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08/05/2025 03:57:08 PM By: BENNETT TUELLER JOHNSON AND DEERE

DECLARATION OF CONDOMINIUM
FOR
FIDDLERS CANYON HILLS
a Contractible/Expandable Utah Condominium Project

DECLARANT
FIDDLERS CANYON HILLS, LLC
A Utah Limited Liability Company

WHEN RECORDED RETURN TO:
FIDDLERS CANYON HILLS, LLC
7026 S 900 E
Midvale, UT 84047

Contents

DECLARATION OF CONDOMINIUM
FOR FIDDLERS CANYON HILLS
(a Utah Condominium Project)

This Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Fiddlers Canyon Hills, a Contractible/Expandable Condominium Project, is made and executed by Fiddlers Canyon Hills, LLC, a Utah limited liability company (the "***Declarant***" or "***Developer***"), for the purposes described below. The contents of this Declaration shall take effect upon recording in the office of the county recorder of Iron County, Utah.

RECITALS

A. Declarant holds both legal and equitable title to certain real property, located in Iron County, State of Utah and more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference (the "***Property***").

B. Declarant is developing a planned community known as Fiddlers Canyon Hills on the Property, as shown on the Condominium Plat on Exhibit B (the "***Project***"), which is expected to include a mixture of apartment, multifamily, recreational, and other facilities and amenities.

C. Fiddlers Canyon Hills Homeowners Association, Inc., a Utah nonprofit corporation (the "***Association***"), is being formed concurrently with the filing of this Declaration, which Association will maintain the Common Areas, provide for the management and operation of the Common Areas, levy and collect Assessments, and administer and enforce the terms of this Declaration, as hereinafter described.

AGREEMENT

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The said covenants, conditions, restrictions and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals.

ARTICLE I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. "***Act***" shall mean the "Community Association Act" as codified in Title 57, Chapter 8a of the Utah Code Annotated, as amended.

2. "***Additional Charges***" shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

3. "***Additional Land***" shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit C attached hereto and incorporated herein by this reference.

4. "***Apartment Board Members***" shall mean and refer to the members of the Board that are elected by the vote of a Proportionate Interests of the Apartment Owners as provided in Article III, Section 14, which shall constitute at least 1/3rd of the members of the Board.

5. "***Apartment Common Expense***" shall mean and refer to all Common Expenses which are solely for the benefit of the Apartment Units, as determined by the Board, including but not limited to the cost for any repairs and maintenance of the Apartment Common Area, greater insurance premiums and utility usage, or a greater portion of repairs and maintenance of the Limited Common Area serving only the Apartment Units.

6. "***Apartment Occupant***" shall mean and refer to any person who is physically occupying an Apartment Unit as a matter of right, under agreement, license, lease or otherwise, for so long as said person is so occupying the Apartment Unit, and the term "Apartment Occupant" shall include, but is not limited to, as the context requires, an Apartment Owner and any tenant or licensee of an Apartment Owner. For purposes of any use restrictions contained in this Declaration, any restrictions on an "Apartment Owner" shall also include any "Apartment Occupant."

7. "***Apartment Owner***" shall mean and refer to the record owner, whether one or more persons or entities, including Declarant, of an Apartment Unit, but specifically excludes a person having merely an interest as a Mortgagee with respect to the Apartment Unit, or as a secured party with respect to a security pledge of any fixtures or personal property, or any party other than those described, holding an interest merely as security for repayment of a debt.

8. "***Apartment Common Area***" shall mean and refer to those Common Areas consisting of parking lots, connected landscaping, and other adjacent amenities which are located immediately adjacent to the Apartment Units, as shown on the Condominium Plat, and are reserved for the exclusive use of the Apartment Owners and Apartment Occupants. Certain parking spaces may be identified as handicapped parking spaces, and may be assigned (or reserved) by Declarant in accordance with applicable federal, state, County, and City laws, statutes, and ordinances. Declarant shall also have the right to withhold parking spaces as it deems necessary to effectuate the efficient management and operation of the Project, including, without limitation, but without binding Declarant to provide such parking, to accommodate parking for visitors and guests. Declarant makes no representation or warranty hereby with respect to the reservation of any particular number or location of guest or visitor parking spaces. The Apartment Common Area shall be a Limited Common Area for the use of the Apartment Owners.

9. "***Apartment Unit***" shall mean and refer to shall mean those Units consisting of an apartment building containing eighteen separate apartments, as identified on the Map as "D-1" through "D-4", which shall be owned by Declarant, or its successors or assigns, and are intended for leasing to tenants pursuant to the terms of this Declaration and in compliance with applicable law, including County and City zoning codes and land use ordinances, together with any Limited Common Area reserved for the exclusive use of the Apartment Unit.

10. "***Architectural Control Committee***" or "***ACC***" shall mean and refer to the architectural control committee established by the Association as it now exists or may be constituted in the future.

11. "***Architectural Guidelines***" shall mean and refer to the architectural and design guidelines of the Architectural Control Committee formed under the Declaration as they now exist or may be amended in the future.

12. "***Articles of Incorporation***" shall mean and refer to the Articles of Incorporation of Fiddlers Canyon Hills Homeowners Association, Inc., on file or to be filed with the Utah Department of Commerce.

13. "***Assessment***" shall mean and refer to any amount imposed upon, assessed or charged a Unit Owner or Occupant at the Project, including without limitation any Base Assessments or Special Assessments.

14. "***Association***" shall mean and refer to Fiddlers Canyon Hills Homeowners Association, Inc., a Utah non-profit corporation.

15. "***Base Assessment***" shall mean and refer to the Assessments levied against all Units within the Project to fund Common Expenses.

16. "***Board***" shall mean and refer to the board of directors elected as provided in this Declaration to direct the affairs of the Association.

17. "***Budget***" shall mean and refer to a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration, which shall including an itemization of the General Common Expenses, the Apartment Common Expenses, and the Townhome Common Expenses, for a twelve-month period. "Budget" shall also include a budget establishing an adequate reserve funded on a reasonable basis for the repair, replacement and reconstruction of the major components of the Common Areas, which shall include an analysis of the expected useful life of Common Areas and Improvements and the cost to repair or replace the same, as set forth in greater detail in Article III, Section 23.4.

18. "***Building***" shall mean and refer to any of the structures constructed in the Project.

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

20. "***Bylaws***" shall mean and refer to the Bylaws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit D.

21. "***Capital Improvement***" shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

22. "***Common Areas***" shall mean and refer to all real property in the Project owned in common by the Unit Owners including but not limited to the following items:

a) The real property and interests in real property subject hereto, including the entirety of the Property and all improvements constructed thereon, excluding the individual Units.

b) All Common Areas and Facilities designated as such in the Condominium Plat, as amended;

c) All Limited Common Areas designated as such in the Condominium Plat, as amended;

d) All utility installations and all equipment connected with or in any way related to

the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water, cable TV and sewer;

e) The Project's common grounds, landscaping, open space, sidewalks, roads, parking amenities, entry and monuments;

f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

Provided, however, utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the County and, if so, this definition shall not be construed to allow the Association to exclude the County from the ownership and control of the utility systems so dedicated.

23. "***Common Expense***" shall mean and refer to all actual and estimated expenses incurred by the Association for the general benefit of the Project and Owners within the Project, including any reasonable reserve, including without limitation the General Common Expenses, the Apartment Common Expenses, and the Townhome Common Expenses, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation, and may include, without limitation, when determined by the Board, expenses associated with the Facilities, wages of any Association employees (including fees for any Manager), and expenses incurred in bringing or defending lawsuits and other litigation expenses.

24. "***Common Facilities***" means all real and personal property, including, but not limited to, the Improvements, structures, buildings, and facilities located on any Common Area that the Association now or hereafter owns or otherwise holds for the common use, enjoyment and/or benefit of all Owners of the Project, which is so designated by Declarant in Declarant's sole discretion, including, but not limited, any trails, sports facilities, pavilions, and related facilities.

25. "***Community***" shall mean and refer to the Project.

26. "***Community Wide Standard***" shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Board from time to time.

27. "***Condominium Plat***" shall mean and refer to the Condominium plat(s) creating the Units for "Fiddlers Canyon Hills" on file in the office of the County Recorder of Iron County, as amended or supplemented from time to time.

28. "***Convertible Space***" shall mean the Apartment Units and Apartment Common Area.

29. "***County***" shall mean Iron County, Utah.

30. "***Declarant***" means Fiddlers Canyon Hills, LLC, a Utah limited liability company, or its successors, successors-in-title or assigns who take title to any portion of the Project and which is designated as Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

31. "***Declarant Affiliate***" mean(s) any entity controlling, controlled by, or under common control with Declarant or any entity in which a principal of Declarant has an interest.

32. "***Declaration***" shall mean and refer to this Declaration of Condominium for Fiddler Canyon Hills, a Utah Contractible/Expandable Condominium Project as it may be amended from time to time.

33. "***Eligible Insurer***" shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

34. "***Eligible Mortgagee***" shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

35. "***Eligible Votes***" shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an "eligible vote".

36. "***Exterior Materials***" shall mean and refer to stucco, wood, finished lumber, metal siding or other similar materials but shall not mean stone, brick, cinder block or concrete block or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the County. The County shall assume no responsibility for enforcement of the Exterior Materials, but reserves the right to and may enforce any Exterior Material requirement at any time and in its sole discretion. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by Declarant or its designee.

37. "***General Common Expense***" shall mean and refer to all Common Expenses which benefit the Apartment Units and the Townhome Units collectively.

38. "***Guest***" shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Occupant.

39. "***Improvements***" means any improvement now or hereafter constructed within the community and includes anything that is a structure and appurtenances thereto of every type and kind, including but not limited to any (a) home, twin home, townhouse, building, shed, hot tub, screening wall, accessory building, fence, or wall; (b) any walkway, garage, road, driveway or parking area; (c) any mailbox, sign, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Unit); (d) any radio or television antenna or receiving dish; (e) any paving, exterior lights, curbing, trees, shrubs, hedges, grass, windbreak, or other landscaping Improvements of every type and kind; (f) any excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment; and (g) any other structure of any kind or nature.

40. "***Land***" shall mean and refer to all of the real property subject to this Declaration, described in Exhibit A and depicted in Exhibit B, together with all easements, rights-of-way, and other rights appurtenant to or accompanying the above-referenced real property, and any Additional Land which is hereafter made subject to this Declaration.

41. "***Laws***" or individually "***Law***" mean any law, regulation, rule, order, statute or ordinance of any governmental or private entity in effect at any time during the term and applicable to the Project or the Unit and the Owner's use thereof, including, but not limited to, building, fire and safety codes and regulations, building permits, conditional use permits, and certificates of occupancy.

42. "***Limited Common Areas***" shall mean and refer to those Common Areas designated in this Declaration or in the Condominium Plat as reserved for the use of a certain Unit Owner or Unit Owners to

the exclusion of the other Unit Owners. Any portico, colonnade, Unit entry, doorsteps, driveway, landings, porches, balconies, decks, patios, parking lots, garages, or other improvements intended to serve only a single Unit, shall constitute Limited Common Area appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a designation.

There shall be no modifications or structural alterations of any kind to the Limited Common Areas without the written approval of the Board; provided, however, that the Apartment Common Area shall be a Limited Common Area reserved for the exclusive use of the Apartment Owners, their guests, tenants, and invitees, and may be modified or altered by the approval of the Eligible Votes of at least sixty-seven percent (67%) of the Proportionate Interest of the Apartment Owners.

Limited Common Areas may not be partitioned from the Unit to which they are appurtenant. The exclusive use of Limited Common Areas is reserved to the Unit to which it is assigned in the Condominium Plat, as amended from time to time. No reference thereto need be made in any instrument of conveyance, encumbrance, or other instrument. The use and occupancy of designated Limited Common Areas and Common Facilities shall be reserved to the Units as shown on the Condominium Plat, as designated from time to time by the Board, or as specified in the Declaration. Owners may not reallocate Limited Common Areas and Common Facilities between or among Units in which they have an interest. Notwithstanding, the Association has the right to reallocate Limited Common Areas and Common Facilities, including garages and parking amenities, to the fullest extent permitted under the Act.

43. "***Majority***" shall mean and refer to those Eligible Votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

44. "***Manager***" shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

45. "***Map***" shall mean and refer to the Condominium Plat.

46. "***Member***", unless the context clearly requires otherwise, shall mean and refer to the Owner of a Unit (whether or not constructed and whether or not the Owner resides on the Parcel), being thereby entitled to vote and otherwise participate in decisions made by the Association and which parties shall constitute the Owners, each of whom is obligated, by virtue of such Owner's ownership to be a member of the Association.

47. "***Mortgage***" shall mean and refer to both a first mortgage and first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.

48. "***Mortgagee***" shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit, but shall not mean or refer to a seller under an executory contract of sale.

49. "***Owner***" shall mean and refer to the person who is the condominium owner of record (in the office) excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term "Owner" includes both Apartment Owners and Townhome Owners.

50. "***Period of Administrative Control***" means a period of time commencing as of the date of this Declaration and expiring upon the date that Declarant resigns as the Declarant pursuant to the terms of this Declaration and records an instrument with the Iron County recorder's office wherein Declarant voluntarily surrenders all rights to control the activities of the Association.

51. "***Person***" shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

52. "***Phase***" shall mean and refer to a particular stage or area of development within the Project so designated by the Declarant.

53. "***Project***" shall mean and refer to Fiddlers Canyon Hills planned unit development.

54. "***Project Documents***" shall mean and refer all documents and applicable provisions thereof as set forth in this Declaration, any Supplemental Declaration, the Bylaws and Articles of Incorporation of the Association, Rules and Regulations, Architectural Guidelines, all written decisions and resolutions of the Board, and any lawful amendments to any of the foregoing.

55. "***Property***" shall mean and refer to all the real property which is described in Exhibit A and depicted in Exhibit B, together with all easements, rights-of-way, and other rights appurtenant to or accompanying the above-referenced real property, and any Additional Land which is hereafter made subject to this Declaration.

56. "***Proportionate Interest***" shall generally mean and refer to a percentage, the numerator of which shall be the square footage of such Unit, and the denominator of which shall be the total aggregate square footage of the Units in the Project, as set forth on Exhibit E attached hereto; provided, however, that when used in connection with a subset of the Project such as with respect to the Apartment Units, "Proportionate Interest" shall mean and refer to a percentage, the numerator of which shall be the square footage of such Apartment Unit, and the denominator of which shall be the total aggregate square footage of Apartment Units in the Project, as set forth on Exhibit E, attached hereto.

57. "***Reasonably Available***" shall mean commercially available using typical insurance carriers and markets, irrespective of the ability of the Association to pay.

58. "***Repair***" shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

59. "***Occupant***" shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

60. "***Regulated Modification***" shall mean (without implication that any particular matter is permitted or prohibited by this Declaration) the commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, Improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing within the community as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by Declarant or Association, but including by way of illustration and not of limitation:

> any building, garage, porch, shed, bathhouse, hot tub, coop or cage, covered or uncovered patio, children's play fort or play set and any other recreational devices or equipment used outside of a Unit, fence, wall or other screening device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters, and any other temporary or permanent modification or alteration;

any other building, structure, Improvement, thing or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Architectural Guidelines, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the community; and

any modifications to the structural, mechanical, or electrical elements, systems or components of a Unit.

61. "***Rules and Regulations***" shall mean the current applicable Rules and Regulations for the Project implemented by the Board, as the same may be supplemented, amended, modified or repealed as provided in this Declaration.

62. "***Special Assessment***" shall mean and refer to the Assessments levied in accordance with Article III, Section 23.15 of this Declaration.

63. "***Townhome Common Expense***" shall mean and refer to all Common Expenses which are solely for the benefit of the Townhome Units, as determined by the Board.

64. "***Townhome Occupant***" shall mean any person physically residing in a Townhome Unit, including any Townhome Owner, their guests, invitees, and tenants. For purposes of any use restrictions set forth in this Declaration, the term "Townhome Owner" shall include a Townhome Occupant.

65. "***Townhome Owner***" shall mean the Owner of a Townhome Unit.

66. "***Townhome Unit***" shall mean the Units consisting of a single townhome or condominium intended for the ownership and use of a single family, together with any Limited Common Areas reserved for the exclusive benefit of such Unit.

67. "***Unit***" shall mean and refer to a separate physical part of the Property intended for independent use or for construction of improvements thereon for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit. The Units shall include both the Apartment Units and the Townhome Units.

68. "***Unit Number***" shall mean and refer to the number, letter or combination thereof designating a particular Unit.

ARTICLE II. SUBMISSION

The Land described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act.

The Land is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of the County to access to the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is SUBJECT TO the described easements and rights of way. Easements and rights-of-way in favor of the County include any dedicated roadways and public utility easements and are depicted on the Condominium Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration and not limitation all easements and rights-of-way in and to the detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

ARTICLE III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. **Description of Improvements.** The Project will consist of multiple phases. The Project shall consist of 330 Townhome Units, which shall be townhome-style condominiums with three bedrooms each, and 4 Apartment Units, which shall be apartment buildings each containing 18 apartments with two bedrooms each. The Units will be constructed principally of concrete foundations with exterior walls of stucco veneer, siding, asphalt shingle and metal roofing, aluminum soffit and fascia, interior walls of wood studs, plywood, and dry wall plaster. The Common Area and Facilities will include common landscaping and open space, sidewalks, a trail or trails, retention ponds, storm drains, and parking amenities. The Project will also contain other improvements of a less significant nature. There shall be a dedicated street or streets. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Condominium Plat.

2. **Description and Legal Status of the Property**. The Condominium Plat shows the Unit Number of each Unit, its location, those Limited Common Areas and Common Facilities which are reserved for its use, and the Common Areas and Common Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered and conveyed; and shall have an appurtenant undivided percentage of ownership interest in the

Common Areas and Common Facilities, subject to the rights of Declarant, the County, and all easements of record. The undivided interest of each Unit Owner in the Common Areas and Common Facilities shall have a permanent character and shall not be altered without the consent of the Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interest of the Members of the Association expressed in an amended declaration duly recorded (*provided, however*, that the Apartment Common Area may be altered with the approval of the Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interest of the Apartment Unit Owners). The Declarant hereby declares each Unit shall have a percentage of ownership interest in the Common Areas and Common Facilities equal to such Unit's Proportionate Interest. There shall be no limitations on the addition of any portion, part or the whole of the addition of the Additional Land. Furthermore, Declarant does not make any assurances as to whether any improvements such be made on any portion, part or the whole of the Additional Land.

3. **Membership in the Association**. Since membership in the Association is mandatory, each Unit Owner is a Member of the Association and membership may not be partitioned from the ownership of a Unit.

4. **Allocation of Voting Rights**. Each Member of the Association shall be entitled to a voting interest in the Association equal to the Proportionate Interest in each Unit owned by such Member, as set forth in this Declaration. Notwithstanding the foregoing, during the Period of Administrative Control, the Declarant (a) has the right to appoint all members of the Board, (b) has the right to disapprove actions by the Board, and (c) shall be the sole Member entitled to vote on all matters subject to the vote of any Members of the Association hereunder, and until the expiration of the Period of Administrative Control, no Member shall be entitled to vote on any matter whatsoever.

5. **Conveyancing**. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved using language in substantially similar form to the sample language below:

> All of Unit No.____ in Building No.____ contained within Phase____, Fiddlers Canyon Hills, as the same is identified in the Condominium Plat recorded in Iron County, Utah as Entry No. in Book at Page of the official records of the County Recorder of Iron County, Utah (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium for Fiddlers Canyon Hills recorded in Iron County, Utah as Entry No. in Book at Page of the official records of the County Recorder of Iron County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

6. **Architectural Standards and Committee.**

6.1. Architectural Control Committee. An Architectural Control Committee, composed of three persons who will be appointed by the Board, is hereby established. Members of the ACC need not be Members of the Association or Owners. The ACC may from time to time designate any one of its members to act in its stead. After the Period of Administrative Control expires, a majority of the persons serving on the ACC must be Owners. All such persons serving on the ACC serve at the discretion of the Board. All decisions of the ACC are subject to review and modification by the Board (except as otherwise expressly provided herein), including specifically the right of any Owner to appeal any decision of the ACC to the Board as provided in the Bylaws. In the event of the death or resignation of any person serving on the ACC, the Board shall designate a successor who will have all of the authority and power of his/her predecessor. Until such successor has been appointed, the remaining members shall have full authority to exercise all rights, duties and powers of the ACC. The ACC shall keep the Board informed as to its activities on a continuing basis, and shall submit a written report regarding the same semi-annually to the Board or as otherwise required by the Board. The ACC has exclusive jurisdiction on behalf of the Association regarding: (a) implementation of all provisions of this Section 6, and (b) promulgation of all Architectural Guidelines pertaining to the development and construction of Improvements with respect to any Townhome Unit within the Project. No person serving on the ACC is entitled to compensation for services performed; provided, the ACC may employ one or more architects, engineers, attorneys or other consultants to assist the ACC in carrying out its duties, and the Association shall pay such consultants for services rendered. Members of the ACC may also be reimbursed for reasonable expenses in such manner and amounts as may be approved by the Board.

6.2. Submission of Plans. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Townhome Unit, or within or upon any part of the Project serving the Townhome Units, unless and until complete plans and specifications have been submitted to and approved in writing by the ACC, as applicable, as to compliance with applicable Architectural Guidelines.

6.3. Architectural Guidelines. The Board or the ACC, subject to Board approval, may, from time to time, effective immediately, adopt, modify, amend and repeal such reasonable Architectural Guidelines applicable to the Townhome Units and Common Area serving the Townhome Units. Such authority includes, but is not limited to, the right to specify:

(a) specific procedural guidelines for submission of requests for, and plans, specifications and other information and documentation necessary to obtain, ACC approval, and procedural requirements for the conducting of all activities necessary to accomplish same;

(b) the amount and manner of payment of any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal or other expert advice or consultation, and all other costs and expenses in connection with review and evaluation of an application;

(c) specific types of Regulated Modifications which may be commenced, constructed, erected or maintained upon any Townhome Units and Common Area serving the Townhome Units;

(d) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of a Regulated Modification;

(e) minimum setbacks;

(f) the location, height, and extent of fences, walls or other screening devices, walks, decks, patios or courtyards;

(g) the orientation of structures and landscaping with respect to streets, walks, driveways and structures on adjacent properties; and

(h) in general, all requirements reasonably deemed necessary to maximize compliance with Architectural Guidelines as set forth herein.

WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ARCHITECTURAL GUIDELINES MAY PROVIDE FOR A FINE OF UP TO $10,000.00 AGAINST ANY OWNER AND UNIT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ACC OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE ACC, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS.

6.4. Manner and Effect of Adoption of Architectural Guidelines. The Association shall make a copy of the Architectural Guidelines available to Owners upon request. Architectural Guidelines may also be (but are not required to be) recorded. Architectural Guidelines are of equal dignity with, and shall be enforceable in the same manner as, other provisions of this Declaration, provided: (a) such Architectural Guidelines shall not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; (b) such Architectural Guidelines shall not be enacted retroactively, except that all repairs, modifications or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Architectural Guidelines; and (c) such Architectural Guidelines shall not conflict with this Declaration.

6.5. Inspection Rights. Upon reasonable notice (oral or written), any member of the ACC or the Board, or their designated representatives, may enter a Unit without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any Regulated Modification in compliance with the approved plans, specifications, information and documentation for same, and as to compliance with any applicable provisions of the Declaration and Architectural Guidelines.

6.6. Records. The ACC is not required to maintain records of any of its meetings. The ACC and the Board, however, must keep and maintain records evidencing their respective final decision(s) regarding all requests for approval and requests for variance for not less than four years. The ACC must also maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon request.

6.7. Limitation of Liability. Neither Declarant, the Association, the Board, the ACC, nor their respective affiliates, are liable to any Owner, Occupant, or any of their affiliates, or to any other person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Architectural Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality or suitability for any purpose of the Regulated Modification. Notwithstanding anything herein to the contrary, the ACC's review of the any plans will be for the ACC's and the Association's sole purpose, will not imply any obligation or liability of any kind on the Association, the Board or the ACC or any of its members, and will not release the Owner from any responsibility to properly design the Regulated Modifications and any Improvements or to comply with the terms and conditions of this Declaration and any Architectural Guidelines. The Owner releases, indemnifies and holds harmless the Association, the Board or the ACC or any of their affiliates from any claims related in any way to the design and construction of the Regulated Modifications and any Improvements.

6.8. Limitation of Applicability. None of the provisions of this Section 6 apply to any activities of Declarant, any affiliates of Declaration, the Association, or the Apartment Units or Apartment Common Areas.

7. **Ownership and Use Restrictions**. Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of such Owner's Unit, to an undivided percentage of ownership interest in the Common Areas equal to such Owner's Proportionate Interest in any Unit owned by such Owner, and to membership in the Association as set forth herein, subject to the following use restrictions:

7.1. Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of such Owner's Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by persons. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

7.2. Title to the Common Area. Each Unit Owner shall be entitled to an undivided percentage of undivided ownership interest in and to the Common Areas and Common Facilities, in proportion to such Unit Owner's Proportionate Interest.

7.3. Mandatory Association. Each purchaser of a Unit, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a member of the Association.

7.4. Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area (except any Limited Common Area related to other Units, and the Apartment Common Area, which shall be limited to use by the Apartment Owners and Apartment Occupants). Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

(a) The right of the Association to limit the number of guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Area;

(b) The right of the Association to suspend the voting rights and the privilege to use the recreational amenities by a member for: (a) any period during which such Owner's Assessment remains delinquent, and (b) a period not to exceed thirty (30) days after notice and hearing as may be set forth hereinafter for any infraction of the Association rules;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Period of Administrative Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant; and

(d) The right of the Association to charge a reasonable admission or other user fee for the use of any recreational facility situated upon the Common Area.

7.5. Rules and Regulations. The Board is hereby specifically authorized to adopt, amend, modify, supplement, cancel, limit, create exceptions to, expand, or enforce such reasonable Rules and Regulations applicable to the operation and use of the Common Area, Common Facilities, and Units within the Project. The Board shall have the right from time to time through the exercise of its business judgment on behalf of the Association to promulgate rules and regulations that it deems beneficial to the Association, including, but not limited to: (i) traffic and parking regulations and other traffic control procedures; (ii) procedures and reasonable restrictions and limitations on the right to use the Common Area; and (iii) all procedural and substantive aspects for the establishment, levy, collection and payment of fines

for any violations of any Rules and Regulations. Rules and Regulations are of equal dignity with and may be enforceable in the same manner as the provisions of this Declaration; provided:

(a) Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter);

(b) Rules and Regulations may not be incompatible with the provisions of this Declaration or any Supplemental Declaration;

(c) Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the Association, the Board shall (i) at least fifteen (15) days before the Board will meet to consider any change to the Rules and Regulations, deliver notice to the Owners and the Association that the Board is considering a change to the Rules and Regulations; (ii) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting before the Board takes action on the Rules and Regulations; and (iii) deliver a copy of the changes in the Rules and Regulations approved by the Board to the Owners within fifteen (15) days after the date of the Board meeting;

(d) Notwithstanding the requirements in (3) above, the Board may adopt Rules and Regulations without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, a Unit, an Owner, or an Occupant. The Board shall provide a copy of the changes in the Rules and Regulations as provided in (3) above;

(e) A Board action pursuant to this Section is disapproved if within sixty (60) days after the date of the Board meeting where the action was taken: (i) (1) there is a vote of disapproval by Board of the Association; and (2) the vote is taken at a special meeting called for that purpose by the Owners; or (ii) the Declarant delivers to the Board a writing of disapproval during the Period of Administrative Control;

(f) The Board has no obligation to call a meeting of the Owners to consider disapproval of any action to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce any Rules and Regulations, unless Owners submit a petition, in the manner prescribed in this Declaration for a special meeting, for the meeting to be held. Upon the Board receiving a petition as provided in the preceding sentence, the effect of the Board's action shall be: (i) stayed until after the meeting is held; and (ii) subject to the outcome of the meeting;

(g) During the Period of Administrative Control, the Declarant may exempt the Declarant from the Rules and Regulations, and may also exempt the Board and the Association from the rulemaking procedures under this Section;

(h) The Rules and Regulations shall treat similarly situated Owners similarly, except that Rules and Regulations may vary for Apartment Owners and their Occupants and Townhome Owners and their Occupants, or may vary according to the level and type of service that the Association provides to Owners and differ between residential and nonresidential uses, if applicable;

(i) The criterion of any Rules and Regulations may not abridge the rights of an Owner to display religious and holiday signs, symbols, and decorations inside a Unit, provided that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside a Unit;

(j) Rules and Regulations may not regulate the content of political signs; provided that Rules and Regulations may regulate the time, place, and manner of posting a political sign, and the Association design provision may establish design criteria for political signs;

(k) Rules and Regulations may not interfere with the freedom of an Owner to determine the composition of the Owner's household; provided that the Association may: (i) require that all Occupants of a Townhome Unit be members of a single housekeeping unit consistent with applicable Law; and (ii) limit the total number of Occupants permitted in each Unit on the basis of the Unit's size and facilities and the fair use of the Common Area;

(l) Rules and Regulations may not interfere with an activity of an Owner within the confines of a Unit to the extent that the activity is in compliance with local Laws and ordinances; provided that Rules and Regulations may prohibit an activity within a Unit if (i) the activity is not normally associated with a residential use or permitted by this Declaration or (ii) (1) creates monetary costs for the Association or other Owners, (2) creates a danger to the health or safety of Occupants of other Units, (3) generates excessive noise or traffic, (4) creates unsightly conditions visible from outside such Unit, (5) creates an unreasonable source of annoyance to persons outside such Unit, or (6) if there are attached Units, creates the potential for smoke to enter another Owner's Unit or the Common Area;

(m) Rules and Regulations may not, to the detriment of an Owner and over an Owner's written objection to the Board, alter the allocation of financial burdens among the various Units (provided that the Apartment Owners may be allocated a different financial burden to Townhome Owners); provided that the Association may: (i) change the Common Area available to an Owner; (ii) adopt generally applicable Rules and Regulations for the use of Common Area; or (iii) deny use privileges to an Owner who is delinquent in paying Assessments, abuses the Common Area, or violates the Project Documents. Notwithstanding the foregoing, Rules and Regulations cannot alter the method of levying Assessments or increase the amount of Assessments as provided in this Declaration;

(n) Rules and Regulations may not prohibit the transfer of a Unit or require the consent of the Association or Board to transfer a Unit; provided that, Rules and Regulations may (i) require a minimum lease term of any rental of a Unit or any apartments within the Apartment Units (i.e., they may prohibit short-term, nightly, daily, and weekly rentals), and (ii) prohibit any Owner (other than the Declarant) from selling its Unit via fractional interests;

(o) Rules and Regulations may not require an Owner to dispose of personal property that was in or on a Unit before the adoption of Rules and Regulations if the personal property was in compliance with all Rules and Regulations and the terms and conditions of the Project Documents previously in force; provided that such exception only applies during the period of the Owner's ownership of the Unit and does not apply to a subsequent Owner who takes title to the Unit after adoption of such Rules and Regulation;

(p) Rules and Regulations or action by the Association or Board may not unreasonably impede a Declarant's ability to satisfy existing development financing for Common Facilities and right to develop the Development or other properties in the vicinity of the Development;

(q) Rules and Regulations or action by the Association or Board may not interfere with the use or operation of an amenity that the Association does not own or control the exercise of a right associated with an easement;

(r) Rules and Regulations may not divest an Owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the Project Documents in existence at the time the completed application was submitted by the Owner for review;

(s) The Association may through Rules and Regulations: (i) regulate the use, maintenance, repair, replacement, and modification of the Common Area; (ii) impose and receive any payment, fee, or charge for the use, rental, or operation of the Common Area, except any Limited Common Area(s), or service provided to an Owner; (iii) impose a charge for a late payment of an Assessment; or (iv) provide for the indemnification of its officers and Board consistent with applicable Laws;

(t) The Association may not prohibit an Owner from displaying a United States flag inside a dwelling or Limited Common Area or on a Unit, if the display complies with United States Code, Title 4, Chapter 1, The Flag, or other applicable law. The Association may restrict the display of a flag on the Common Area;

(u) If permitted by applicable law, the Board may modify the conditions and stipulations set forth in the subsections above;

(v) Rules and Regulations will not become effective until ten (10) days after notice thereof is given to all Members or such later date as stated in the notice (certification by the Association that proper notice was given in accordance with this Section to be conclusive absent proof of fraud); and

(w) The Apartment Board Members shall have the sole right and authority to promulgate, amend, and modify Rules and Regulations with respect to the Apartment Units and Apartment Common Areas.

8. **Restrictions on Use**. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Project, which use or operation violates applicable laws, zoning codes, or the provisions of this Declaration. In addition to the foregoing, no Apartment Unit and no part of the Project shall be used for any activity or purpose considered by the Board to pose a safety hazard or health risk within the Project. The Apartment Units shall be used solely for the leasing of apartments to Occupants for residential, non-commercial use. The Apartment Owners shall not be permitted to subdivide the Apartment Units or to separately convey or encumber any portion thereof, other than entering into leases for the residential use of apartments located within the Apartment Units.

9. **Fines**. Each Owner and Occupant is responsible for adhering to the Project Documents governing the Project. Pursuant to Utah Code Annotated ("***U.C.A.***"), Section 57-8-37, a breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants and/or guests. Fines levied against residents, tenants, and guests of any Unit are the responsibility of the Owner. The Board shall react to each material violation in the following manner:

9.1. Fines imposed are final unless appealed in writing to the Board within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Board within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

9.2. Before assessing a fine under Section 9.1 above, the Board shall give notice to the homeowner of the violation and inform the owner that the fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or rules, which shall be at least forty-eight (48) hours.

9.3. An Owner who is assessed a fine under Section 9.1 above may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Board. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

9.4. An Owner may appeal a fine issued under Section 9.1 above by initiating a civil action within one hundred and eighty (180) days after: (1) a hearing has been held and a final decision has been rendered by the Board under Section 9.5 below; or (2) the time to request an informal hearing under Section 9.5 below has expired without Owner making such a request.

9.5. A fine assessed under Section 9.1 above 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 Section 25.3 below.

10. Leases, Rentals, and Rentals on a Short-Term Basis.

10.1. Except as otherwise set forth in this Declaration, there is no restriction on the right of any Owner to lease, rent, or otherwise grant occupancy rights to a Unit. Rentals of the Units (including apartments within Apartment Units) for terms of less than thirty (30) days (such Units, "**Short-Term Rentals**") are permitted, subject to the provisions of this Section 10.

10.2. EACH OWNER BY ACCEPTANCE OF A DEED OR OTHER DOCUMENT OF CONVEYANCE ACKNOWLEDGES AND AGREES THAT THE TOWNHOME UNITS AND THE APARTMENTS WITHIN THE APARTMENT UNITS MAY BE RENTED ON A NIGHTLY, WEEKLY, MONTHLY, OR OTHER PERIODIC BASIS, AND THAT VACATION AND OTHER SHORT-TERM RENTALS ARE PERMITTED.

10.3. Notwithstanding the foregoing, (i) at no time shall more than 40% of the apartments within the Apartment Units be operated as Short-Term Rentals, unless otherwise approved in writing by the Board, and (ii) at no time shall more than 40% of the Townhome Units be leased or rented to any person who is not the Owner of such Unit, unless otherwise approved in writing by the Board.

10.4. All Owners who rent or lease Unit(s) shall ensure that tenants are provided with a 24-hour assistance telephone number, which shall also be provided to the Association for its records. This number must connect to a Person or authorized representative who is located within Iron County, Utah and is capable of responding to urgent issues related to the Unit. Owners shall be permitted to fulfill this requirement by providing such services themselves or by use of a professional rental management company, duly licensed and qualified in the State of Utah, which shall have all necessary business and other licenses or permits required by the county or state.

10.5. Each Owner desiring to operate their Units (or apartments within the Apartment Units) as Short-Term Rentals, and each Owner of a Townhome Unit desiring to operate their Units as any rental, shall provide a written request to the Association, identifying which Units (or apartments within the Apartment Units) will be operated as Short-Term Rentals or rentals and the professional rental management company to be used, (i) within 60 days following the transfer of the Units (or lease of the apartments within the Apartment Units) to such Owner, and (ii) within 30 days following the end of each calendar year thereafter.

10.6. No Owner shall rent any Unit (or apartment within the Apartment Units) as a Short-Term Rental, and no Owner of a Townhome Unit shall rent any Townhome Unit for any period, until the Association has provided written notice to such Owner approving such use for the applicable calendar year.

10.7. All rentals shall comply with any laws, restrictions, and regulations applicable to the Units (or apartments within the Apartment Units) and the Project.

10.8. The Association may, in its sole discretion, charge a fee of up to $200 once every twelve months to any Owner operating their Unit as a rental property in accordance with U.C.A. Section 57-8a-209(9)(c).

10.9. Owners are responsible for the actions and behavior of their tenants. Owners shall review the Declaration, Bylaws, and any rules and regulations with their tenants to ensure compliance. A tenant's violation of the terms of the Declaration, Bylaws or rules and regulations may result in a fine that is the responsibility of the Owner.

11. **Easements - Support Maintenance and Repair**. There is hereby reserved to the Association, and the Association is hereby granted a non-exclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance, and repair of the Common Area and Common Facilities, and regulation of the Architectural Guidelines.

12. **Liability of Owners and Occupants for Damages and Waste**. Each Owner or Occupant shall be liable to the Association, or other Owners or Occupants, for damages to person or property and waste in the Community caused by such Owner's negligence.

13. **Encroachments**. If any portion of Common Area, Limited Common Area, or a Unit encroaches or comes to encroach upon other Common Area, Limited Common Area, or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

14. **Board**. The Association shall be managed by a Board and such officers as the Board may elect or appoint in accordance with the Articles of Incorporation and Bylaws as the same may be amended from time to time. The number of members serving on the Board shall be set forth in the Bylaws. The Association, by and through the Board shall (a) govern and manage the Project and Property conveyed by the Declarant and any other Association Property and (b) enforce the provisions of this Declaration. Notwithstanding the foregoing, the governance and management of any matters affecting solely the Apartment Units or Apartment Common Areas is hereby delegated to the Apartment Board Members. During the Period of Administrative Control, the Declarant shall have the right to appoint and remove all members of the Board at any time in its sole discretion. After the expiration of the Period of Administrative Control, members of the Board shall be elected by the Eligible Vote of a Majority of the Proportionate Interests of the Members of the Association; provided, however, that the Apartment Owners shall be entitled to elect the Apartment Board Members, who shall constitute at least $1/3^{rd}$ of the members of the Board.

15. **Officers and Agents**. The Board shall elect and/or appoint officers and agents of the Association, which may include without limitation a President, Secretary, and Treasurer.

16. **Board Meetings**. The Board shall meet at regular intervals and at least quarterly. Notwithstanding anything herein or in the Bylaws of the Association to the contrary, since the Declarant has the sole voting rights during the Period of Administrative Control, meetings during the Period of Administrative Control may solely include the Declarant, and the Declarant shall not be obligated to provide any notices of any meetings to any of the Members.

17. **Status and General Authority of Board**. Any instrument executed by the Board that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in Sections 17.1 through 17.13 below, constitute a legal entity capable of dealing in its Board name. The Board shall have, and is hereby granted, the following authority and powers:

17.1. Access. The right, power and authority to have access to each Unit: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities; or (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry.

17.2. Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

17.3. Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.

17.4. Standing. The power to sue and be sued.

17.5. Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

17.6. Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by the Eligible Votes comprising at least sixty seven percent (67%) of the Proportionate Interests of the Members of the Association.

17.7. Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by the Eligible Votes comprising at least sixty seven percent (67%) of the Proportionate Interests of the Members of the Association.

17.8. Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to Section 17.7 above to the Project, so long as it has been approved by the Eligible Votes comprising at least sixty seven percent (67%) of the Proportionate Interests of the Members of the Association.

17.9. Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by the Eligible Votes comprising at least sixty seven percent (67%) of the Proportionate Interests of the Members of the Association.

17.10. Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with the Act and this Declaration.

17.11. Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Occupants not on the Board, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board meetings.

17.12. Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional

manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

17.13. All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

Notwithstanding the foregoing, the Board shall not exercise any of the foregoing powers with respect to any Apartment Unit, Apartment Owner, and/or Apartment Common Area without the consent of a Majority of the Apartment Board Members. It is the express intent of this Declaration that any action of the Board include a Majority of the Apartment Board Members consent prior to the Board's taking any action that directly or indirectly impacts any Apartment Unit, Apartment Owner, and/or Apartment Common Area, as reasonably determined by the Apartment Board Members.

18. **Delegation of Management Responsibilities**. The Board may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Board may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause on thirty (30) days written notice provided by the Board.

19. **Owners Meetings**. The Association shall meet at least annually. Notwithstanding anything herein or in the Bylaws of the Association to the contrary, since the Declarant has the sole voting rights during the Period of Administrative Control, meetings during the Period of Administrative Control may solely include the Declarant, and the Declarant shall not be obligated to provide any notices of any meetings to any of the Members.

20. **Lists of Owners, Occupants, and Eligible Mortgagees**. The Board shall maintain up to date lists of the name, address and phone number of all Owners, Occupants (other than short-term renters), and Eligible Mortgagees. The Owners, Occupants, and Mortgagees have a duty to provide this information to the Board.

21. **Capital Improvements**. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

21.1. Board Discretion/Expenditure Limit. Any capital improvement to the Project which costs ten percent (10%) or less of the Budget, and does not alter the nature of the Project, may be authorized by the Board alone (the "***Capital Improvement Ceiling***").

21.2. Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by the Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interests of the Members of the Association.

21.3. Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being

constructed or accomplished, be authorized by the Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interests of the Members of the Association.

21.4. Apartment Capital Improvements. Any capital improvement to the Apartment Units or Apartment Common Areas which costs ten percent (10%) or less of the Apartment Common Expenses set forth in the Budget, and does not alter the nature of the Apartment Units or Apartment Common Areas, may be authorized by the Apartment Board Members acting alone (the "***Apartment Improvement Ceiling***"). Any capital improvement, the cost of which will exceed the Apartment Improvement Ceiling, must, prior to the commencement of construction, or which would materially alter the nature of the Apartment Units or Apartment Common Areas, shall be authorized by the Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interests of the Apartment Unit Owners. Any capital improvements affecting solely the Apartment Units or Apartment Common Areas shall be assessed to the Apartment Unit Owners as set forth in Section 23 and Section 24 below.

22. **Operation, Maintenance and Alterations**. Each Unit, the Limited Common Area, Common Area shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

22.1. Clean, Safe, Sanitary and Attractive Condition. The Units, Limited Common Area, and Common Area shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition.

22.2. Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with any requirements imposed by the Association and any County landscaping maintenance plans or ordinances. Specific additional written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Board from time to time. All landscaping shall be maintained in a safe, sanitary, aesthetic and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. All landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project.

22.3. Area of Common Responsibility. Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Area and Common Facilities within or serving the Project, including by way of illustration but not limitation the Building structures, roofs, exterior walls, including any pony wall located on the border of the Common Area, foundation, common walls and supports, common landscaping, open space, sidewalks, parking amenities, entry and monument. The Association shall initially install all Limited Common Area improvements.

22.4. Area of Personal Responsibility. Each Owner shall maintain, repair and replace such Owner's Unit, including without limitation all individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door systems, garage doors and garage door systems, patios, balconies and decks, plumbing fixtures, systems and lateral pipes or valves servicing only such Owner's Unit, including any damage caused thereby and not covered by insurance. Each Unit Owner shall also maintain such Owner's Limited Common Area broom clean and free of debris. Each Unit Owner shall maintain, repair and replace all physical improvements to such Owner's Limited Common Area. All maintenance, repairs and replacements are subject to the approval of the Board as to construction materials, quality of construction and installation, and uniformity of appearance. No Unit Owner shall allow such Owner's Unit, Limited Common Area to detract from the health, safety or uniform appearance or design of the Project.

22.5. Default Provisions. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly such party's

obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Association, or Board may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "***Default Maintenance Cost***"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Unit Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Unit 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., Section 57-8-20.

22.6. Alterations to the Common Area. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without additional approval required, including without limitation the consent of the Board or Members of the Association; provided, however, no Owner or Occupant may make any structural alterations to the Common Area (including the Limited Common Area), without the express prior written consent of the Board. This provision does not include amendments to the property lines for the Common Area.

22.7. Certain Work Prohibited. No Owner or Occupant shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Owners being first had and obtained.

23. **Common Expenses and Assessments**. Each Owner shall pay such Owner's Assessments subject to and in accordance with the procedures set forth below.

23.1. Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until (a) the expiration of the Period of Administrative Control; or (b) Declarant elects in writing to pay the Assessments, whichever first occurs.

23.2. Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board.

23.3. Creation of Assessments.

(a) There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Board, to be commenced at the time and in the manner set forth herein. There shall be four (4) types of Assessments: (i) Base Assessments to fund General Common Expenses; (ii) Apartment Assessments to fund Apartment Common Expenses; (iii) Townhome Assessments to fund Townhome Common Expenses; and (iv) Special Assessments as described in Article III, Section 24 below. Each Owner by acceptance of a deed is deemed to covenant and agree to pay all applicable Assessments.

(b) All Assessments, together with interest at the greater of fifteen percent (15%) per annum or the prime lending rate established by the Federal Reserve plus 400 basis points (provided that the interest rate cannot exceed the maximum rate allowed by Utah law), as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the real property owned by the applicable Owner against which each Assessment is made until paid. Each such Assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the Assessment arose, and, in the event of a transfer of title, his or her grantee shall

be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

(c) The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate in writing setting forth whether such Assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of any Assessments therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless the Board otherwise provides, the Base Assessments, Apartment Assessments, and Townhome Assessments shall be due and payable on the first day of each calendar month during any fiscal year. If any Owner is delinquent in paying any Assessments or other charges, the Board shall require any unpaid installments of the Base Assessments, Apartment Assessments, Townhome Assessments, and/or any other Assessments to be paid in full immediately, unless exceptional circumstances exist (as determined by the Board in its sole discretion).

(e) No Owner may waive or otherwise exempt itself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of the Common Facilities or abandonment of the Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of any Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Project Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(f) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

23.4. Computation of Base Assessments, Apartment Assessments, and Townhome Assessments. At least sixty (60) days before the beginning of each fiscal year, the Board will prepare a Budget covering the estimated Common Expenses of the Association during the coming fiscal year, including the General Common Expenses, Apartment Common Expenses, and Townhome Common Expenses. The Budget shall include a capital contribution establishing and maintaining a Reserve Fund in accordance with a budget separately prepared. The Base Assessments shall be allocated to all Owners within the Project in accordance with each Owner's Proportionate Interest. The Apartment Assessments shall be allocated to all Apartment Owners within the Project in accordance with each Apartment Owner's proportionate interest in relation to all Apartment Owners in the Project. The Townhome Assessments shall be allocated to all Townhome Owners within the Project in accordance with each Townhome Owner's proportionate interest in relation to all Townhome Owners in the Project. Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessments, Apartment Assessments, and Townhome Assessments determined pursuant to the above formula by taking into account other sources of funds available to the Association. During the Period of Administrative Control, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessments, Apartment Assessments, or Townhome Assessments for any fiscal year by loaning funds or paying a subsidy to the Association (in addition to any amounts paid by Declarant pursuant to any other part of this Declaration); provided, any such loaned amounts or subsidy shall be conspicuously disclosed as a line item in the income portion of the Budget and shall be made available to the membership. The payment of any loaned amount or subsidy in any year shall under no circumstances obligate Declarant to continue to make loans or subsidies in future years. The Board shall cause a copy of the Budget and notice of the amount of the Base Assessment,

Apartment Assessment, and Townhome Assessment to be levied against each Owner to be furnished or otherwise made available to each Owner. After the expiration of the Period of Administrative Control, the Budget may be disapproved if, within forty-five (45) days after the date when the budget is presented, there is a vote of disapproval by a Majority of the Proportionate Interests of the Members in the Association, and the vote is taken at a special meeting called for that purpose by the Members under this Declaration or the Project Documents. If the Budget is disapproved, the Budget that the Board last adopted that was not disapproved by the Members shall continue as the Budget until and unless the Board presents another Budget to the Members and that Budget is not disapproved. During the Period of Administrative Control, Members may not disapprove a Budget.

23.5. Payment of Assessments. Assessments shall be due and payable in a manner and on a schedule as the Board may provide.

23.6. Additional Services. The Board may but is not obligated to add to the Assessment of any particular Unit or Unit Owner additional charges for individual services offered or provided, not a Common Expense.

23.7. Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Unit; (2) the owner of record in the offices of the County Recorder of Iron County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

23.8. Equitable Changes. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

23.9. Dates and Manner of Payments. The dates and manner of payment shall be determined by the Board.

23.10. Reserve Analysis and Funds. The Board shall cause the Association to establish and maintain a Reserve Fund to accumulate money to cover the cost of repairing, replacing, and restoring the Common Area and Common Facilities to the extent required by the Act, but excluding any cost that can reasonably be funded from the Association's general budget or from other Association funds (the "***Reserve Fund***"). Pursuant to the Act, the Board shall cause a Reserve Fund analysis to be conducted as required by law. The Association shall review and, if necessary, update the reserve analysis as required by the Act. Based upon the reserve analysis, the Board shall establish a reserve budget. The Board will provide a copy of the reserve analysis and any update thereto to any Owner requesting the same. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the Budget, with respect both to amount and timing by annual Base Assessments, Apartment Assessments, and Townhome Assessments over the period of the Budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable Budget and notice of Assessments. The Reserve Fund shall not be used for daily maintenance expenses, unless the Eligible Votes comprising at least a Majority of the Proportionate Interests of the Members of the Association vote to approve the use of the Reserve Fund for such purpose, or for any purpose other than the purpose for which the Reserve Fund was established. The Reserve Fund shall be maintained separate from other Association funds. The Board will prepare and submit the Reserve Fund

analysis as required by the Act. The Reserve Fund may be invested in a prudent manner, subject to any investment constraints imposed by the Project Documents. The above requirements do not apply to the Association during the Period of Administrative Control.

23.11. Acceleration. Assessments shall be paid in the manner and on dates fixed by the Board who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment *is* accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

23.12. Statement of Assessments Due. Upon written request, the Board shall furnish to any Owner a statement of Assessments due, if any, on such Owner's Unit. Failure to provide the certificate within twenty (20) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed $15 for the issuance of such certificate.

23.13. Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Unit hereby waives.

23.14. Suspension of Right to Use Amenities for Non-Payment. At the discretion of the Board, the right to use any amenities in the Project may be suspended for such period of time as determined by the Board if the Owner is in arrears on such Owner's obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

23.15. Suspension of Right to Vote for Non-Payment. At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended for such period of time as determined by the Board if the Owner is delinquent in the payment of such Owner's Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

24. Special Assessments.

24.1. In addition to the other Assessments authorized herein, the Association may levy special assessments for purposes of defraying, in whole or in part, the cost of any action or undertaking on behalf of the Association, or the cost of any construction or replacement of, a specific capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto; and for purposes of providing any necessary funds for restoration and repair of damaged or destroyed Common Area in accordance with the provisions hereof. Any Special Assessment levied pursuant to this section shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which such Special Assessment is approved, if the Board so determine. The Association may also levy Special Assessments for reasonable charges against any individual Owner, which may include the following:

(a) providing a statement of Assessments or indebtedness, including resale certificates;

(b) reasonable administrative fees to reflect changes of ownership, tenancy or occupancy on the records of the Association, including, but not limited to a fee for providing Association payoff information needed in connection with the financing, refinancing, or leasing of an Owner's Unit, which amount shall not exceed the maximum amount allowed by applicable law;

(c) administrative fees for providing Association payoff information needed in connection with financing, refinancing, or closing of an Owner's share of that Owner's Unit, as provided for in Utah Code. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees;

(d) plan fees and other fees associated with reviewing, processing and approving applications for architectural approval, which fees may not exceed the actual cost of reviewing, processing and approving such applications;

(e) admission or usage fees applicable to any Common Area and/or Common Facility as from time to time established by applicable Rules and Regulations;

(f) fines as from time to time established by applicable Rules and Regulations for any violation of this Declaration or other Project Documents;

(g) all other monetary obligations established by or pursuant to this Declaration or other Project Documents; and

(h) any costs associated with the maintenance or repair of any Limited Common Area or Limited Common Area Improvements appurtenant to such Owner's Unit(s).

24.2. With respect to any Special Assessments levied on a regular basis, the Association may require an Owner to pay any such applicable Special Assessments on a regular recurring basis concurrently with the payment of Base Assessments.

24.3. Special Assessments as authorized by this Section are due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. Failure of the Association (or managing agent as applicable) to impose or collect any Special Assessment is not grounds for any action against the Association, any managing agent, or their respective directors, officers, agents or employees, and does not constitute a waiver of the right to exercise authority to collect any Special Assessments in the future. For good cause shown as determined in the sole opinion of the Board, the Board may waive, wholly or partially, imposition of any special Assessment authorized herein, provided, any such waiver must be conditioned upon payment in full of all remaining monetary obligations or receipt of written commitment that same will be paid within a specified period of time.

25. **Collection of Assessments.** The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

25.1. Delinquent Assessments. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Unit, regardless of whether a written notice is recorded.

25.2. Late Fees and Accruing Interest. A late fee of fifty dollars ($50.00) or five percent (10%) of the delinquent amount, whichever is lesser, shall be assessed on all tardy payments. Default interest at the rate of one percent (1.5%) per month or eighteen percent (18%) per annum shall accrue on all delinquent accounts.

25.3. Lien. If any Unit Owner fails or refuses to make any payment of any Assessment or such Owner's portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing

unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

25.4. Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclose the lien.

25.5. Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

25.6. No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of such Owner's Unit.

25.7. Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

25.8. Application of Payments. All payments shall be applied first to Additional Charges, second to delinquent Assessments, and last to current Assessments.

25.9. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

25.10. Appointment of Trustee. The Owner by accepting a deed to the Unit hereby irrevocably appoints Jeffrey E. Matson, of Bennett, Tueller, Johnson & Deere, attorney at law, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in U.C.A. Section 57-8-45(2), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

25.11. Attorney in Fact. Each Owner by accepting a deed to a Unit hereby irrevocably appoints the Association as such Owner's attorney in fact to collect rent from any person renting such Owner's Unit, if the Unit is rented and Owner is delinquent in such Owner's Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

26. **Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.**

26.1. If an Owner fails or refuses to pay any assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common Expense, and terminate the Owner's right of access and use of Common Facilities, after giving notice and an opportunity to be heard. Before terminating utility services or right of access and use of Common Facilities, the Board shall give written notice to the Owner in the manner provided in the Declaration, Bylaws, or Rules and Regulations. The notice shall state:

(a) utility services or right of access and use of Common Facilities will be terminated if payment of the Assessment is not received within the time provided in the Declaration, Bylaws, or Rules and Regulations, which time shall be stated and be at least 48 hours;

(b) the amount of the Assessment due, including any interest or late payment fee; and

(c) the right to request a hearing.

26.2. An Owner who is given such notice may request an informal hearing to dispute the Assessment by submitting a written request to the Board within 14 days from the date the notice is received. A notice shall be considered received on the date (1) it is hand delivered, (2) it is delivered by certified mail, return receipt requested, or (3) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association.

26.3. The hearing shall be conducted in accordance with the standards provided in the Declaration, Bylaws, or Rules and Regulations.

26.4. If a hearing is requested, utility services or right of access and use of Common Facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

26.5. Upon payment of the assessment due, including any interest or late payment fee, the manager or Board shall immediately take action to reinstate the terminated utility services to the Unit and right to use of Common Facilities.

27. **Assignment of Rents.**

27.1. If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Board may demand the Occupant to pay to the Association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the Board must give the Owner written notice, in accordance with the Declaration, Bylaws, or Rules and Regulations, of its intent to demand full payment from the Occupant. This notice shall:

(a) provide notice to the Occupant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the Assessment is received within the time period provided in the Declaration, Bylaws, or Rules and Regulations;

(b) state the amount of the assessment due, including any interest or late payment fee;

(c) state that any costs of collection, not to exceed $150, and other assessments that become due may be added to the total amount due; and

(d) provide the requirements and rights described herein.

27.2. If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or Board may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at such Owner's last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(a) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the Board's intent to collect all lease payments due to the Association pursuant hereto.

(b) that until notification by the Association that the Assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the Association; and

(c) payment by the Occupant to the Association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this subsection, suit or other action may not be initiated by the Owner against the Occupant for failure to pay.

27.3. All funds paid to the Association pursuant hereto shall be deposited in a separate account and disbursed to the Association until the Assessment due, together with any cost of administration which may not exceed $25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the Association.

27.4. Within five business days of payment in full of the Assessment, including any interest or late payment fee, the Board must notify the Occupant in writing that future lease payments are no longer due to the Association. A copy of this notification must be mailed to the Owner.

27.5. As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a Unit by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

28. **Liability of Board**. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers and directors insurance coverage to fund this obligation, if such insurance is Reasonably Available, as provided below.

29. **Insurance**. Commencing no later than the time of the first conveyance of a Unit to an Owner other than Declarant or a Declarant Affiliate, the Association shall obtain and thereafter maintain, to the extent Reasonably Available, the following insurance coverage pursuant to any applicable Laws and any other insurance coverage that may be required by the Association pursuant to applicable laws:

29.1. Commercial Property Insurance. The Association will maintain commercial property insurance on the Common Areas and the Common Facilities (cause of loss – special form) insuring against all risk of direct physical loss in an amount equal to one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy.

29.2. Commercial General Liability Insurance. The Association will maintain commercial general liability insurance providing coverage on an occurrence basis with limits reasonably determined by the Board, but not less than $1,000,000 per occurrence and in the aggregate. Such insurance shall cover all occurrences commonly only insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area.

29.3. Workers' Compensation Insurance. The Association will maintain workers' compensation insurance to the extent necessary to meet the requirements of applicable Law.

29.4. Employer's Liability Insurance. If applicable, the Association will maintain employer's liability insurance with the following limits: (a) bodily injury by accident with limits of $100,000 per each accident; (b) bodily injury by disease with a $500,000 policy limit; and (c) bodily injury by disease with limits of $100,000 per each employee.

29.5. Fidelity Insurance/Bonds. The Board, in the Board's discretion, may obtain and maintain fidelity bond/fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or other individuals responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, fidelity insurance coverage may also be obtained for the officers, employees or agents thereof handling or responsible for Association funds. The fidelity insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) the estimated maximum of funds, including Reserve Funds, in the custody of the Association or management agent at any given time during the term of such bond or period of coverage of such insurance, (b) a sum equal to three months' aggregate Assessments plus reserves, or (c) the estimated maximum amounts of funds, including reserves, in the custody of the Association (or its management agent) at any one time. In connection with this coverage, an appropriate endorsement to the policy to cover any individual who serves without compensation shall be added if the policy would not otherwise cover volunteers. Any such coverage must also name the Association as an obligee.

29.6. D&O Insurance. The Association will maintain a policy of "directors and officers" liability insurance, including errors and omissions coverage for the Board members and the officers.

29.7. Earthquake & Flood Insurance. The Association shall have the right, but not the obligation to maintain earthquake and/or flood insurance for the Common Facilities. The earthquake and/or flood insurance shall be administered in a similar manner as property insurance, and the costs thereof shall be allocated to the Owners in the same manner as the costs of property insurance.

29.8. Other Insurance. The Association will maintain such other insurance (or policies with greater coverage or limits than provided herein) as the Board shall determine from time to time to be appropriate to protect the Association.

29.9. Reasonably Available. If the Association becomes aware that property insurance or liability insurance under this Section is not Reasonably Available, the Association shall, within seven

(7) calendar days after becoming aware, give all Owners notice that the insurance is not Reasonably Available.

29.10. Authorized Companies. All policies shall be written with a company authorized to do business in Utah which holds a Best's rating of A- or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if Reasonably Available, or, if not available, the most nearly equivalent rating which is available.

29.11. Authority to Adjust Losses. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

29.12. Insurance Requirements. The Board shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(a) Secondary. The insurance maintained by the Association shall be secondary to and non-contributing with any insurance maintained by any Owner, Occupant, or Mortgagee, which insurance shall be primary.

(b) Waiver of Subrogation. Subject to the primary nature of insurance maintained by any Owner, Occupant or Mortgagee pursuant to the above, the insurer issuing such policy shall waive any rights of subrogation with respect to claims arising from the acts or omissions of the Declarant, the Association or its agents, servants or employees, or the Owners or Occupants.

(c) Severability of Interest. The insurance maintained by the Association shall contain a "severability of interest" clause or endorsement, which precludes the insurer from denying the claim of the Association, Declarant, Owner, or Occupant because of the negligence or other acts of another insured party or canceling, invalidating, suspending, or refusing to renew a policy on account of any one or more individual claimant(s).

(d) Curable Violation. The insurance maintained by the Association shall contain a statement or endorsement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or the Board.

(e) Insured Party. The Association shall be the named insured under the insurance maintained by the Association. The Board may elect to include other parties as either named or additional insureds under its commercial general liability insurance policy.

(f) Mortgagee Notification. For policies of commercial property insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(g) Other Insurance. The insurance maintained by the Association shall contain a statement or endorsement that any "other insurance" clause in any policy exclude individual Owners' policies from consideration.

(h) Notification. The insurance maintained by the Association shall contain a statement or endorsement that the Association will be given at least thirty (30) days' prior written notice of any cancellation.

(i) Owner's Actions. Unless an Owner is acting within the scope of such Person's authority on behalf of the Association, the act or omission of an Owner may not void a property insurance policy or a liability insurance policy maintained by the Association or be a condition to recovery under a policy.

(j) Compliance with Act. An insurance policy issued to the Association may not be inconsistent with any provision of the Act. In the event this Declaration or any Governing Document is contrary to a provision of the Act, such provision shall be revised and interpreted to be consistent with the provisions of the Act.

29.13. Owner's Insurance. A property insurance or liability insurance policy issued to the Association may not prevent an Owner from obtaining insurance for the Owner's own benefit. Each Owner is responsible to maintain insurance on such Owner's Unit(s) and any Improvements located thereon and on any Limited Common Area Improvements appurtenant to such Owner's Unit(s). Any Owner benefitting from any Limited Common Area is encouraged to obtain and maintain appropriate liability insurance associated with such Limited Common Area. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry the insurance required by this Association and Declaration. In addition to the foregoing, Apartment Owners shall at all times maintain premises liability insurance, general commercial liability insurance, workers' compensation insurance, and other insurance coverage in amounts equal to the requirements applicable to the Association set forth in this Declaration.

29.14. Insurance Costs. The cost to obtain and maintain the insurance carried by the Association, including reasonable deductibles, shall be included as part of the Assessments.

29.15. Indemnification. To the extent not prohibited or inconsistent with any applicable Laws, each Owner agrees to release, indemnify, hold harmless and defend each and every other Owner and Occupant within the Project and the Association against any Claim for bodily injury or property damage occurring within the Unit of the indemnifying Owner, including any Limited Common Area appurtenant to such Owner's Unit, if any, except to the extent that: (a) such Claim is covered and defended by the Association's or an indemnified Owner's insurance; or (b) the injury or damage occurred by reason of the willful misconduct of the Association.

30. **Damage and Destruction**. The following provisions shall apply with respect to the destruction of all or any portion of the Project.

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

30.2. Repair. Any damage or destruction to the Common Facilities or Property owned by the Association shall be repaired or reconstructed within a reasonable time unless (a) the Project is terminated; (b) the repair or replacement would be illegal under a state statute or local ordinance governing

health or safety; or (c) both Declarant and the Eligible Votes comprising at least seventy-five percent (75%) of the Proportionate Interests of the Members of the Association vote within sixty (60) days after the casualty, at a special meeting called for that purpose in accordance with the Bylaws, not to repair or reconstruct; provided, however, that if for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period for voting shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. Notwithstanding the above, the Association shall repair and restore any Common Facilities that are required to be restored by Iron County or any other municipal authority. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Project shall be repaired or reconstructed.

30.3. No Repair. In the event that it should be determined in the manner described above that the damage or destruction to Common Facilities shall not be repaired or reconstructed and no alternative improvements are authorized, then the affected portion of the Common Area shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive condition.

30.4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining shall be retained by and for the benefit of the Association and placed in a capital improvements account.

30.5. Insufficient Proceeds. If the damage or destruction to the Common Area and the Common Facilities for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

31. **Condemnation**. Whenever all or any part of the Common Area shall be taken (or conveyed by the Board in lieu of and under threat of condemnation), each Owner shall be entitled to notice thereof. A decision by the Board to convey a part of the Common Area under threat of condemnation shall be binding on the Association so long as it is made in good faith. The award made for such taking shall be payable to the Association will be disbursed as follows:

31.1. If the taking involves a portion of the Common Area on which Common Facilities have been constructed (excluding any Limited Common Area), then, unless within sixty (60) days after such taking both Declarant and Eligible Votes comprising at least seventy-five percent (75%) of Proportionate Interest of the Members of the Association shall otherwise agree, the Association shall restore or replace such Common Facilities so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. Neither the Board nor Declarant shall have any obligation to obtain or dedicate any Common Area in order to accomplish such a repair or restoration if such land is not available at the time of the condemnation. If such Common Facilities are to be repaired or restored, the above provisions regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. Notwithstanding the above, the Association shall restore any Common Facilities or Improvements required to be restored by the applicable municipal authority. An Owner shall be responsible for the repair and restoration of any Limited Common Area Improvements appurtenant to such Owner's Unit(s).

31.2. If the taking does not involve any recreational Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such

restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in its sole discretion.

32. **Consent in Lieu of Vote**. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

32.1. Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

32.2. Change in Ownership. Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and

32.3. Notice. If approved, written notice of the approval must be given to all Unit Owners at least ten (10) days before any action is required by them.

33. **Mortgagee Protection**. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Unit in foreclosure. The lien or claim against a Unit for unpaid Assessments levied by the Board or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

33.1. Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.

33.2. Books and Records Available for Inspection. The Board or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board and the Association. The term "Available," as used in the Section, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

33.3. Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

33.4. Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board shall provide, or be deemed to provide hereby, that:

(a) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

(b) No contract may be for an initial term greater than one (1) year.

33.5. Eligible Mortgagee Designation. Upon written request to the Board or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(a) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(b) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

(c) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board or the Association.

(d) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

(e) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

34. **Amendment**. During the Period of Administrative Control, Declarant, acting alone, shall have the sole and unilateral right to amend this Declaration. After the Period of Administrative Control, this Declaration may be amended or terminated by the affirmative vote or written consent, or any combination thereof, of the Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interests of the Members of the Association, which shall include at least fifty percent (50%) of the Proportionate Interests of the Apartment Owners. Notwithstanding the above, to the extent not prohibited or restricted by applicable law, after the Period of Administrative Control, any amendment concerning lot boundaries, any Owner's voting rights shall require the affirmative vote or written consent, or any combination thereof, of Eligible Votes comprising at least sixty-seven percent (67%) of the Proportionate Interests of the Members of the Association, including the vote of the affected Owner. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment or termination of this Declaration must be recorded to be effective. If an Owner consents to any amendment to or termination of this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to so consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege:

35. **View Impairment**. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Unit, from adjacent Units will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

36. **Declarant's Sales Program**. Anything to the contrary notwithstanding, until Declarant has sold all Units owned by it, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay such Owner's portion of the Common Expenses or other Assessments, except as herein otherwise provided. Neither the Owners, the Association, nor the Board shall interfere with the completion of improvements and sale of Declarant's Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

36.1. Sales Office and Model Units. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any one time. Such office and/or models may be one or more of the Units owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

36.2. Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

36.3. Common Area Use. Declarant shall have the right to use the Common Areas of the Project in any other way necessary to facilitate sales, including by way of illustration but not limitation as a sales office or offices.

36.4. Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section.

36.5. Restrictions in Favor of the Declarant. The recreational amenities or facilities at the Project may not be subject to any restriction or reservation in favor of the Declarant or any of its affiliates.

37. **Limitation on Improvements by Association**. Until such time as the earlier of the following events occur: (a) the Declarant has sold all of the Units, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

38. **Completion Obligation**. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

38.1. Units. Each Unit which an Owner has contracted to purchase, the Building within which such Unit is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and

38.2. Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use.

39. **Declarant's Rights Assignable**. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover,

encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

40. **Separate Taxation**. Each Unit and its percentage of undivided interest in the Common Areas and Facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building or Buildings, the property nor any of the Common Areas and Facilities may be considered a parcel for tax purposes.

41. **Relationship with Tax-Exempt Organizations**. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including, but not limited to, organizations that provide facilities and services designed to meet the physical and social needs of older persons, for the benefit of the Project, the Association, its Members and Occupants. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual Budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

42. **Interpretation**. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. 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 construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration until the expiration of the Period of Administrative Control. Thereafter, the exclusive right to construe and interpret this Declaration shall rest with the Association acting by and through its Board. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the construction or interpretation of the provisions hereof by Declarant and thereafter the Association shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration and provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development, operation and maintenance of Project.

43. **Covenants to Run with Land**. This Declaration and all the 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 Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

44. **Enforcement and Right to Recover Attorney's Fees**. Should the County, Association, Board or an aggrieved Owner be required to take action to enforce the Declaration, Bylaws or any Rules and Regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

45. **Alleged Defect Limitations and Right to Repair**.

45.1. Limitations on Actions for Defect. The Association, all individual Members of the Association, the Board, all individual Managers, and all Owners (by acceptance of the conveyance of a Unit) (collectively "***Claimant***"), hereby acknowledge and agree that any claim, contention or allegation that any portion of the Project, including without limitation, any Building, any Improvement, all Common Areas, any Limited Common Areas, the entire Project, the Property, and all Units, are defective or that Declarant or its agents, consultants, contractors, or subcontractors were negligent in planning, design, engineering, grading, construction, or other development thereof (any "***Alleged Defect***") is limited in all respects to all of the provisions of U.C.A. Section 78B-4-513, and any successor or replacement statute, including without limitation:

(a) the limitation that any actions shall be limited to breach of contract (except as otherwise provided in U.C.A. Section 78B-4-513(3);

(b) the limitation that only a person in privity of contract with the original contractor, architect, engineer, or the real estate developer may bring an action for defective design or construction, as set forth in U.C.A. Section 78B-4-513(5); and

(c) the requirement that any such claimant shall, prior to bringing any such action, provide written notice as set forth in U.C.A. Section 78B-4-513(8).

45.2. Declarant's Right to Cure. In addition to the limitations otherwise set forth this Declaration, each Claimant agrees that before any Claimant may take any action with respect to any Alleged Defect, Claimant shall first notify Declarant at the address where Declarant maintains its principal place of business of such Alleged Defect, and Declarant hereby reserves the right to inspect, repair, and/or replace such Alleged Defect within nine (9) months following such notification, without admission of any fault with respect thereto. Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit and/or improvement (including Common and Limited Common Areas), or other portions of the Project and/or Property for the purposes of inspecting and if deemed necessary by Declarant, repairing or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant shall be entitled to take any action as it shall deem reasonably necessary under the circumstances.

45.3. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the Office of the Iron County Recorder.

45.4. Dispute Resolution. Any claim or action validly brought by any Claimant in accordance with this Section 45 shall be subject in all respects to the dispute resolution provisions of Section 49 of this Declaration.

45.5. Waiver. Notwithstanding anything to the contrary in this Section 45, Declarant hereby disclaims any representations and warranties in respect of, shall have no continuing liability to any Owners for, any design or construction defects (whether known or unknown) relating to the Project or Property, including latent defects.

46. **Agent for Service of Process**. The President of the Association is the person designated to receive service of process in the cases authorized by the Act. The initial Registered Agent is Mark 25, LLC, 7026 S 900 E Midvale, UT 84047.

47. **Offensive Activity; Pets.**

47.1. No noxious or offensive activity shall be carried out on any Unit or within the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Units. No Owner or occupant shall engage in any activity within the Project that violates any law, ordinance, statute, rule, or regulation of any local, county, state, or federal authority.

47.2. Owners are permitted to keep common household pets within their Units, subject to the Rules and Regulations promulgated by the Association from time to time. For the purposes of this Declaration, "common household pets" shall include domesticated dogs, cats, birds, fish, and other animals typically kept in a home for personal enjoyment. Any dispute regarding whether an animal is included in the definition of "common household pet" for purposes of this Declaration shall be conclusively determined by the Board. Livestock, including but not limited to horses, cattle, goats, pigs, and poultry, as well as any animals raised for commercial purposes, are expressly prohibited within any part of the Project, including Units and Common Areas. All pets must be kept and maintained in a manner that does not create a nuisance or disturbance to other Owners and must be in compliance with all state and local statutes, ordinances, rules, regulations, and orders concerning the keeping of animals. The Board may establish and enforce rules and regulations governing pets within the Project, which may include, but are not limited to, leash requirements, noise control, waste removal, and restrictions on the number of pets allowed in a Unit. Owners shall be responsible for the actions and behavior of their pets and shall indemnify and hold harmless the Association, its Board, Owners, and Occupants from any loss, claim, or liability of any kind arising out of or in connection with their pets.

48. **Combination of Units; Optional Conversion of Apartment Units.**

48.1. Combination. Subject to the requirements of Iron County for the combination of Units, including the amendment of the Condominium Plat, an Owner of two or more adjoining Units shall have the right upon approval of the Board, the Association, and the Mortgagees of said Units, to combine one or more adjoining Units or portions thereof and to alter or amend the declaration and map to reflect such combination.

(a) Such amendments may be accomplished by the Unit Owner recording an amendment or amendments to this Declaration, together with an amended map or maps containing the same information with respect to the altered Units as required in the initial Declaration and map with respect to the initial Units. All costs and expenses required in such amendments shall be borne by the Unit Owner desiring such combination.

(b) All such amendments to the Declaration and map must be approved by attorneys employed by the Board to insure the continuing legality of the Declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Units.

(c) Any amendments of the Declaration or map pursuant to this Section shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas and Common Facilities which are appurtenant to the Units involved in the alterations. The remaining combined Unit, if two or more Units are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Common Facilities appurtenant to the Units. If a portion of one Unit is combined with another, the resulting Units shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Common Facilities of the Units involved in the combination on the basis of area remaining in the respective, combined Units. The percentage of undivided interest in the Common Areas and Common Facilities appurtenant to all other Units shall not be changed. All such amendments must, in all instances, be consented to by the Board and also all other persons holding interest in the Units affected. The consent of other Unit Owners need not be

obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Common Facilities of the other Unit Owners remain unchanged.

48.2. Optional Conversion of Apartment Units. The Declarant may, in its sole discretion and without any limitation, convert from time to time and at different times all or any portion or portions of the Convertible Space into one or more Townhome Units, or into Common Area or Limited Common Area, so long as such conversion is made pursuant to the provisions of this Section 48.2 and Section 57-8-13.4 of the Act.

(a) The Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior or subsequent to converting all or portions of the Convertible Space.

(b) In order to convert all or any portion of the Convertible Space, the Declarant shall:

(i) record, with regard to the Convertible Space or any portion thereof that is being converted, a supplemental record of survey map (the "***Supplemental Map***") showing the location and dimensions of the vertical and horizontal boundaries of each Townhome Unit, if any, formed out of the Convertible Space or portion thereof, and assign or reassign any Limited Common Area which is to be appurtenant to each such Townhome Unit. Each such Supplemental Map shall be certified as to its accuracy and compliance with the requirements of Section 57-8-13 of the Act by the land surveyor who prepared or supervised the preparation of it; and

(ii) record simultaneously with each Supplemental Map an amendment to this Declaration (the "***Amendment***") describing the conversion. Each such Amendment shall assign an identifying number to each Townhome Unit, if any, formed out of the Convertible Space or portion thereof and shall allocate to each such Townhome Unit a pro rata portion of the undivided interest in the Common Areas and Facilities appertaining to such Townhome Unit or if Units are eliminated or the size thereof is decreased, such Amendment shall reallocate a pro rata portion of the undivided interest in the Common Areas and Facilities to the remaining Units in the Project. Each such Amendment shall describe or delineate the Limited Common Area, if any, formed out of the Convertible Space or portion thereof, showing or designating the Townhome Unit or Units to which each is assigned.

(iii) So long as the Convertible Space, or any portion thereof, is not converted pursuant to this Section 48.2, it shall be treated for all purposes as Apartment Units or Apartment Common Areas, as applicable, until or unless it is so converted; and the Act, this Declaration, the Articles and the Bylaws shall be deemed applicable to the Convertible Space, or any portion thereof, as though the same were Apartment Units or Apartment Common Areas, as applicable.

(iv) No provision of this Section 48.2 shall be amended without the prior written consent of all the Declarant.

49. Dispute Resolution and Limitation on Litigation.

49.1. Agreement to Avoid Costs of Litigation. The Association, Declarant, each Owner, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Section (collectively, "***Bound Parties***") agree to encourage the amicable resolution of disputes involving the properties at the Project, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, causes of action, grievances or disputes, whether based in contract, tort, or applicable law, between such Bound Party and

any other Bound Party involving properties at the Project or the purchase of any Unit from the Declarant or any affiliates of Declarant, including, without limitation, claims, causes of action, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration or the Bylaws (collectively "***Claim***"), except for those Exempt Claims authorized under Section 49.2 below, shall be subject to the procedures set forth in Section 49.3.

49.2. Exempt Claims. The following Claims ("***Exempt Claims***") shall be exempt from the provisions of Section 49.3.

(a) Any suit by the Declarant against any Bound Party to enforce the provisions of this Declaration or to enforce any of Declarant's developmental rights set forth in this Declaration;

(b) Any suit by the Association against any Bound Party to enforce the provisions of this Declaration, including any defensive or responsive actions by the party against whom the action is taken;

(c) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration, including any defensive or responsive actions by the party against whom the action is taken;

(d) Any suit between Owners, which suit does not include or implicate the Declarant or an affiliate of Declarant, seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Declaration or Bylaws;

(e) Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage; and

(f) Any suit or claim by the Association resulting from the Initial Development and Construction governed by Section 49.4.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 49.3, but there shall be no obligation to do so.

49.3. Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("***Claimant***") against any other Bound Party ("***Respondent***") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative or governmental tribunal seeking redress or resolution of such Claim. Instead, the Claimant and Respondent must follow the dispute resolution procedures set forth in this Section 49.3.

(a) Notice. The Claimant shall notify each Respondent in writing of the Claim ("***Notice***"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, person involved, Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Declaration, Bylaws, or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not to do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Good Faith Negotiation. Each Claimant and Respondent ("***Parties***") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Project community.

(c) Final and Binding Arbitration.

(i) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("***Termination of Negotiations***"), the Claimant shall have thirty (30) days following Termination of Negotiations to submit the Claim to arbitration in accordance with the "***Arbitration Provisions***" attached hereto as Exhibit F or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii) This Section 49.3 is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Utah. The arbitration award (the "***Award***") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah.

(iii) In the event a Bound Party is compelled by a court to arbitrate any Claim, that Bound Party shall be required to pay all the attorneys' fees and costs incurred by any other Bound Party in connection with compelling arbitration.

(d) Allocation of Costs of Resolving Claims. Each Party shall bear all its own costs incurred prior to and during the proceedings described in this Section 49.3, including the fees of its attorney or other representative. Each Party shall share equally in the costs of conducting the arbitration proceeding (collectively, "***Arbitration Costs***"), except as otherwise provided in this Section 49.3; provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Arbitration Costs, including the costs incurred by the Respondent.

49.4. Claims Arising from Initial Development and Construction. Any Claim related to the Initial Construction by any Person shall be subject to all of the requirements of Utah Code Section 78B-4-513 (and any successor statute thereto). In addition to the foregoing, all claims and causes of action by the Association, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, or any subcontractors of a General Contractor, such Claim shall be governed by the following:

(a) In all claims and causes of action by the Association, the Association shall attach as an exhibit to its first Complaint filed with a court of competent jurisdiction an affidavit of a third-party licensed in the State of Utah in the same profession, area of practice, or construction trade as to each defendant and who is competent to testify. Each affidavit shall set forth specifically a professional opinion as to each act, error, or omission alleged in the Complaint against the respective defendant that caused the Association's alleged damages and the factual basis for each such opinion. The Association's failure to file the affidavit in accordance with this Section 49.4 shall result in dismissal with prejudice of any claim described in this Section 49.4 against the particular defendant for which such affidavit is required and an award of reasonable attorney fees and expenses incurred by the particular defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the allegations of the Complaint.

(b) The Association shall commence all claims and causes of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against a Developer, Design Professional, General Contractor, any design consultants of a Design Professional, or any subcontractors of a General Contractor not more than four (4) years after the date of Substantial Completion of the Initial Construction. The Association waives all claims and causes of action not commenced in accordance with this section.

(c) During the four (4) years following the date of Substantial Completion of the Initial Construction, the Association shall schedule an annual walkthrough of all common areas with the Association's maintenance personnel and all Developers, Design Professionals, and General Contractors for the purpose of identifying items potentially in need of repair or maintenance within the next year. The Association shall give at least thirty (30) days prior written notice of the date and time of the walkthrough to all Developers, Design Professionals, and General Contractors, which time and date shall be during normal business hours. The Association shall conduct each walkthrough regardless of any lack of participation by any Developers, Design Professionals, or General Contractors. In the event the Developers, Design Professionals, or General Contractors do not participate, the Association shall inform them in writing of the results of the walkthrough consistent with Section 49.4.

(d) As an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, or any subcontractors of a General Contractor, the Association shall give written notice by United States Postal Service certified mail, return receipt requested, of an alleged defect in the Initial Construction to all Developers, Design Professionals, and General Contractors within thirty (30) days of first discovering the alleged defect, and each Developer, Design Professional, and General Contractor shall then have ninety (90) days from the mailing date of the last written notice to any of them to cure such alleged defect. The Association's failure to provide notice in accordance with Section 49.4(d) shall result in dismissal with prejudice of any claim described in Section 49.4(d) and an award of reasonable attorney fees and expenses incurred by any defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the alleged defect. This dismissal in no way affects any claims, counterclaims, cross-claims, or defenses of Developers, Design Professionals, General Contractors, or any subcontractors of a General Contractor.

(e) To the extent damages are covered by insurance, the Association waives all rights against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, and any subcontractors of a General Contractor for damages, except such rights as the Association may have to the proceeds of such insurance.

(f) The Association waives any claim or cause of action for consequential damages arising out of or relating to the Initial Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, and any subcontractors of a General Contractor.

(g) A Super Majority vote in favor by the voting members of the Association is an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against a Developer, Design Professional, General Contractor, any consultants of a Design Professional, or any subcontractors of a General Contractor.

(h) Definitions. The following terms shall be defined as follows:

(i) "***Design Professional***" means any architect, engineer, or surveyor licensed in the State of Utah that performed professional services for the Initial Construction pursuant to a contract with the Developer.

(ii) "***Developer***" shall mean the Declarant, any affiliate of Declarant or their successors in interest in development of the Project.

(iii) "***General Contractor***" shall mean any contractor licensed in the State of Utah that furnished labor, materials, or equipment for the Initial Construction pursuant to a contract with the Developer.

(iv) "***Initial Development and Construction***" shall mean the design and construction of the Project, including all services, labor, materials, and equipment furnished for the improvement thereof, that achieved Substantial Completion within six (6) years of date of the recording of this document.

(v) "***Substantial Completion***" means the completion of substantially all of the construction of the Project, as reasonably determined by the Developer.

(vi) "***Super Majority***" shall mean 67% of the Proportionate Interest of the Owners.

49.5. Amendment of Section 49. Notwithstanding anything to the contrary in the Declaration or Bylaws, the requirements of Section 49 may not be amended with respect to any Claim involving the Declarant unless the Declarant expressly consents in writing to such amendment.

50. **Security**. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the Association, nor the Declarant shall in any way be considered insurers or guarantors of security within the Project, however, and neither the Association, nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, residents, tenants, guests and invitees acknowledge that the Declarant, the Association and its Board do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, resident, tenant, guest or invitee acknowledges and understands that the Declarant, Association and Board are not insurers and that each Owner, resident, tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that Declarant, Association and Board have made no representations or warranties nor has any Owner, resident, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

51. **Conflict with Condominium Plat**. In the event of any conflict or inconsistency between the provisions of this Declaration and the Condominium Plat(s) affecting the Project, including the plat notes thereon, the provisions of said plats or plat notes, as the case may be, shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said plats, including any plat notes.

52. **Rights of Eligible Mortgagee**. Any Eligible Mortgagee shall be entitled to:

52.1. upon reasonable request, inspect the books and records of the Association during normal business hours;

52.2. receive reasonable written notice of meetings of the Association where the consent of any Eligible Mortgagee is required;

52.3. upon reasonable request, obtain copies of Association financial statements;

52.4. receive reasonable written notice of condemnation proceedings affecting any of Association's Property;

52.5. receive reasonable written notice of the lapse of any insurance that the Association is required to maintain under this Declaration; and

52.6. where the Owner of any Unit shall be deemed delinquent in the payment of any Assessment, any Eligible Mortgagee of said Unit shall be given written notice of such delinquency by the Association, provided the Eligible Mortgagee shall have been notified by the Association of its lien.

53. **Expansion of the Project.**

53.1. Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional Units in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date this Declaration is recorded, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be constructed on any or all portions of the Additional Land.

53.2. Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Iron County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the current phase of Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

53.3. Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Iron County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

53.4. Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon

recording the Supplemental Map and Supplemental Declaration in the said office of the Iron County Recorder.

53.5. Right of Declarant to Adjust Ownership Interest in Common Areas. All rights set forth herein are subject to the requirements of the Project Documents, as well as restrictions imposed by county, state, and federal law. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Declaration. The proportionate interest of each Unit Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration. Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

53.6. Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

(a) All or any part of the Additional Land may be added to the Project without any limitations whatsoever.

(b) Portions of the Additional Land may be added to the Project at different times without any limitations.

(c) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

(d) No assurances are made concerning:

(i) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

(ii) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

(iii) Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase I.

(iv) Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

(e) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (ii) the creation, construction, or addition to the Project of any additional property; (iii) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (iv) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

(f) The maximum number of Units that may be created within the Project is 403; and the maximum number of Units per acre that may be created within the Project is 7 Units per acre, all or which or none of which may be restricted exclusively to residential purposes, as it may be set forth by the Declarant in any Supplemental Declaration and Supplemental Map.

ARTICLE IV. MISCELLANEOUS PROVISIONS

1. **Provisions Incorporated in Deeds**. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

2. **Number and Gender**. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

3. **No Dedication**. Unless expressly provided, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project to the public or for any public use

4. **Notices**. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been posted in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner

5. **Utah Law**. The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Utah

6. **Disclaimer**. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness or intended use or operation, cost of maintenance or taxes except as expressly set forth in this Declaration or except as set forth in any Disclosure Statement required to be given under applicable rules of the Utah Division of Real Estate

7. **Designation of Successor**. For purposes of this Declaration and the easements, dedications, rights, privileges and reservations set forth herein, a successor and assign of Declarant shall be deemed a successor and assign only as specifically designated by Declarant by instrument recorded in the real estate records of Iron County, Utah, and, only with respect to the particular rights or interests specifically designated therein.

8. **Severability**. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable, but which in Declarant's reasonable opinion would be considered not to be unconscionable

9. **Run with the Land**. Declarant, for itself, its successors and assigns, hereby declares that all of the Project shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants, conditions and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Project.

10. **Restatement of Declaration**. To assure uniformity and ease in determining what provisions of this instrument apply, Declarant shall have the right, from time to time, incorporating cumulatively into one document all prior amendments, to publish and adopt a restatement of this Declaration (the "Second, Third, Fourth Declaration" as the case may be).

11. **Recording References**. All references in this Declaration to maps, plats, agreements, instruments or other documents of record shall mean and refer recordings with the Office of the Recorder of Iron County, Utah.

12. **Effective Date**. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Condominium Plat shall take effect upon its being filed for record in the office of the County Recorder of Iron County, Utah.

[*remainder of page left intentionally blank; signatures to follow*]

DATED this 1st day of August, 2025.

FIDDLERS CANYON HILLS, LLC
A Utah limited Liability Company

By: _____

Name: Richard T. Wolper

Title: Manager

STATE OF UTAH)
) ss.
County of SALT LAKE)

On the 1st day of August, 2025, personally appeared before me Richard T. Wolper, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of FIDDLERS CANYON HILLS, LLC, a Utah limited liability company, and who acknowledged to me that such entity executed it.

RUSSELL C SKOUSEN
NOTARY PUBLIC-STATE OF UTAH
COMMISSION# 743466
COMM. EXP. 06-10-2029

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The land situated in the County of Iron and described as follows:

B-1198-0100-0000
B-1198-0101-0000
B-1198-0102-0000
B-1198-0103-0000
B-1198-0104-0000
B-1198-0105-0000
B-1198-0106-0000
B-1198-0107-0000
B-1198-0108-0000
B-1198-0109-0000
B-1198-0110-0000
B-1198-0111-0000
B-1198-0112-0000
B-1198-0113-0000
B-1198-0114-0000
B-1198-0115-0000
B-1198-0116-0000
B-1198-0117-0000
B-1198-0118-0000
B-1198-0119-0000
B-1198-0120-0000
B-1198-0121-0000
B-1198-0122-0000
B-1198-0123-0000
B-1198-0124-0000
B-1198-0125-0000
B-1198-0126-0000
B-1198-0127-0000
B-1198-0128-0000
B-1198-0129-0000
B-1198-0130-0000
B-1198-0131-0000
B-1198-0132-0000
B-1198-0133-0000
B-1198-0134-0000
B-1198-0135-0000
B-1198-0136-0000
B-1198-0137-0000
B-1198-0138-0000
B-1198-0139-0000
B-1198-0140-0000
B-1198-0141-0000
B-1198-0142-0000
B-1198-0143-0000
B-1198-0144-0000
B-1198-0145-0000
B-1198-0146-0000
B-1198-0147-0000
B-1198-00OS-0001
B-1198-00OS-0002
B-1198-00OS-0003

[Parcel IDs: B-0100-0000 thru B-1198-0147-0000; B-1198-00OS-0001 thru -0003]

Phase 1

BEGINNING AT A POINT N00°18'30" W, 1696.89 FEET ALONG THE SECTION LINE AND WEST, 1308.59 FEET FROM THE SOUTHEAST CORNER OF SECTION 35, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN, CEDAR CITY, UTAH; TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF FIDDLERS CANYON ROAD, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 379.70 FEET, RADIAL POINT BEARS N14°33'01"W; THENCE NORTHEASTERLY ALONG THE SAID RIGHT OF WAY AND THE ARC OF SAID CURVE 107.25 FEET THROUGH AN INCLUDED ANGLE OF 16°11'04"; THENCE N59°15'46"E 48.00 FEET, TO POINT OF TANGENCY ON A 1034.31 FOOT RADIUS CURVE TO THE RIGHT; THENCE 288.83 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL

ANGLE 16°00'00'; THENCE N75°15'46"E 39.44 FEET; TO A POINT OF TANGENCY ON A 583.39' RADIUS CURVE TO THE LEFT; THENCE 310.45 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°29'24"; THENCE N44°46'23"E 62.21 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY OF SANDSTONE CLIFFS DRIVE, SAID POINT ALSO BEING THE NORTHWESTERLY CORNER OF SHADOW COVE TOWNHOMES P.U.D.; THENCE ALONG SAID RIGHT OF WAY AND BOUNDARY S45°23'05"E 133.61 FEET; TO A POINT OF TANGENCY OF A 275.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 20.73 FEET, THROUGH A CENTRAL ANGLE OF 4°19'11"; THENCE S44°50'12"W 60.30 FEET, TO POINT OF TANGENCY OF A 245.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 49.11 FEET THROUGH A CENTRAL ANGLE OF 11°29'05"; THENCE S56°19'16"W 283.58 FEET; THENCE S33°40'44"E 22.00 FEET; THENCE S57°19'44"W 8.60'; THENCE S12°31'45"E 56.31 FEET; THENCE S77°36'48"W 333.63 FEET; TO A POINT ON A NON-TANGENT 97.50 FOOT RADIUS CURVE TO THE LEFT, RADIAL POINT BEARS S46°07'39"E; THENCE ALONG THE ARC OF SAID CURVE 119.90 FEET THROUGH A CENTRAL ANGLE OF 70°27'35"; THENCE S26°31'11"E 31.97 FEET; THENCE S63°28'46"W 117.03 FEET; THENCE N26°31'14"W 45.00 FEET TO A POINT ON A NON-TANGENT 422.50 FOOT RADIUS CURVE TO THE LEFT, RADIAL POINT BEARS S26°31'14"E; THENCE ALONG THE ARC OF SAID CURVE 45.10 FEET THROUGH A CENTRAL ANGLE OF 6°06'55"; THENCE N32°10'35"W 20.25 FEET; THENCE N25°09'52"E 148.58 FEET; THENCE S70°49'13"E 31.44 FEET; THENCE N18°40'20"E 36.00 FEET, TO A POINT ON A 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, RADIAL POINT BEARS N19°10'47"E; THENCE ALONG THE ARC OF SAID CURVE 26.70 FEET THROUGH A CENTRAL ANGLE OF 76°28'35" TO A POINT ON A 142.50 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 23.58 FEET THROUGH A CENTRAL ANGLE OF 9°28'49"; THENCE N71°13'50"W 210.93 FEET; THENCE N14°32'51"W 9.44 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.9155 ACRES.

Phase 1 Private Drainage Easement

BEGINNING AT A POINT N00°18'30"W, 1696.89 FEET ALONG THE SECTION LINE AND WEST, 1308.59 FEET FROM THE SOUTHEAST CORNER OF SECTION 35, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF FIDDLERS CANYON ROAD, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 379.70 FEET, RADIAL POINT BEARS N14°33'01"W; THENCE NORTHEASTERLY ALONG THE SAID RIGHT OF WAY AND THE ARC OF SAID CURVE 107.25 FEET THROUGH AN INCLUDED ANGLE OF 16°11'04"; THENCE N59°15'46"E 48.00 FEET, TO POINT OF TANGENCY ON A 1034.31 FOOT RADIUS CURVE TO THE RIGHT; THENCE 157.39 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE 08°43'07" TO A POINT ON A 20.000 FOOT RADIUS CURVE TO THE RIGHT; THENCE 33.77 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 96°44'08" TO A POINT ON A 148.05 FOOT RADIUS COMPOUND CURVE TO THE RIGHT; THENCE 68.89 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°29'01" TO A POINT ON A 127.50 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIAL POINT BEARS N72°10'56"W); THENCE 57.98 FEET ALONG THE ARC OF SAID CURVE THROUGH A

CENTRAL ANGLE OF 26°03'18"; THENCE S43°52'22"W 109.05 FEET TO A POINT ON A 142.5 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 4.20 FEET THROUGH A CENTRAL ANGLE OF 1°41'20"; THENCE N71°13'50"W 210.93 FEET; THENCE N14°32'51"W 9.44 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.7609 ACRES

Phase 2

BEGINNING AT A POINT N00°18'30"W, 1591.77 FEET ALONG THE SECTION LINE AND WEST 1071.76 FEET FROM THE SOUTHEAST CORNER OF SECTION 35, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N77°36'48"E 333.63 FEET; THENCE N12°31'45"W 56.31 FEET; THENCE N57°19'44"E 8.60 FEET; THENCE N33°40'44"W 22.00 FEET; THENCE N56°19'16"E 283.58 FEET TO A POINT OF TANGENCY ON A 245.00 FOOT RADIUS CURVE TO THE LEFT; THENCE 49.11 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°29'05"; THENCE N44°50'12"E 60.30 FEET, TO A POINT ON A 275.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT OF WAY OF SANDSTONE CLIFFS DRIVE THE RADIUS POINT BEARING S48°56'06"W; THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY AND THE ARC OF SAID CURVE 35.23 FEET THROUGH A CENTRAL ANGLE OF 7°20'23"; THENCE S33°43'31"E 188.51 FEET; THENCE S56°19'16"W 370.32' FEET TO A POINT OF TANGENCY ON A 222.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 82.68 FEET THROUGH A CENTRAL ANGLE OF 21°17'31"; THENCE S77°36'48"W 276.03 FEET TO A POINT OF TANGENCY OF A 327.50 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 80.79 FEET THROUGH A CENTRAL ANGLE OF 14°08'02";THENCE S63°28'46"W 27.18 FEET; THENCE N26°31'11"W 31.97 FEET; TO A POINT ON A 97.50 FOOT RADIUS NON TANGENT CURVE TO THE RIGHT, RADIUS POINT BEARS N63°24'45"E; THENCE ALONG THE ARC OF SAID CURVE 119.90 FEET THROUGH A CENTRAL ANGLE OF 70°27'35" TO THE POINT OF BEGINNING.

CONTAINS 3.0850 ACRES

EXHIBIT B

SITE PLAN

[see attached]

TDS

6/14/23
DATE

SOUTH CENTRAL COMMUMICATION

8/4/2023
DATE

UTILITIES NOTE

UTILITIES SHALL HAVE THE RIGHT TO INSTALL, MAINTAIN AND OPERATE THEIR EQUIPMENT ABOVE AND BELOW GROUND AND ALL OTHER RELATED FACILITIES WITHIN THE PUBLIC UTILITY EASEMENTS IDENTIFIED ON THIS PLAT MAP AS MAY BE NECESSARY OR DESIRABLE IN PROVIDING UTILITY SERVICES WITHIN AND WITHOUT THE LOTS IDENTIFIED HEREIN, INCLUDING THE RIGHT OF ACCESS TO SUCH FACILITIES AND THE RIGHT TO REQUIRE REMOVAL OF ANY OBSTRUCTIONS INCLUDING STRUCTURES, TREES AND VEGETATION THAT MAY BE PLACED WITHIN THE PUE. THE UTILITY MAY REQUIRE THE LOT OWNER TO REMOVE ALL STRUCTURES WITHIN THE PUE AT THE LOT OWNER'S EXPENSE, OR THE UTILITY MAY REMOVE SUCH STRUCTURES AT THE LOT OWNER'S EXPENSE. AT NO TIME MAY ANY PERMANENT STRUCTURES BE PLACED WITHIN THE PUE OR ANY OTHER OBSTRUCTION WHICH INTERFERES WITH THE USE OF THE PUE WITHOUT THE PRIOR WRITTEN APPROVAL OF THE UTILITIES WITH FACILITIES IN THE PUE.

ROCKY MOUNTAIN POWER APPROVES THIS PLAT SOLELY FOR THE PURPOSES OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS. ROCKY MOUNTAIN POWER MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT CONSTITUTE ABROGATION OR WAIVER OF ANY OTHER EXISTING RIGHTS, OBLIGATIONS OR ACCEPTANCE, APPROVAL OR ACKNOWLEDGEMENT OF ANY TERMS CONTAINED IN THE PLAT, INCLUDING THOSE SET FORTH IN THE OWNER'S DEDICATION AND THE NOTES AND DOES NOT CONSTITUTE A GUARANTEE OF PARTICULAR TERMS OF ELECTRIC UTILITY SERVICE.

CITY ENGINEER'S APPROVAL

I, JOHNATHAN STATHIS, CEDAR CITY ENGINEER, DO HEREBY CERTIFY THAT THIS PLAT OF *FIDDLERS CANYON HILLS - PHASE 1* WAS EXAMINED AND ACCEPTED BY ME THIS 18 DAY OF December, 2023.

Jonathan Stathis
JOHNATHAN STATHIS, CEDAR CITY ENGINEER

PLANNING COMMISSION AP

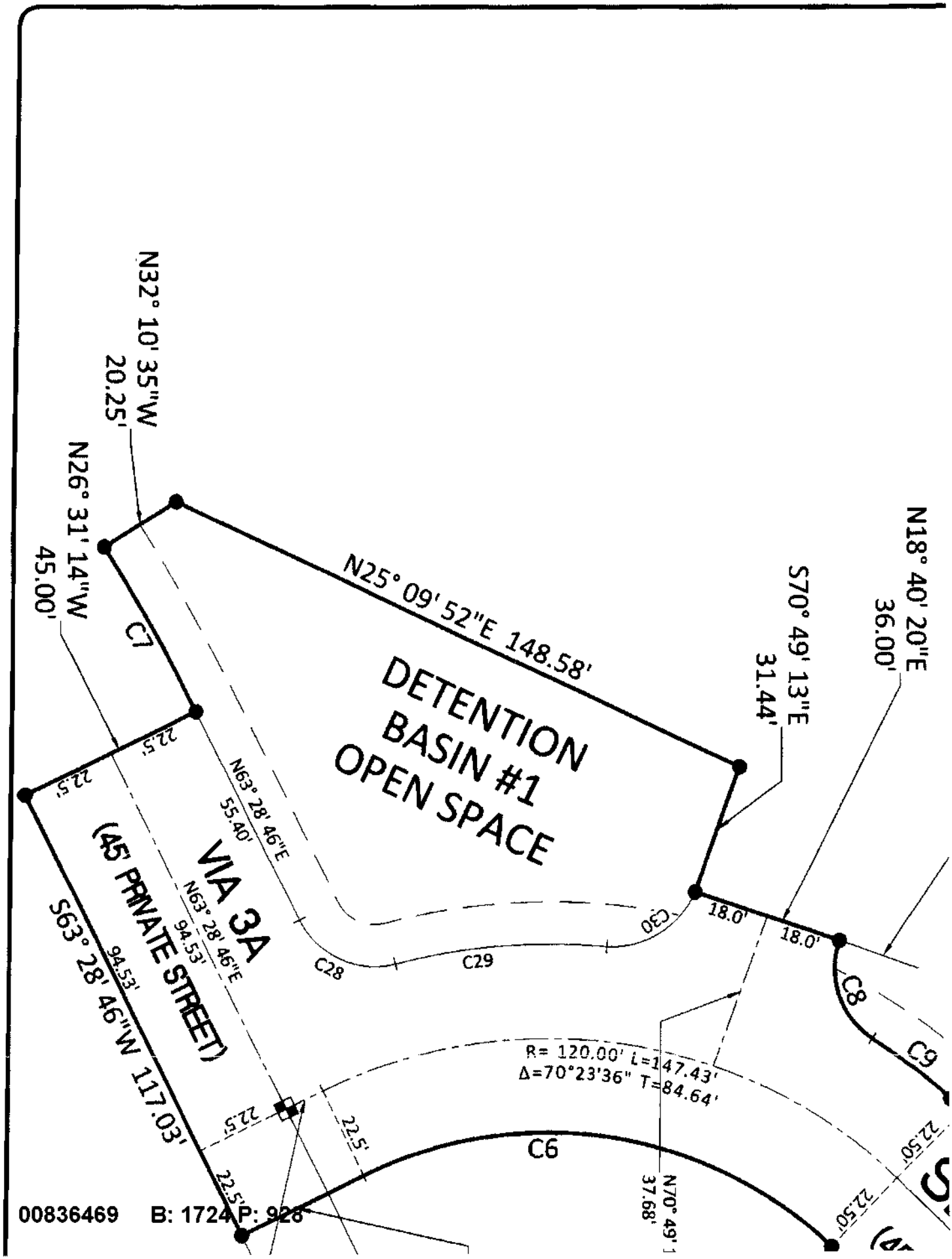
I, ADAM HAHN, CHAIRPERSON OF THE CEDAR CITY PI
HEREBY CERTIFY THAT THIS PLAT OF *FIDDLERS CANYO*
APPROVED BY SAID COMMISSION.

ADAM HAHN, CHAIRPERSON

DA

B: 1724 P: 927

00836469



BELOW GROUND AND ALL OTHER RELATED FACILITIES WITHIN THE PUBLIC UTILITY EASEMENTS IDENTIFIED ON THIS PLAT MAP AS MAY BE NECESSARY OR DESIRABLE IN PROVIDING UTILITY SERVICES WITHIN AND WITHOUT THE LOTS IDENTIFIED HEREIN, INCLUDING THE RIGHT OF ACCESS TO SUCH FACILITIES AND THE RIGHT TO REQUIRE REMOVAL OF ANY OBSTRUCTIONS INCLUDING STRUCTURES, TREES AND VEGETATION THAT MAY BE PLACED WITHIN THE PUE. THE UTILITY MAY REQUIRE THE LOT OWNER TO REMOVE ALL STRUCTURES WITHIN THE PUE AT THE LOT OWNER'S EXPENSE, OR THE UTILITY MAY REMOVE SUCH STRUCTURES AT THE LOT OWNER'S EXPENSE. AT NO TIME MAY ANY PERMANENT STRUCTURES BE PLACED WITHIN THE PUE OR ANY OTHER OBSTRUCTION WHICH INTERFERES WITH THE USE OF THE PUE WITHOUT THE PRIOR WRITTEN APPROVAL OF THE UTILITIES WITH FACILITIES IN THE PUE.

ROCKY MOUNTAIN POWER APPROVES THIS PLAT SOLELY FOR THE PURPOSES OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS. ROCKY MOUNTAIN POWER MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT CONSTITUTE ABROGATION OR WAIVER OF ANY OTHER EXISTING RIGHTS, OBLIGATIONS OR ACCEPTANCE, APPROVAL OR ACKNOWLEDGEMENT OF ANY TERMS CONTAINED IN THE PLAT, INCLUDING THOSE SET FORTH IN THE OWNER'S DEDICATION AND THE NOTES AND DOES NOT CONSTITUTE A GUARANTEE OF PARTICULAR TERMS OF ELECTRIC UTILITY SERVICE.

POST OFFICE APPROVAL

THE UNITED STATES POSTAL SERVICE HEREBY APPROVES THE LOCATIONS SHOWN FOR NEIGHBORHOOD DELIVERY AND COLLECTION BOX UNITS (N.D.C.B.U.).

POSTMASTER

8/4/2023
DATE

CITY ENGINEER'S APPROVAL

I, JOHNATHAN STATHIS, CEDAR CITY ENGINEER, DO HEREBY CERTIFY THAT THIS PLAT OF *FIDDLERS CANYON HILLS - PHASE 2* WAS EXAMINED AND ACCEPTED BY ME THIS 18 DAY OF December, 2023.

Jonathan Stathis
JOHNATHAN STATHIS, CEDAR CITY ENGINEER

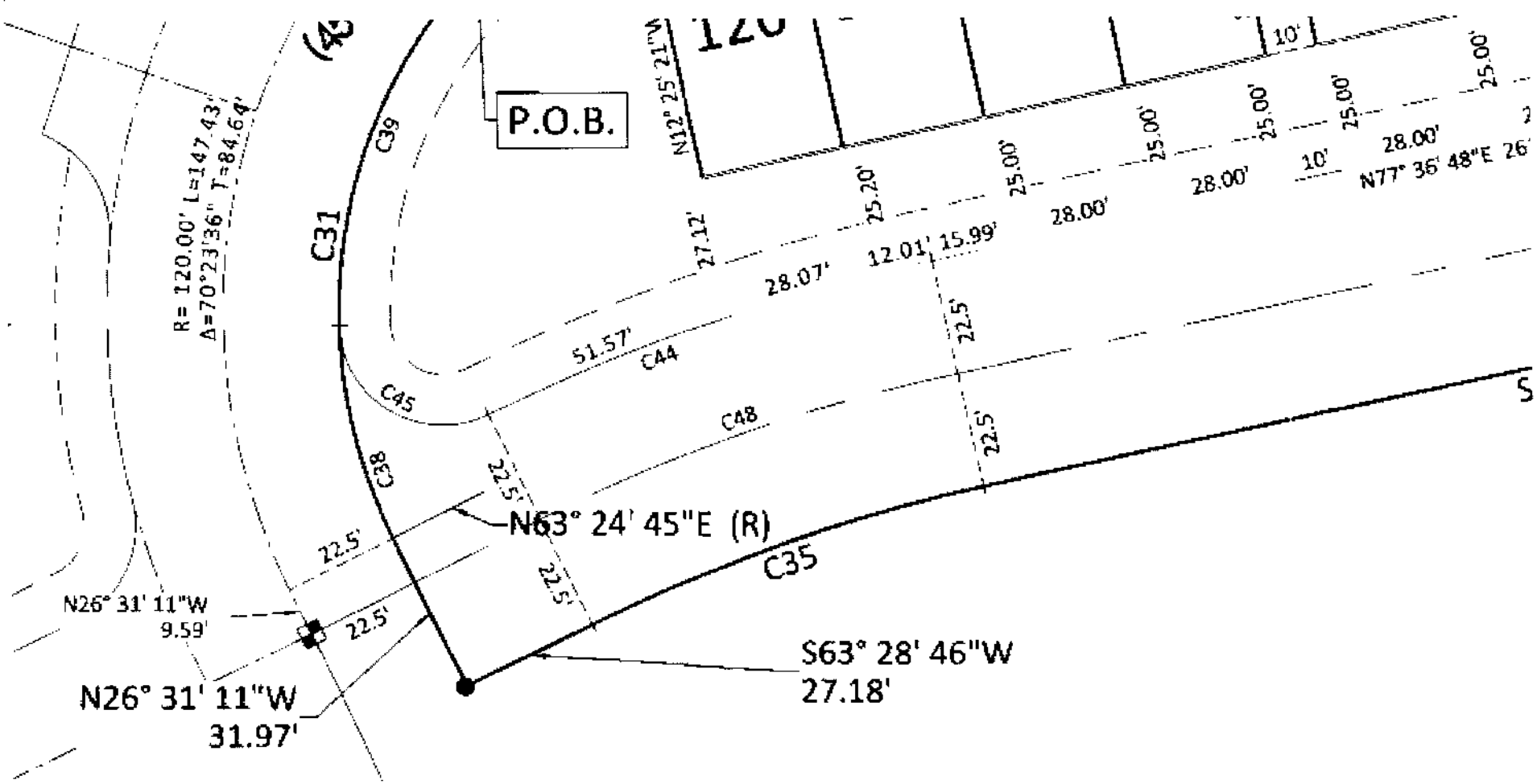
PLANNING COMMI

I, ADAM HAHN, CHAIRPERSON OF T
HEREBY CERTIFY THAT THIS PLAT OF
APPROVED BY SAID COMMISSION.

ADAM HAHN, CHAIRPERSON

B: 12

00836469



00836469 B: 1724 P: 930

EXHIBIT C

LEGAL DESCRIPTION OF ADDITIONAL LAND

The land situated in the County of Iron and described as follows:

Parcel 1: [B-1196-0045-0000, Iron County]

BEGINNING AT A POINT NORTH 00°18'30" WEST 2034.04 FEET ALONG THE SECTION LINE AND EAST, 353.55 FEET FROM THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN, CEDAR CITY, UTAH; AND RUNNING THENCE SOUTH 00°02'08" EAST 729.19 FEET; THENCE NORTH 90°00'00" WEST, 350.08 FEET TO SAID SECTION LINE OF SECTION 36; THENCE ALONG THE SECTION LINE SOUTH 00°18'30" EAST, 1304.84 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 35; THENCE ALONG THE SECTION LINE SOUTH 89°35'21" WEST, 801.40 FEET; THENCE NORTH 00°18'38" WEST 500.00 FEET; THENCE SOUTH 89°35'21" WEST, 1166.28 FEET; THENCE NORTH 25°22'26" EAST, 630.86 FEET; THENCE NORTH 20°55'40" EAST, 140.38 FEET; THENCE NORTH 25°08'23" EAST, 216.24 FEET; THENCE SOUTH 64°44'08" EAST, 19.98 FEET; THENCE NORTH 25°08'23" EAST, 107.25 FEET; THENCE NORTH 62°35'00" WEST, 20.00 FEET; THENCE NORTH 27°24'45" EAST 230.09 FEET; THENCE ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF FIDDLERS CANYON ROAD AS FOLLOWS: THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 379.70 FEET; A DISTANCE OF 196.65 FEET, LONG CHORD FOR SAID CURVE BEARS NORTH 74°06'00" EAST, 194.46 FEET; THENCE NORTH 59°15'46" EAST 48.00 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1034.31 FEET, A DISTANCE OF 288.83 FEET; THENCE NORTH 75°15'46" EAST 39.44 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 583.39 FEET, A DISTANCE OF 310.45 FEET; THENCE NORTH 44°46'23" EAST 84.52 FEET TO A POINT ON THE CENTERLINE OF PROPOSED BELLA DESTINO DRIVE A 50 FOOT RIGHT OF WAY; THENCE SOUTH 45°04'18" EAST, 338.53 FEET TO A POINT OF CURVATURE WITH 500.00 FOOT RADIUS CURVE TO THE RIGHT;

THENCE 271.72 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°08'14"; THENCE NORTH 76°03'56" EAST, 25.00 FEET; THENCE SOUTH 77°37'01" EAST, 150.79 FEET; THENCE NORTH 38°36'43" EAST 557.75 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THAT PORTION CONVEYED IN THAT CERTAIN WARRANTY DEED RECORDED ON NOVEMBER 10, 2015 AS ENTRY NO. 676670 IN BOOK 1329 AT PAGE 98 AND CORRECTED IN THAT CERTAIN SCRIVENER'S AFFIDAVIT RECORDED NOVEMBER 24, 2015 AS ENTRY NO. 677190 IN BOOK 1330 AT PAGE 314 AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 00°18'30" WEST 1305.00 FEET ALONG THE SECTION LINE FROM THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 90°00'00" EAST 350.08 FEET; THENCE NORTH 00°02'08" WEST 888.44 FEET; THENCE SOUTH 44°46'23"

WEST 6.01 FEET; THENCE NORTH 45°13'37" WEST 550.00 FEET TO A POINT OF CURVATURE TO THE LEFT HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE ALONG THE ARC OF SAID CURVE 23.56 FEET; THENCE SOUTH 44°46'23" WEST 697.37 FEET ALONG THE SOUTHEASTERLY RIGHT OF WAY OF FIDDLERS CANYON ROAD; THENCE SOUTH 45°23'00" EAST 133.53 FEET TO A POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 275.00 FEET AND A CENTRAL ANGLE OF 11°39'34"; THENCE ALONG THE ARC OF SAID CURVE 55.96 FEET; THENCE SOUTH 33°43'26" EAST 768.92 TO THE POINT OF BEGINNING.

EXHIBIT D

BYLAWS

Bylaws of
Fiddlers Canyon Hills Homeowners Association, Inc.

ARTICLE I – PURPOSES

Section 1.01 Purpose. This corporation is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, as set forth in the corporations Articles of Incorporation, including, without limitation, the operation and management of the master common areas and master common facilities of a master development known as Fiddlers Canyon Hills.

ARTICLE II – OFFICES

Section 2.01 Offices. The principal office of the corporation may be located at any place, either in or outside the State of Utah, as designated in the corporation's most current Annual Report filed with the Utah Division of Corporations and Commercial Code. The corporation may have such other offices, either in or outside the State of Utah, as the Board of Directors may designate or as the business of the corporation may require from time to time. The corporation shall maintain at its principal office a copy of certain records, as specified in Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act. The initial address of the corporation's principal office shall be 7026 South 900 East, Midvale, Utah, 84047.

Section 2.02 Registered Office. The registered office of the corporation, required by Section 16-6a-501 of the Utah Revised Nonprofit Corporation Act, shall be located in the State of Utah and may be, but need not be, identical with the corporation's principal office (if located in the State of Utah). The address of the registered office may be changed from time to time.

Section 2.03 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Easements, and Restrictions for Fiddlers Canyon Hills filed simultaneously in the official records of Iron County, Utah (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "**Declaration**"), unless the context indicates otherwise.

ARTICLE III – MEMBERS

Section 3.01 Membership. The qualifications, privileges and obligations of membership in the Association shall be as set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 3.02 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3.03 Annual Meetings. Annual meetings of the Association shall be held during each year on a date and at a time set by the Board of Directors.

Section 3.04 Special Meetings of Membership. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 3.05 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meetings of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage thereon prepaid.

Notices for any Board meetings during the period after the Period of Administrative Control will be provided pursuant to Utah Code Ann. Section 57-8a-225 or any replacement statute.

Section 3.06 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or its

proxy shall be deemed a waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 3.07 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are represented at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 3.08 Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 3.09 Proxies. At all meetings of the Members, Members may vote in person or by proxy and, in the case of a Member which is a corporation, partnership or other legal entity, such Member shall vote by proxy. Every proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Except as otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than eleven (11) months after its execution unless otherwise provided in the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Member's parcel. Proxies shall be valid even if presented in facsimile form.

Section 3.10 Majority. As used in these Bylaws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

Section 3.11 Quorum. Those Owners present, either in person or by proxy, at a meeting shall constitute a quorum for the adoption of decisions.

Section 3.12 Conduct of Meetings. The President shall preside at all meetings of the Association, and the Secretary or designated managing agent shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 3.13 Action Without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by the Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a vote of the Members at a duly called meeting. During the Period of Administrative Control, the Declarant may take action without providing notice or having a meeting, and may sign documents, including Amendments to the Declaration and these Bylaws, without the necessity of any other approval or signature.

ARTICLE IV – BOARD OF DIRECTORS

Section 4.01 General Powers. The business and affairs of the corporation shall be managed under the direction of its Board of Directors, each of whom shall have one (1) vote. Directors need not be Members of the Association.

Section 4.02 Period of Administrative Control. Notwithstanding anything to the contrary contained in these Bylaws, the Declarant shall be entitled to appoint all members of the Board of Directors during the Period of Administrative Control as set forth in the Declaration.

Section 4.03 Nomination of Directors. Commencing with the election of the first Board of Directors to be elected by the Members, nominations for election to the Board of Directors may be made by any Member. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 4.04 Number and Term of Office. Notwithstanding any other provisions contained herein:

(a) The initial Board of Directors shall consist of three (3) directors, one of which shall be designated as the Apartment Board Member as set forth in the Declaration, who shall serve from the date of incorporation of the Association until the annual meeting of the membership after the expiration of the Period of Administrative Control.

(b) At the first annual meeting of the membership after the expiration of the Period of Administrative Control pursuant to Section 2 of this Article, two (2) directors shall be elected by the Members, and one (1) director shall be elected by the Apartment Owners, as set forth in the Declaration. Of the two (2) directors so elected, one director will serve for a term of two (2) years and the other director will serve for a period of three (3) years. The remaining director shall serve for a term of one (1) year. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected by the Members (or by the Apartment Owners, with respect to the Apartment Board Member) to serve for a term of three (3) years.

Section 4.05 Election. Each Member shall be entitled to cast, with respect to each vacancy to be filled, the total number of votes to which it is entitled under the Declaration. There shall be no cumulative voting. The candidates receiving the most votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

Section 4.06 Term. The term of office of each director shall continue until the earlier of the expiration of the appointed term, his or her death, resignation or removal from office.

Section 4.07 Qualifications. Each director must be a natural person 18 years of age or older. Directors need not be residents of the State of Utah. During the Period of Administrative Control, a director does not need to be a Member of the Association. After the expiration of the Period of Administrative Control, a director will need to be a Member of the Association.

Section 4.08 Resignation. Any director of the corporation may resign at any time by giving written notice to the corporation. A resignation is effective when the notice is received by the corporation unless the notice specifies a later effective date.

Section 4.09 Vacancies. Vacancies in the Board caused by any reason other than removal of a member of the Board of Directors by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board of Directors at a special meeting of the Board held for that purpose after the occurrence of any such vacancy, even though the total members of the Board of Directors remaining may constitute less than a quorum of the Board; provided, however, than a vacancy in the position of the Apartment Board Member shall be filled by the vote or written consent of the Apartment Owners, and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member of the Board of Directors by a vote of the Association shall be filled by the election and vote of the Association.

Section 4.10 Removal.

(a) All directors appointed by the Declarant shall serve, and may be removed and replaced, at the discretion of the Declarant, and shall not be subject to removal or replacement by the Members generally.

(b) Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

(c) Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and the Board may appoint a successor.

Section 4.11 Right to Disapprove Actions. This Section 4.11 may not be amended without the express, written consent of the Declarant during the Period of Administrative Control.

During the Period of Administrative Control, the Declarant shall have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until and unless the following requirements have been met:

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meeting with Article III, Sections 8, 9, and 10 of these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, be set forth in reasonable particularity in the agenda to be followed at such meeting;

(b) The Declarant shall be given the opportunity at any such meeting to join in or have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Declarant, its representatives or agents shall make its concerns; thoughts, and suggestions known to the members of the subject committee and/or the Board. The Declarant shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the

Association, or any Member of the Association at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 4.12 Regular Meetings. Regular Meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but following the Period of Administrative Control, meetings shall be held at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 4.13 Special Meetings. Special meeting of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to the considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery, (b) written notice by first class mail, postage prepaid, (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) business days before the time set for the meeting. Notices given by personal delivery, telephone or telegraph shall be delivered, telephoned or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 4.14 Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if consent in writing, setting forth the action so taken, is signed by all of the directors. Such consent has the same force and effect as a unanimous vote of the directors. Action taken under this provision is effective at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked a consent by a writing signed by the director and received by the secretary or any other person authorized by the Bylaws or the Board of Directors to receive the revocation, or unless the consent specifies a different effective time.

Section 4.15 Waiver of Notice.

(a) Written Waiver. Any director may waive notice of any meeting before or after the date and time of the meeting stated in the notice. Except as provided in subsection (b),

below, the waiver must be in writing and signed by the director entitled to notice. The waiver shall be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.

(b) Waiver by Attendance. The attendance of a director at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to the holding of the meeting or the transacting of business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

Section 4.16 Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 4.17 Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the Board of Directors (provided, however, that matters affecting the Apartment Units or Apartment Common Areas shall require the approval of the Apartment Board Members as set forth in the Declaration). Voting by proxy is not permitted.

Section 4.18 Meetings by Telecommunication. The Board of Directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is considered present in person at the meeting.

Section 4.19 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

Section 4.20 Powers and Duties. The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things

as are provided by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Members (provided, however, that matters affecting the Apartment Units or Apartment Common Areas shall require the approval of the Apartment Board Members as set forth in the Declaration). The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, by way of explanation, but not limitation:

(a) preparing, adopting, and amending in accordance with the Declaration annual budgets in which there shall be established the contribution of each Owner to the Association's common expenses;

(b) making assessments to defray the Association's expenses (including expenses incurred by virtue of cost sharing agreements entered into with entities such as a residential owner's association, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment, if permitted);

(c) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and any other property for which it has responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(d) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided, any Reserve Fund may be deposited, in the director's best business judgment, in depositories other than banks;

(e) making and amending design guidelines and rules and regulations;

(f) opening of bank accounts on behalf of the Association and designating the signatories required;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the property of the Association in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(k) keeping books with detailed amounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred,

(l) making available to any prospective purchaser of a Unit, any Owner of a Unit, and the holders, insurers, and guarantors of mortgages or deeds of trust on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association;

(m) permitting utility suppliers to use portions of the Association's property, if any, as reasonably necessary to the ongoing development or operation of the Properties;

(n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah Law, the Articles of Incorporation or the Declaration;

(o) making contracts and entering into agreements necessary for the performance of the Association's obligations and duties;

(p) borrowing money and entering into loans and other instruments, including proving a security interest in, pledging, or assigning the Association's rights, title and interest in the common areas and any income to the Association, including any reimbursement fees;

(q) subject to applicable law, acquiring, holding, encumbering, and conveying title or interest to real estate or personal property;

(r) granting easements, leases, licenses, and concessions through or over the common areas;

(s) performing any rights, duties and obligations under the Declaration and enforcing any rights under the Declaration;

(t) exercising any other powers necessary and proper for the governance and operation of the Association; and

(u) employing a professional property manager to carry out its duties under the Declaration, these Bylaws and any rules and regulations.

Notwithstanding the foregoing, the Apartment Board Members shall have the sole right and authority to perform any of the actions set forth above with respect to the Apartment Units and Apartment Common Areas.

Section 4.21 Management. The Board of Directors shall retain for the Association a professional property manager at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The obligation of the Board to retain a professional property manager may not be amended or modified. The Board of Directors may delegate to the property manager, subject to the Board's supervision, all of the powers granted

to the Board of Directors by these Bylaws, other than the powers set forth in subparagraphs (b), (e), (f) and (h) of Section 4.20 of this Article.

Section 4.22 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise.

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) financial reports shall be prepared for the Association at least quarterly containing;

(i) an Income Statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the tenth (10th) day following the due date unless otherwise determined by the Board of Directors); and

(g) financials consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year, (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year.

Section 4.23 Borrowing. The Board of Directors shall have the power to borrow for any legal purpose, provided, the approval of the Members holding at least fifty-one (51%) percent of

the votes represented in person or by proxy at a duly constituted meeting shall be required in the event that the proposed borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws, or the Articles of Incorporation, no mortgage lien shall be placed on any portion of the Association's property without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Association vote.

Section 4.24 Rights of the Association. The Association shall have the right to contract with any person or entity for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other property owners' agreements with trusts, condominiums, and cooperatives, of other property owners or similar associations, both within and without the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

Section 4.25 Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder in accordance with the terms of the Declaration.

(a) Additional Enforcement Rights. The Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE V – OFFICERS

Section 5.01 Number. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The Association officers shall be elected from among the members of the Board of Directors. The Board of Directors may appoint such other officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 5.02 Appointment and Term of Office. Initial officers of the Association shall be elected by the Board of Directors after formation of the Association. The officers of the

Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5.03 Removal. Any officer, assistant, agent or employee may be removed, with or without cause, at any time by the board of directors, or by any officer to whom or committee of the board of directors to which such power of removal has been delegated, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5.04 Resignation. An officer may resign at any time by giving written notice of resignation to the corporation. A resignation of an officer is effective when it is received by the corporation, unless the notice specifies a later effective date. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Section 5.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors or by any officer to whom or committee of the Board of Directors to which such power has been delegated.

Section 5.06 The President. The president, unless otherwise specified by the Board of Directors, shall be the chief executive officer of the corporation and, under the direction of the Board of Directors, shall in general supervise and control all the business and affairs of the corporation. The president shall, when present, preside, in the absence of the chair of the Board, at meetings of the Board of Directors. The president may hire, prescribe the duties of, and fire employees, and may delegate such authority in whole or in part to any other officer or employee. The president may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation, and any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the corporation, or shall be required by Law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5.07 The Vice President. In the absence of the president, or in the event of the president's death, inability or refusal to act, the vice president (or in the event there is more than one vice president, the vice presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions

upon the president. Any vice president may sign, with the secretary or an assistant secretary, certificates for shares of the corporation; and shall perform such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors.

Section 5.08 The Secretary. The secretary shall (a) keep the minutes of the Board of Directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by Law; (c) be custodian of the corporate records and of the seal of the corporation and affix such seal to documents when authorized; (d) maintain the records required under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, and (e) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors. In the absence of a secretary and any assistant secretaries, the president shall perform these duties.

Section 5.09 The Treasurer. If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. He or she shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositaries as shall be selected in accordance with the provisions of Section 8.04 of these Bylaws; and (c) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors. In the absence of a treasurer, the secretary shall perform such duties.

Section 5.10 Assistant Secretaries and Assistant Treasurers. The assistant secretaries, when authorized by the Board of Directors, may sign with the president or vice president certificates for shares of the corporation, the issuance of which shall have been authorized by a resolution of the Board of Directors. The assistant treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the president or the Board of Directors.

Section 5.11 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE VI – COMMITTEES

Section 6.01 General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present as a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

ARTICLE VII – INDEMNIFICATION

Section 7.01 Indemnification. The corporation shall indemnify each person who is or was a director, officer, employee or agent of the corporation or an individual who, while serving the indicated relationship to the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee fiduciary, or agent of another corporation or other person or of an employee benefit plan, to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act.

Section 7.02 Authorization of Indemnification. The corporation shall be deemed to have authorized such indemnification whenever as determination has been made under Section 16-6a-906 of the Utah Revised Nonprofit Corporation Act that indemnification of an individual is permissible in the circumstances because the person has met the applicable standard of conduct.

Section 7.03 Advance of Expenses. The corporation shall accept the undertaking required by Subsection 16-6a-904(1)(b) of the Utah Revised Nonprofit Corporation Act without reference to financial ability to make repayment.

Section 7.04 Insurance. The corporation may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while serving as a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify him or her against the same liability.

Section 7.05 Savings Clause. If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each officer and director as to expenses, including attorneys' fees, judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal,

administrative or investigative, and whether internal or external, including without limitation a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

ARTICLE VIII – MISCELLANEOUS

Section 8.01 Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 8.02 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law, the Articles of Incorporation, the Declaration, or these Bylaws.

Section 8.03 Conflicts. If there are conflicts between the provisions of Utah law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Utah law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail. If any provision of these Bylaws is in conflict with Utah law, the provision will be interpreted to be consistent with Utah law and the remainder of these Bylaws shall remain in full force and effect.

Section 8.04 Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and Bylaws, membership register books of account, and minutes of meetings of the Members, the Board, and committees shall be maintained in accordance with applicable law and the Board and/or the Association may redact information as permitted by applicable law. Subject to the preceding and in accordance with applicable law, the records shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by the duly appointed representative of any Member at any reasonable time and for a purpose reasonably related to his or her interest in a Unit at the office of the Association or at such other place within the Properties as the Board shall prescribe. In the event any records are copies, the Association may recover copying costs as permitted by applicable law.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any time to inspect all books, records, and documents of the Association and the physical properties

owned or controlled by the Association. The right of inspection by a director shall include the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 8.05 Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid;

(a) If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no street address has been designated, at the address of the Unit of such Member; or

(b) If to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 8.06 Amendment.

(a) By Declarant. During the Period of Administrative Control, the Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the properties within the Development; provided, however, any such amendment shall not adversely affect the title to any property unless the owner thereof shall consent thereto in writing. Further, so long as it still owns property within the Development, the Declarant may unilaterally amend these Bylaws for any purpose provided such amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent or any combination thereof, of Members holding seventy-five percent (75%) of the Proportionate Interest in the Association, which shall include at least fifty percent (50%) of the Proportionate Interests of the Apartment Owners. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove revoke, or modify any right or privilege of the Declarant without the prior written consent of the Declarant or its assignee of such right or privilege.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon recordation in the public records of Iron County, Utah, unless another date is specified therein. Any procedural challenge to an amendment must be made within thirty

(30) days of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. If an Owner consents to any amendment to these Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary position in any mortgage or contract between Owner and a third party will affect the validity of such amendment.

EXHIBIT E

PROPORTIONATE INTEREST

Unit Identifying Number	Approx. Sq. Ft. of Unit	Proportionate Interest Per Unit
100	2,100	2.0833%
101	2,100	2.0833%
102	2,100	2.0833%
103	2,100	2.0833%
104	2,100	2.0833%
105	2,100	2.0833%
106	2,100	2.0833%
107	2,100	2.0833%
108	2,100	2.0833%
109	2,100	2.0833%
110	2,100	2.0833%
111	2,100	2.0833%
112	2,100	2.0833%
113	2,100	2.0833%
114	2,100	2.0833%
115	2,100	2.0833%
116	2,100	2.0833%
117	2,100	2.0833%
118	2,100	2.0833%
119	2,100	2.0833%
120	2,100	2.0833%
121	2,100	2.0833%
122	2,100	2.0833%
123	2,100	2.0833%
124	2,100	2.0833%
125	2,100	2.0833%
126	2,100	2.0833%
127	2,100	2.0833%
128	2,100	2.0833%
129	2,100	2.0833%
130	2,100	2.0833%
131	2,100	2.0833%
132	2,100	2.0833%
133	2,100	2.0833%
134	2,100	2.0833%
135	2,100	2.0833%
136	2,100	2.0833%
137	2,100	2.0833%
138	2,100	2.0833%
139	2,100	2.0833%
140	2,100	2.0833%

Unit Identifying Number	Approx. Sq. Ft. of Unit	Proportionate Interest Per Unit
141	2,100	2.0833%
142	2,100	2.0833%
143	2,100	2.0833%
144	2,100	2.0833%
145	2,100	2.0833%
146	2,100	2.0833%
147	2,100	2.0833%
Total:	100,800	100.00%

EXHIBIT F

ARBITRATION PROVISIONS

1. Dispute Resolution. The Bound Parties hereby agree that the arbitration provisions set forth in this Exhibit E ("***Arbitration Provisions***") are binding on each of them. As a result, any attempt to rescind or declare these Arbitration Provisions invalid or unenforceable for any reason is subject to these Arbitration Provisions.

2. Arbitration. Any Claim must be submitted to arbitration ("***Arbitration***") to be conducted exclusively in Salt Lake County, Utah and pursuant to the terms set forth in these Arbitration Provisions. The Bound Parties agree that the award of the arbitrator rendered pursuant to Paragraph 4 below (the "***Arbitration Award***") shall be (a) final and binding upon the Bound Parties, (b) the sole and exclusive remedy between them regarding any Claim, claims, counterclaims, issues, or accountings presented or pleaded to the arbitrator, and (c) promptly payable in United States dollars free of any tax, deduction, or offset (with respect to monetary awards). Any costs or fees, including without limitation attorneys' fees, incurred in connection with or incident to enforcing the Arbitration Award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. Judgment upon the Arbitration Award may be entered and enforced by any state or federal court sitting in Iron County, Utah.

3. The Arbitration Act. The Bound Parties hereby incorporate herein the provisions and procedures set forth in the Utah Uniform Arbitration Act, U.C.A. § 78B-11-101 *et seq.* (as amended or superseded from time to time, the "***Arbitration Act***"). Notwithstanding the foregoing, pursuant to, and to the maximum extent permitted by, Section 105 of the Arbitration Act, in the event of conflict or variation between the terms of these Arbitration Provisions and the provisions of the Arbitration Act, the terms of these Arbitration Provisions shall control and the Bound Parties hereby waive or otherwise agree to vary the effect of all requirements of the Arbitration Act that may conflict with or vary from these Arbitration Provisions.

4. Arbitration Proceedings. Arbitration between Bound Parties will be subject to the following:

4.1 *Initiation of Arbitration.* The Bound Parties agree that any of the Bound Parties (the "***Petitioner***") may initiate Arbitration ("***Petitioner***") by giving written notice (the "***Arbitration Notice***") to one or more of any of the other Bound Parties (collectively, "***Respondent***") using any method of service authorized for the commencement of a civil action under the Utah Rules of Civil Procedure ("***Service***"). The Arbitration Notice must describe the nature of the controversy, the identity of the Respondent, the remedies sought, and the election to commence Arbitration proceedings. All Claims in the Arbitration Notice must be pleaded consistent with the Utah Rules of Civil Procedure.

4.2 *Selection and Payment of Arbitrator.*

(a) Petitioner and Respondent shall make good faith efforts to agree on an arbitrator from the roster of arbitrators maintained by Utah ADR Services (http://www.utahadrservices.com). If the Petitioner and Respondent cannot agree to an arbitrator, Petitioner or Respondent may seek the appointment of an arbitrator by filing an action in a state court of Utah sitting in Iron County and requesting via a motion that the court appoint an arbitrator.

(b) The date that an arbitrator is selected or appointed pursuant to this Paragraph 4.2 and agrees in a writing (including via email) to serve as the arbitrator hereunder is referred to herein as the

"***Arbitration Commencement Date.***" If an arbitrator resigns or is unable to act during the Arbitration, a replacement arbitrator shall be chosen in accordance with this Paragraph 4.2 to continue the Arbitration. If Utah ADR Services ceases to exist or to provide a list of neutrals or qualified arbitrators, then the arbitrator shall be selected under the then prevailing rules of the American Arbitration Association.

(c) The cost of the arbitrator must be paid equally by the parties to the Arbitration.

4.3 *Applicability of Certain Utah Rules.* The Bound Parties agree that the Arbitration shall be conducted generally in accordance with the Utah Rules of Civil Procedure and the Utah Rules of Evidence. More specifically, the Utah Rules of Civil Procedure shall apply, without limitation, to the filing of any pleadings, motions, or memoranda, the conducting of discovery, and the taking of any depositions. The Utah Rules of Evidence shall apply to any hearings, whether telephonic or in person, held by the arbitrator. Notwithstanding the foregoing, it is the Bound Parties' intent that the incorporation of such rules will in no event supersede these Arbitration Provisions. In the event of any conflict between the Utah Rules of Civil Procedure or the Utah Rules of Evidence and these Arbitration Provisions, these Arbitration Provisions shall control.

4.4 *Answer and Default.* The Respondent shall deliver to the arbitrator and all parties to the Arbitration an answer and any counterclaims or crossclaims related to the Arbitration Notice within twenty (20) calendar days after the Arbitration Commencement Date.

4.5 *Discovery.* The Bound Parties agree that discovery shall be conducted as follows:

(a) Written discovery will only be allowed if the likely benefits of the proposed written discovery outweigh the burden or expense thereof, and the written discovery sought is likely to reveal information that will satisfy a specific element of a claim or defense already pleaded in the Arbitration. The party seeking written discovery shall always have the burden of showing that all of the standards and limitations set forth in these Arbitration Provisions are satisfied.

(b) No party shall be allowed (i) more than fifteen (15) interrogatories (including discrete subparts), (ii) more than fifteen (15) requests for admission (including discrete subparts), (iii) more than ten (10) document requests (including discrete subparts), or (iv) more than three (3) depositions (excluding expert depositions) for a maximum of seven (7) hours per deposition. The costs associated with depositions will be borne by the party taking the deposition. Further, the party defending the deposition will submit a notice to the party taking the deposition of the estimated attorneys' fees that such party expects to incur in connection with defending the deposition. If the party defending the deposition fails to submit an estimate of attorneys' fees within five (5) calendar days of its receipt of a deposition notice, then such party shall be deemed to have waived its right to the estimated attorneys' fees. The party taking the deposition must pay the party defending the deposition the estimated attorneys' fees prior to taking the deposition, unless such obligation is deemed to be waived as set forth in the immediately preceding sentence. If the party taking the deposition believes that the estimated attorneys' fees are unreasonable, such party may submit the issue to the arbitrator for a decision. All depositions of Bound Parties will be taken in Salt Lake County, Utah.

(c) All discovery requests (including document production requests included in deposition notices) must be submitted in writing to the arbitrator and the other party. The party submitting the written discovery requests must include with such discovery requests a detailed explanation of how the proposed discovery requests satisfy the requirements of these Arbitration Provisions and the Utah Rules of Civil Procedure. The receiving party will then be allowed, within five (5) calendar days of receiving the proposed discovery requests, to submit to the arbitrator an estimate of the attorneys' fees and costs associated with responding to such written discovery requests and a written challenge to each applicable discovery request. After receipt of an estimate of attorneys' fees and costs and/or challenge(s) to one or more discovery requests, the arbitrator will within three (3) calendar days make a finding as to the likely attorneys' fees and costs associated with responding to the discovery requests and issue an order that (i) requires the requesting

party to prepay the attorneys' fees and costs associated with responding to the discovery requests, and (ii) requires the responding party to respond to the discovery requests as limited by the arbitrator within twenty-five (25) calendar days of the arbitrator's finding with respect to such discovery requests. If a party entitled to submit an estimate of attorneys' fees and costs and/or a challenge to discovery requests fails to do so within such 5-day period, the arbitrator will make a finding that (A) there are no attorneys' fees or costs associated with responding to such discovery requests, and (B) the responding party must respond to such discovery requests (as may be limited by the arbitrator) within twenty-five (25) calendar days of the arbitrator's finding with respect to such discovery requests. Any party submitting any written discovery requests to another party, including without limitation interrogatories, requests for production, or requests for admissions, must prepay the estimated attorneys' fees and costs, before the responding party has any obligation to produce or respond to the same, unless such obligation is deemed waived as set forth above.

(d) In order to allow a written discovery request, the arbitrator must find that the discovery request satisfies the standards set forth in these Arbitration Provisions and the Utah Rules of Civil Procedure. The arbitrator must strictly enforce these standards. If a discovery request does not satisfy any of the standards set forth in these Arbitration Provisions or the Utah Rules of Civil Procedure, the arbitrator may modify such discovery request to satisfy the applicable standards, or strike such discovery request in whole or in part.

(e) Each party may submit expert reports (and rebuttals thereto), provided that such reports must be submitted within sixty (60) days of the Arbitration Commencement Date. Each party will be allowed a maximum of two (2) experts unless the arbitrator orders otherwise. Expert reports must contain the following: (i) a complete statement of all opinions the expert will offer at any hearing or arbitration and the basis and reasons for them; (ii) the expert's name and qualifications, including a list of all the expert's publications within the preceding ten (10) years, and a list of any other cases in which the expert has testified at trial, hearing, arbitration, or in a deposition or prepared a report within the preceding ten (10) years; and (iii) the compensation to be paid for the expert's report and testimony. The Bound Parties are entitled to depose any other party's expert witness one (1) time for no more than four (4) hours. An expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the expert report.

4.6 *Dispositive Motions.* Each party shall have the right to submit dispositive motions pursuant to the Utah Rules of Civil Procedure (a "***Dispositive Motion***"). Within seven (7) calendar days of delivery of the Dispositive Motion the other party shall deliver to the arbitrator and to the other party a memorandum in opposition to the Dispositive Motion (the "***Memorandum in Opposition***"). Within seven (7) calendar days of delivery of the Memorandum in Opposition, as applicable, the party that submitted the Dispositive Motion shall deliver to the arbitrator and to the other party a reply memorandum to the Memorandum in Opposition ("***Reply Memorandum***"). If the applicable party shall fail to deliver the Memorandum in Opposition as required above, or if the other party fails to deliver the Reply Memorandum as required above, then the applicable party shall lose its right to so deliver the same, and the Dispositive Motion shall proceed regardless.

4.7 *Confidentiality.* All information disclosed by any party (or such party's agents) during the Arbitration process (including without limitation information disclosed during the discovery process) shall be considered confidential in nature. Each party agrees not to disclose any confidential information received from the other party (or its agents) during the Arbitration process (including without limitation during the discovery process) unless (a) prior to or after the time of disclosure such information becomes public knowledge or part of the public domain, not as a result of any inaction or action of the receiving party or its agents, (b) such information is required by a court order, subpoena, or similar legal obligation to be disclosed if such receiving party has notified the other party thereof in writing and given it a reasonable opportunity to obtain a protective order from a court of competent jurisdiction prior to disclosure, or (c) such information is disclosed to the receiving party's agents, representatives, and legal counsel on a need to know basis who each agree in writing not to disclose such information to any third party. The arbitrator is hereby authorized and directed to issue a protective order to prevent the disclosure of privileged

information and confidential information upon the written request of any party.

4.8 *Authorization; Timing; Scheduling Order.* Subject to all other portions of these Arbitration Provisions, the Bound Parties hereby authorize and direct the arbitrator to take such actions and make such rulings as may be necessary to carry out the Bound Parties' intent for the Arbitration proceedings to be efficient and expeditious. The Bound Parties hereby agree that an Arbitration Award must be made within one hundred eighty (180) calendar days after the Arbitration Commencement Date, unless the arbitrator, for good cause, extends this deadline. The arbitrator shall not, however, extend the deadline to issue an Arbitration Award to more than five-hundred and forty (540) calendar days after the Arbitration Commencement Date. The arbitrator is hereby authorized and directed to hold a scheduling conference within ten (10) calendar days after the Arbitration Commencement Date in order to establish a scheduling order with various binding deadlines for hearings, discovery, expert testimony, and the submission of documents by the Bound Parties to enable the arbitrator to render a decision prior to the end of such 180-day period.

4.9 *Relief.* The arbitrator shall have the right to award or include in the Arbitration Award (or in a preliminary ruling) any relief which the arbitrator deems proper under the circumstances, including, without limitation, specific performance and injunctive relief, provided that the arbitrator may not award exemplary or punitive damages.

4.10 *Fees and Costs.* As part of the Arbitration Award, the arbitrator is hereby directed to require the losing party to (a) pay the full amount of any unpaid costs and fees of the Arbitration, and (b) reimburse the prevailing party for all reasonable attorneys' fees, arbitrator costs and fees, deposition costs, other discovery costs, and other expenses, costs, or fees paid or otherwise incurred by the prevailing party in connection with the Arbitration.

5. Miscellaneous.

5.1 *Severability.* If any part of these Arbitration Provisions is found to violate or be illegal under applicable law, then such provision shall be modified to the minimum extent necessary to make such provision enforceable under applicable law, and the remainder of the Arbitration Provisions shall remain unaffected and in full force and effect.

5.2 *Governing Law.* These Arbitration Provisions shall be governed by the laws of the State of Utah without regard to the conflict of laws principles therein.

5.3 *Interpretation.* The headings of these Arbitration Provisions are for convenience of reference only and shall not form part of, or affect the interpretation of, these Arbitration Provisions.

5.4 *Waiver.* No waiver of any provision of these Arbitration Provisions shall be effective unless it is in the form of a writing signed by the party granting the waiver.