing the common area (including sidewalks) in such a manner as to restrict ingress or egress to or from the lots</li> </ul>
				<ul style="list-style-type: none"> <li>• misuse or damage to the common area by attaching any item to the common area without the written permission of the Board</li> <li>• painting or decorating any common area without written permission of the Board</li> <li>• causing damage to the common area (lawn, parking area, sidewalk, driveway, sprinkler system, flowers or shrubs)</li> </ul>
				<ul style="list-style-type: none"> <li>• leaving personal belongings in the common area such as bicycles, scooters, toys, work equipment</li> </ul>

Warning	\$50	\$100	\$150	<ul style="list-style-type: none"> <li>creating noise within a living unit or lot that can be heard in another living unit or lot, or in the common area, such that the noise is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life</li> <li>creating noise in the common area that can be heard in a unit or lot such that the noise is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life</li> <li>maintaining pets in a unit or lot in violation of the Association bylaws, declaration or rules and regulations</li> <li>failing to immediately clean up after pets that have defecated or otherwise made a mess in the common area</li> <li>allowing pets in the common area without a leash</li> <li>allowing pets in the common area without the owner or another responsible party being present</li> <li>maintaining a pet in lot that can be heard in another lot such that the sound or smell created by the pet is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life</li> <li>performing any construction outside a unit without written authorization from the Board</li> <li>operating a business in a unit without a business license or in violation of the municipal ordinances, the Association bylaws, declaration, or rules and regulations</li> <li>failing to maintain window coverings, etc. (for example: failure to replace broken blinds, torn drapes or other such window coverings). There shall be no blankets, newspapers or bed sheets used for window coverings.</li> <li>leasing a unit in violation of the Association leasing policy as set forth in the Declaration by failing to require tenants to comply with Association rules</li> </ul>
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## EXHIBIT D

### MAINTENANCE ALLOCATION CHART

ITEM	HOA	OWNER	NOTES
GENERAL NOTE			Shared items are to be resolved between the Owners involved in use of the item.
A/C Pad & Unit		X	
Address Numbers	X		
Attic		X	
Cable/Satellite TV		X	
Ceiling		X	
Fireplace, Flue, & Vent Pipes - Cleaning & Repair		X	
Circuit Breakers for Unit		X	
Door and Door Frames - Exterior		X	
Door and Door frames - Interior		X	
Door Hardware		X	
Door steps/stoops/porch		X	
Doorbell		X	
Drains - Living Unit & Limited Common Patio/Porch		X	
Dryer Vent Cleaning		X	
Electrical Wiring/Panel		X	
Exterior Wall Finishes (Rock/Stucco/Siding, etc.)	X		
Fences the boarder the exterior of the Project	X		
Interior Fences (bordering Lots) - future replacement		X	
Interior Fences (bordering Lots) - repairs from wind/shifting		X	
Fence - repair damage caused by resident/guests		X	
Fireplace Component, including spark arrestor		X	
Floor Coverings		X	
Foundation - Structural		X	
Foundation - Cracks, cosmetic		X	
Front Landing/Porch		X	
Furnace		X	
Garage Door Openers, Springs, Hinges, Parts		X	
Garage Doors Paint, Repair, Replace		X	
Gas Pipes		X	
Gate Hardware & Locks		X	
Hose Bib/Faucet/Spigot		X	
Hot Water Heater		X	
Insurance Coverage - Property (attached buildings)	X		
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - Loss Assessment		X	

Insurance Deductible	X	X	Deductible assessed to Owners pro-rata in which a loss takes place. Deductible on Owners HO6 Policy is Owner's responsibility.
Irrigation Lines / Heads - outside yard areas	X		
Landscape - outside fenced yard areas	X		
Landscape - fenced yard area		X	if applicable
Lights - Garage Fixtures & Bulbs		X	
Lights - Eaves (Electrical Issue/Replacement)		X	
Lights - Eaves Bulb		X	
Lights - Porch Fixture & Bulb		X	
Limited Common Area Driveways		X	
Limited Common Area Patios		X	
Limited Common Area Porches		X	
Limited Common Area Sidewalks	X		
All Concrete Located on a Lot or on the Limited Common Area Associated with a Lot (this includes the maintenance, repair and replacement of the concrete)		X	
Mailbox & Stand/Structure	X		
Mailbox Lock & Key			USPS
Paint - Exterior Finishes and doors, garage doors, etc.	X		
Paint - Interior		X	
Patio Slab		X	
Pest Control Interior		X	
Phone Lines		X	
Plumbing Valves, Pressure Regulator		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter HOA.
Plumbing Main Line		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter HOA.
Plumbing Leak		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter HOA.
Plumbing Clogging/Stoppage		X	Point of connection/Meter to the unit - Owner. Before point of connection/Meter HOA.
Plumbing Pipes Inside Unit serving only one unit		X	
Rain Gutters clean-out, repair, replacement	X		
Rain Gutters - drains away from building	X		
Roof - future replacement	X		
Roof Leak	X		
Screen Doors		X	*Must be approved by DRC
Sewer pipes that only serve one Unit and are located Inside or underneath a Living Unit		X	
Sewer pipes that (a) serve more than one Lot, or (b) are located Outside of a Unit or within the Common Area	X		
Shutters		X	
Skylights		X	
Snow Removal Driveways & Sidewalks on Lots or in Limited Common Areas		X	
Termites, pests, rodents, insects, etc.		X	
Trash		X	
TV Reception		X	

Utility Doors		X	
Vent covers - Exterior		X	
Walkways to individual unit- not shared		X	
Wall - Bearing Interior Wall	X		
Wall - Partition Interior Wall		X	
Water - Culinary		X	
Water - Landscape	X		*Unless metered to the individual unit owner
Weatherstripping		X	
Window Boxes		X	
Window Frames		X	
Window Glass & Screens		X	



## **EXHIBIT E**

### **SATELLITE DISH ANTENNA POLICY**

# Stoker Gardens Townhomes PRUD Satellite Dish Antenna Policy

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Any unit owner wishing to use or install a satellite dish or antenna (hereinafter "Dish") on their lot should consult with the Association Board prior to installation.

A Dish must be one meter or less in diameter, and designed to receive direct broadcast satellite service, including direct to home satellite service, or to receive or transmit fixed wireless signals via satellite. Dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via MMDS (wireless cable) or to receive or transmit fixed wireless signals other than via satellite may also be considered.

The Board will consider a properly completed *Stoker Gardens Homeowner Association Satellite Dish Antenna Approval Form* as a request for Dish installation. A decision on whether to approve the location of the Dish will be discussed by the Board at the next regularly scheduled Board meeting after the request has been received.

Consideration will be given to each request according to the prioritized list of acceptable locations listed below. These prioritized locations have been established to help Stoker Gardens Homeowner Association meet FCC regulations, and to minimize any negative visual impact the Dish may have on the appearance of the Stoker Gardens Townhomes community.

The lot owner is to have a professional representative from his/her desired satellite service provider conduct a site survey to check the listed areas to determine where an acceptable signal can be received, and fill out that part of the form prior to submission.

A lot owner wishing to install a Dish should consider the first area listed below before any other location. If, and only if, the first area cannot receive an acceptable signal, he/she may consider the second area. If, and only if, the second area cannot receive an acceptable signal, he/she may consider the third area. If, and only if, the third area cannot receive an acceptable signal, he/she may consider the fourth area.

The same prioritized list of locations applies to all lots. They are:

**First Area:** Wholly within the Living Unit's deck or patio area.

**Second Area:** On the Living Unit's rear roof not visible from the street in front of the unit.

**Third Area:** The rear exterior wall of the Living Unit.

**Fourth Area:** On the roof of the Living Unit in an area that is least likely to be observed from the street.

Approval will be based on the requested location for the Dish. If the lot owner changes the desired location after approval has been granted, for whatever reason, another Approval Form will need to be submitted indicating the new location, and the reason for the change. If none of the prioritized areas can receive an acceptable signal, the Board will consider another location in an area that is least likely to detract from the visual appearance of the community.

In some cases, the Board may be willing to consider an alternate location to the prioritized list of areas even if an acceptable signal can be received in at least one of those areas. This option would be considered only if the Board believes that the alternate location provides a better overall visual impact for the community than do those locations on the prioritized list.

In some cases the Board may ask a lot owner to paint the antenna to match the surrounding building and/or plant bushes or shrubs that could help to minimize the visual impact to the community.

A violation of any part of this policy will result in a fine being assessed to the lot owner in the amount of \$50.00 for each week of violation. If the fine is not paid within thirty (30) days, interest will be charged at the legal rate.

This Policy does not apply to the installation of a Dish by an owner if the Dish is wholly within the owner's property. However, the owner who installs a Dish wholly within the owner's property remains responsible for damages caused by the Dish installation.

# Stoker Gardens Homeowner Association

## Satellite Dish Antenna Approval Form

A lot owner wishing to use a satellite dish or antenna is asked to complete this form, submit it to the Board for approval, and receive written approval from the Board before installation of a Dish. The process for approval is as follows:

1. The lot owner desiring to install a Dish must first read and understand the *Stoker Gardens Homeowner Association Satellite Dish Antenna Policy*. Questions should be directed to a member of the Board.
2. The lot owner contacts her/his desired satellite service provider and requests a site survey.
3. The site survey is performed by a service provider representative to determine which prioritized area can receive an acceptable signal.
4. The service provider must complete the site survey portion of this document, provide his company contact information, and sign the document in the appropriate places.

5. The lot owner completes the form (including any information needed to justify a request for use of an Alternate Area), signs the agreement, and submits the form to the Board.

6. The Board reviews the request at the next regularly scheduled meeting, determines if changes must be made, or what conditions may apply, and votes on the request.

7. If the proposal is accepted, the approval form is signed by the appropriate members of the Board and a copy is returned to the lot owner. *(If rejected, the form is returned with an explanation of what must be modified in order to gain approval.)*

8. The lot owner may then proceed with the Dish installation, following the instructions and conditions established by the committee.

Name of Lot Owner \_\_\_\_\_

Lot #: \_\_\_\_\_

Phone #: \_\_\_\_\_

**First Area:** Wholly within the patio area of the Living Unit.

Date tested: Name/signature of the professional conducting the site survey: \_\_\_\_\_

Can an acceptable signal be received in this area? ☐ Yes ☐ No (if no, explain why): \_\_\_\_\_

**Second Area:** On the Living Unit's rear roof not visible from the street in front of the Living Unit.

Date tested: Name/signature of the professional conducting the site survey: \_\_\_\_\_

Can an acceptable signal be received in this area? ☐ Yes ☐ No (if no, explain why): \_\_\_\_\_

**Third Area:** The rear exterior wall of the Living Unit.

Date tested: Name/signature of the professional conducting the site survey: \_\_\_\_\_

Can an acceptable signal be received in this area? ☐ Yes ☐ No (if no, explain why): \_\_\_\_\_

**Fourth Area:** On the roof of the Living Unit in an area that is least likely to be observed from the street.

Date tested: Name/signature of the professional conducting the site survey: \_\_\_\_\_

Can an acceptable signal be received in this area? ☐ Yes ☐ No (if no, explain why): \_\_\_\_\_

**Alternate Area:** The Living Unit owner should describe the alternate area at which he/she proposes to install the dish antenna & why:

Why should this location be considered instead of the other areas listed above? \_\_\_\_\_

Describe the visual impact on the community if a dish antenna were to be installed in this area: \_\_\_\_\_

Has this area been tested ☐ Yes ☐ No; If yes, can an acceptable signal be received in this area? ☐ Yes ☐ No

Name of person conducting the sight survey: \_\_\_\_\_

Date tested: \_\_\_\_\_

Phone #: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

I certify that I conducted the sight survey, and that the information provided is accurate. Signature: \_\_\_\_\_

As Lot Owner I desire to install a satellite dish antenna at the ☐ First Area ☐ Second Area ☐ Third Area ☐ Fourth Area ☐ Alternate Area, as described above.

I agree to restore the installation area to match its surroundings when the dish is removed at a later date. I agree that approval from the Board applies to one installation, and that if I wish to change the location, and/or install an additional dish antenna, I should submit another request.

Signature of Lot Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Board Response: ☐ Request Accepted As Is ☐ Request Accepted w/ Conditions (see below) ☐ Request Rejected

(Explanation for rejection: \_\_\_\_\_)

Signatures: Board President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Date: \_\_\_\_\_