

After Recording Mail To:  
Stag Investments LLC  
3605 W 900 S  
Ogden, UT 84404

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
WILSON COVE TOWNHOMES**

THIS DECLARATION of Covenants Conditions and Restrictions of Wilson Cove Townhomes is made and executed this \_\_\_\_ day of November, 2020 by Stag Investments LLC, a Utah limited liability company (the "Declarant").

**RECITALS:**

A. Declarant is the record owner of that certain tract of land (the "Property") in the city of West Haven, county of Weber, state of Utah, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. Declarant desires to create on said Property a residential development with townhomes and landscaped Common Areas and Limited Common Areas (the "Project").

B. Declarant desires to provide for preservation of the values and amenities of the Project and for maintenance of the Common Areas and Limited Common Areas in the official records of Weber County, state of Utah.

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, Declarant has caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, Wilson Cove Townhome Owners Association (the "Association").

D. Declarant desires to have Units constructed on and in this Project be sold subject to the covenants, conditions, and restrictions of this Declaration and the Association.

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property and Project shall be subject to this Declaration and that the Property and the Units in the Project are and shall be held, transferred, sold, conveyed and occupied subject to the covenants; restrictions, easements, charges and liens hereinafter set forth.

## ARTICLE I DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals"), the following terms shall have the meaning indicated:

**Section 1.1.** Association shall mean Wilson Cove Townhomes Owners Association, a Utah nonprofit corporation.

**Section 1.2.** Board shall mean the Board of Directors of the Association.

**Section 1.3.** Bylaws shall mean and refer to the Bylaws of the Association as the same may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit "D."

**Section 1.4.** Common Areas shall mean all property, including sidewalks, rights-of-way and utilities, owned or designated on the recorded plat as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners together with all improvements thereon and all easements appurtenant thereto as more particularly described in Exhibit "C" attached hereto and incorporated by this reference. The Common Areas shall not include the Limited Common Areas.

**Section 1.5.** Common Expenses shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

**Section 1.6.** Declarant shall mean Stagg Investments LLC, and its successors and assigns.

**Section 1.7.** Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Wilson Cove Townhomes.

**Section 1.8.** Design Committee shall mean the Design Committee established by and referred to in Article VIII of this Declaration.

**Section 1.9.** Dwelling; Dwelling Unit or Unit shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on a Pad and used in conjunction with such residence.

**Section 1.10.** Governing Documents. shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.

**Section 1.11.** Limited Common Areas shall mean or refer to those common areas designated on the recorded subdivision Plats as reserved for the use and benefit of each Unit to the exclusion of all other Owners, including, without limitation, driveways, patios, porches and other areas and improvements appurtenant to and benefitting a particular Unit.

**Section 1.12.** Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.1 of Article IV of this Declaration.

**Section 1.13.** Member shall mean and refer to every person who holds membership in the Association.

**Section 1.14.** Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and "mortgagee" shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

**Section 1.15.** Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Weber County, Utah) of a fee or undivided fee interest in any Unit, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Unit owned by it.

**Section 1.16.** Pad shall mean and refer to any portion of the land as shown upon and designated on the Plat upon which a cluster of up to six (6) Dwelling Units are to be constructed.

**Section 1.17.** Party Wall shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Units, which wall may be separated by a sound board between two or more Units.

**Section 1.18.** Period of Declarant Control shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots have been conveyed to purchasers; or (ii) the Declarant executes and records a written waiver of its right to control the Association. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then the Period of Declarant Control shall remain effective with respect to all retained Special Declarant Rights.

**Section 1.19.** Plat shall mean and refer to the Plat, as amended from time to time of Wilson Cove Townhomes, prepared and certified by Landmark Surveying, Inc., a licensed professional engineer, executed and acknowledged by Declarant, which has been or shall be recorded in the official records of Weber County, Utah, in connection with the Declaration.

**Section 1.20.** Property shall mean the Property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration including Limited Common Areas.

**Section 1.21.** Record of Survey Map and Map shall mean and refer to the Record of Survey Map filed on April 9, 2020, consisting of three sheets, and prepared and certified by Ernest D. Rowley, a Professional Utah Land Surveyor having Certificate No. 171781-2201, a copy of which is attached hereto as Exhibit "B."

**Section 1.22.** Roadways shall mean that portion of the Common Areas consisting of the streets and roads within the Property for the use and benefit of the Owners as such are identified and depicted on the Plat.

## **ARTICLE II SUBMISSION AND DIVISION OF PROJECT**

**Section 2.1.** Submission. The Property which is and shall be held transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in Weber county, state of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Property is being subdivided into Pads, identified as Pads through and Units identified as Units through, and such other Units to be identified in the future on the Pads as identified in the Plat. It is anticipated that the Project will be completed in more than one phase, with this Declaration being recorded with Phase 1 of the Project.

**Section 2.2.** Division into Pads, Common Areas and Limited Common Areas. The Property is hereby divided into Pads, each consisting of up to six (6) Units, having a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Pads or Units shall constitute the Common Area, which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration, or Limited Common Areas, which shall be owned by the Association for the benefit of the Owner(s) of the Unit(s) appurtenant to such Limited Common Area in accordance with the provisions of this Declaration.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 3.1.** Membership. Every Owner upon acquiring title to a Unit, shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Unit ceases for any reason, at which time his/her membership in the Association with respect to such Unit shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Unit.

**Section 3.2.** Voting Rights. Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned.

**Section 3.4. Multiple Ownership Interests.** If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.

**Section 3.5. Record of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Unit and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Units. Any Owner who mortgages his Unit or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

#### **ARTICLE IV OPERATION AND MAINTENANCE**

**Section 4.1. Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, and subject to any Period of Declarant Control, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all owners as Members of the Association.
- (b) The Association shall accept title to all Common Areas and Limited Common Areas conveyed to it by the Declarant.
- (c) The Association shall provide and be responsible for the management, control, operation, care maintenance, repair, replacement, and upkeep of the Common Areas, including snow removal, and shall keep the same in good, clean, attractive, safe and sanitary condition unless until and except to the extent that such responsibility is transferred to and accepted by some other authority, public agency, or utility, and such transfer is agreed to by Members holding at least two-thirds (2/3) of the votes of the membership of the Association.
- (d) In addition to maintenance of the Common Areas, the Association shall also provide and be responsible for the upkeep of each of the Limited Common Areas subject to assessment hereunder as follows: water, mow, cut, prune and replace as needed all lawns trees, shrubbery, flowers and other landscaping features located on any portion of a Unit which lies between the boundaries of the Unit and the extremities of the Dwelling located thereon. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, or the Owner's family, guests or

invitees, the Owner shall be obligated to immediately reimburse the Association for the cost thereof. The Owner's obligation to reimburse the Association for the cost of such maintenance or repairs shall be secured by a lien against the Owner's Unit in the same manner as provided in Article V below with respect to Monthly Assessments and Special Assessments. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Common Areas and Limited Common Areas; provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(e) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.

(f) The Association shall at all times employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas and Limited Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by the Board with cause upon thirty (30) days written notice thereof and at any time without cause or payment of a termination fee upon ninety (90) days written notice thereof, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.

**Section 4.2. Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass damage or otherwise, to enter upon any Unit for the purpose of maintaining and repairing such Unit or any improvement thereon if for any reason the Owner fails to maintain and repair such Unit or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Unit in violation of Articles VII or VIII of this Declaration. The Association shall also have the power and authority from time to time in its own name on its own behalf or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations. A maintenance allocation chart has been attached hereto as Exhibit "E," which further

defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas, Limited Common Areas and Units (to the extent required herein or necessitated by the failure of the Owners of such Units) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas and Limited Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Area or Limited Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance repair, operation or administration and (ii) to obtain; contract and pay for, or otherwise provide for:

(1) Maintenance, repair and replacement of all appurtenant improvements, including the removal of snow thereon, on such terms and conditions as the Board shall deem appropriate

(2) Construction, maintenance, repair and replacement of landscaping and improvements (excluding the maintenance, repair and replacement of driveways and sidewalks) upon the Common Areas and Limited Common Areas, including snow removal from driveways and sidewalks within the Limited Common Areas on such terms and conditions as the Board shall deem appropriate;

(3) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant the Association, the members of the Board, the members of the Design Committee, and the Owners;

(4) Such utility services, including (without limitation) culinary water secondary water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable for use by the Association and related to the Common Areas or Limited Common Areas (the intent of this clause in no way affects the obligation of each Owner of a Unit to directly provide for the culinary water, secondary water, sewer, trash removal, electrical, telephone and gas services, along with any other utility services, servicing or related to such Unit);

(5) The services of architects engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(6) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property;

(7) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary; and

(c) The Board may delegate to a Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Area or Limited Common Area.

(d) Upon thirty (30) days prior written notice to the Owner, the Association shall have the power and authority to hire a responsible corporation, partnership, firm person or other entity, to maintain an Owner's Unit should the Owner thereof fail to properly maintain the same. The cost to maintain a Unit for an Owner shall be charged to the Owner and may be included in the next scheduled monthly assessment to the Owner.

**Section 4.3. Owner Maintenance.**

(a) Except for the areas maintained by the Association as outlined in Section 4.2 above, each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit. Each Owner shall have the maintenance responsibilities regarding the Owner's Unit as set forth in the Maintenance Chart attached hereto as Exhibit "E," including the responsibility to maintain any attic space, foundation, patio posts, floor joists, and garage doors that are part of a Unit. Such maintenance shall also include repair or replacement of window glass on such Owner's Unit and the repair or replacement of the portion of any utility lines that only serve that Unit and are located within the Unit. The Association shall have no obligation regarding maintenance or care of the interior of any Unit except as expressly covered by insurance or in the Maintenance Chart attached as Exhibit "E," or elsewhere in this Declaration. No Owner shall attach anything to the exterior their Unit without the prior written consent of the Board. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot or Limited Common Area.

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

(c) Owners shall be responsible to maintain, repair, and replace non-perimeter fences installed by a Lot Owner, and which are not part of the Project's original construction. In the event, the backyard portion of a Lot or Limited Common Area is not enclosed by a fence upon initial construction, the Association may grant permission for an Owner to enclose such area with approved fencing; but, such approval must be made



in writing at the discretion of the Board. No approval to enclose the Limited Common Area shall be granted unless the Owner agrees to cover the cost of construction and any necessary alterations to the existing area, as the Board so determines; and, includes a gate to enable the Association to maintain landscaping within the bounded area as provided herein. In the event an Owner fails to provide unrestricted access to the landscaped area within an enclosed fence, the Association shall have no obligation to maintain, repair, or replace such areas while access is restricted, or to maintain, repair, or replace landscaping, irrigation systems, or any other unmaintained or damaged property arising out of or resulting from the Owner's failure to provide unrestricted access.

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

(e) Further descriptions of Owner maintenance, repair, and replacement responsibilities are contained in the maintenance allocation chart attached as Exhibit "E."

**Section 4.4. Owner Maintenance Neglect.**

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

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

**Section 4.5. Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas or Limited Common Areas as specified herein is caused through the

willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

**Section 4.6. Association Rules.** The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use and maintenance the Limited Common Areas; (b) the collection and disposal of refuse; (c) the maintenance of animals on the Property; and (d) other matters concerning the use and enjoyment of the Property and the conduct of residents.

**Section 4.7. Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees the Board, the Design Committee or the Managing Agent.

## **ARTICLE V ASSESSMENTS**

**Section 5.1. Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his/her interest in a Unit, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article together with late payment fees interest and costs of collection, if and when applicable. All such amounts shall constitute and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the assessment fails due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Common Areas and Limited Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Unit at the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

**Section 5.2. Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas and Limited Common Areas; maintenance; repair, and improvements of the Common Areas and Limited Common Areas; management and supervision of the Common Areas and Limited Common Areas; establishing and funding of a reserve to cover major repair or replacement of improvements within the Common Areas and Limited Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Areas and Limited Common Areas that must be maintained repairs or replaced on a periodic basis.

**Section 5.3. Monthly Assessments.** The Board shall from time to time and in its discretion set, the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration.

**Section 5.4. Special Assessments.** The Association may levy special assessments for the purpose of defraying in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas and Limited Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

**Section 5.5. Quorum Requirements.** The quorum at any meeting required for any action authorized by Section 5.3 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of the membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting another meeting may be called (subject to the notice requirements set forth in Section 5.3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

**Section 5.6. Special Assessment on Specific Units.** In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.3 above, the Board may levy at any time special assessments (a) on every Unit especially benefited by any improvement to adjacent Roadways sidewalks, planting areas or other portions of the Common Areas or Limited Common Areas made on the written request of the Owner of the Unit to be charged (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas and/or Limited Common Areas necessitating repairs and (c) on every Unit as to which the Association shall incur any expense for maintenance or repair work performed or enforcement action taken, pursuant to Section 4.2(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action: including all overhead and administrative costs, and shall be allocated among the affected Units according to the special benefit or cause of damage or maintenance or repair work or enforcement action as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Units benefited.

**Section 5.7. Uniform Rate of Assessment.** All monthly and special assessments authorized by Section 5.3 or 5.4 above shall be fixed at a uniform rate for all Units. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Units adversely affected.

**Section 5.8. Monthly Assessment Due Dates.** The monthly assessments provided for herein shall commence as to all Units as of the second month following conveyance to the Association of the Common Areas shown on the Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

**Section 5.9. Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrance of a Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

**Section 5.10. Effect of Nonpayment; Remedies.** Any assessment not paid when due shall, together with interest and costs of collection be, constitute, and remain a continuing lien on the affected Unit. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1½%) per month; and the Association may do any of the following:

(a) The Association may suspend such Owner's voting rights.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Weber County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

(e) The Association may terminate utilities paid out of the Common Expense, if any, and the right to use the Common Areas.

(f) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

The Association shall have any other remedy available to it whether provided in the this Declaration, the Bylaws , the Act, or other law or in equity.

**Section 5.11. Reserve Account.** The Board shall establish a reserve account to fund long- term maintenance of Common Areas and the exteriors of Units. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

**Section 5.12. Subordination of Lien to Mortgages.** The Hen of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Unit by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Unit; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage the lien shall apply to such excess. No sale or transfer shall relieve any Unit from the lien of any assessment thereafter becoming due.

## **ARTICLE VI TOWNHOME PROPERTY RIGHTS AND CONVEYANCES**

**Section 6.1. Easement Concerning Common Areas.** Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser or other person who resides on such Owner's Unit. Notwithstanding the foregoing, no Owner shall

have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

**Section 6.2. Easement Concerning Limited Common Areas.** The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the Limited Common Areas. With the exception of the rights and easements granted to the Association, the Owner(s) of a Unit shall have the exclusive use of all Limited Common Areas appurtenant to their Unit. Namely, the driveway in front of each Dwelling shall be Limited Common Area to each such Dwelling.

**Section 6.3. Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_\_ of Wilson Cove Townhomes, according to the Plat thereof recorded in the Official Records of Weber County. SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declarations of Covenants, Conditions ruled Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, 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. Any lease of a Unit shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

**Section 6.4. Transfer of Title to Common Areas and Limited Common Areas.** Declarant shall convey to the Association title to the various Common Areas and Limited Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any non delinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area and Limited Common Area is substantially completed.

**Section 6.5. Limitation on Easement.** An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

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

(b) The right of the Association to suspend an Owners right to the use of any amenities included in the Common Areas for any period during which an assessment on

such Owner's Unit remain unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

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

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association provided that such dedication or transfer must first be assented to in writing by (1) all holders of first mortgages secured by Units and (2) the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant). No such dedication or transfer, however may take place without the Association first receiving written approval from West Haven City pursuant all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

**Section 6.6. Reservation of Access and Utility Easements.** Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, including the attic space of any Unit, together with the right to grant to West Haven City and Weber County, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

**Section 6.7. Easements for Encroachments.** If any part of the Common Areas or Limited Common Areas as improved by Declarant now or hereafter encroaches upon any Unit or if any structure constructed by Declarant on any Unit now or hereafter encroaches upon any other Unit or upon any portion of the Common Areas or Limited Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Unit or upon any portion of the Common Areas or Limited Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue shall exist.

**Section 6.8.** Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as maybe reasonably incident to or necessary for the (a) construction of Dwellings on Units, (b) improvement of the Common Areas and Limited Common Areas and construction, installation and maintenance thereon of Roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners and (c) construction installation and maintenance on lands within; adjacent to, or serving the Property of Roadways walkways, and other facilities, planned for dedication to appropriate governmental authorities. The reservations contained in this paragraph shall expire twenty (20) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Weber County, Utah.

## **ARTICLE VII LAND USE RESTRICTIONS AND OBLIGATIONS**

**Section 7.1.** General Restrictions and Requirements.

(a) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Unit from its natural or improved state existing on the date such Unit is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VII and the provisions of Article VIII.

(b) Units shall be used only for single-family residential purposes and no more than one Dwelling shall be constructed on any Unit. The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Common Areas shall be used only for natural recreational uses which do not injure or scar the Common Areas or the vegetation thereof increase the cost of maintenance thereof or cause unreasonable embarrassment disturbance or annoyance to Owners in their enjoyment of their Units and Dwellings or the Common Areas.

(c) Businesses, professions or trades may be operated or maintained in a Unit subject to the prior written approval of the Board, which approval shall not be unreasonably withheld, subject to the following limitations: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the Project (iii) may not be observable from outside the Unit and may only be carried on following approval from West Haven City pursuant to all applicable state and city laws rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Unit subject to the foregoing limitations and all other limitations of this Declaration.



(d) No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Units and Dwellings or the Common Areas and Limited Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Unit and Dwelling thereon, shall be placed or used upon any Unit without the prior written approval of the Design Committee.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Units, Roadways or Common Areas and Limited Common Areas.

(f) Each Unit, and all improvements located thereon, shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense.

(g) All garbage, rubbish and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible for neighboring Units, roadways, Common Areas, or Limited Common Areas. The storage, collection and disposal of garbage rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

(h) No Unit shall be resubdivided.

(i) All improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(j) All structures constructed on any Unit shall be constructed with new materials unless otherwise permitted by the Design Committee; and no used structures shall be relocated or placed on any Unit.

(k) No structure or improvement having a height of more than two (2) stories shall be constructed on any Unit; provided, however, that the height of a structure or improvement may exceed two (2) stories if permitted by law and if the Design Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

(l) Roof and materials shall be architectural grade asphalt shingles as approved by the Design Committee or other high quality roofing materials. All replacement of shingles shall be made by the Association at the expense of the Association so as to maintain uniformity throughout the project.

(m) Once a Residential Dwelling is constructed, no Owner shall change or alter the exterior covering of the Dwelling unless prior written approval is obtained from the Design Committee.

(n) No Dwelling or landscaping of the Unit shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays are approved by the Design Committee.

(o) No exterior lighting of any sort shall be installed or maintained on a Unit if the light source shines directly into a neighboring residence.

(p) No Dwelling shall be occupied until the same is substantially completed in accordance with the plans of the Dwelling type.

(q) No Owner of any Unit, except Declarant, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the Design Committee.

(r) No outside toilet, other than self-contained portable toilet units used during construction, shall be placed or constructed on any Unit or the Common Areas or Limited Common Areas. All plumbing fixtures, dishwashers, garbage disposals toilets and sewage disposal systems shall be connected to a sewage system.

(s) No fuel tanks or similar storage facilities shall be constructed or used on any Unit or in the Common Areas or Limited Common Areas.

(t) No exterior antenna or satellite dish of any sort shall be installed or maintained on any Unit except of a height, size and type approved by the Design Committee. No activity shall be conducted within the Property which interferes with television or radio reception.

(u) No Outside clotheslines and other outside clothes drying or airing facilities shall be maintained on any Unit unless the same is maintained within a fenced enclosure and not visible from the Roadways.

(v) No drilling (except for a water well expressly permitted), refining, quarrying or mining operations of any kind shall be permitted upon any Unit or the Common or Limited Common Areas, and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Unit or the Common Areas or Limited Common Areas. There shall be no water well developed on any Unit by the Owner thereof unless (i) a permit is first obtained from the Board, (ii) the Board first approves the location and facilities used in connection with such well, and (iii) a permit is obtained by all appropriate governmental authorities.

(w) There shall be no blasting or discharge of explosives upon any Unit or the Common Areas and Limited Common Areas except as permitted by the Board; provided that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the development and sale of Units; and provided further that the Owner as first obtained the approval of all appropriate governmental authorities.

- (x) No signs whatsoever shall be erected or maintained upon any Unit, except:
  - (1) Such signs as may be required by legal proceedings,
  - (2) Such signs as Declarant may erect or maintain on a Unit prior to sale and conveyance.
  - (3) One "For Sale" or For Rent" sign having a maximum face area of fifteen (15) square feet and referring only to the premises on which it is situated.

(aa) Except to the extent used by Declarant in connection with and during the development and sale of Units no mobile home or similar facility shall be placed upon any Unit, the Common Areas, Limited Common Areas, or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained on any Unit, Common Areas or the Limited Common Areas. No large commercial vehicle, motor home, camping trailer, snowmobile trailer, or the like shall be parked on any Unit, Common Areas or Limited Common Areas except as prior approved by the Board.

(bb) Maintenance of any animals on any Unit shall be subject to the following restrictions and limitations:

(1) No livestock of any kind, including, but not limited to, pigs, cows, goats, sheep, horses, etc. may be kept or maintained on any Unit.

(2) No dangerous or nuisance animals, as defined by the Board, may be maintained or kept on any Unit.

(3) The area of any Unit occupied by an animal shall be properly maintained so as not to create any noxious or offensive odors or conditions which is or may become a nuisance or may cause disturbance or annoyance to other Owners in the Project.

(4) No animals shall be permitted on the Common Areas or Limited Common Areas except when accompanied by and under the control of the persons to whom they belong.

(5) The use and control of any animals shall be subject to further control by rules and regulations promulgated by the Board.

(cc) Subject to further control by rules and regulations promulgated by the Board, only a reasonable number of generally recognized house pets shall be kept on any Unit. House pets shall be permitted on the Common Areas when accompanied by and

under the control of the person to whom they belong. No animals of any kind shall be raised for commercial purposes unless prior written approval is obtained from the Board.

(dd) There shall be no exterior fires except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles designed for such purposes. No Owner shall cause or permit any condition which creates a fire hazard creates a nuisance, or is in violation of any fire prevention regulations.

(ee) There shall be no camping upon any Unit or Common or Limited Common Areas except as permitted by the Board by written license.

(ff) No Owner or guest shall park any vehicle or cause any obstruction in front of a driveway.

**Section 7.2. Exemption of Declarant.** Notwithstanding the provisions of Section 7.1 the Declarant shall have the right to use any Unit or Dwelling owned by it and any part of the Common Areas and Limited Common Areas reasonably necessary or appropriate in furtherance of any construction marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas and Limited Common Areas or improvement and sale of all Units owned by Declarant.

**Section 7.3. Enforcement of Land Use Restrictions.** The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a) Declarant so long as it has any interest in any of the Property or
- (b) Any Owner;
- (c) The Association; or
- (d) The City of West Haven.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

**Section 7.4. Conditional Notes on Plat.** Neither the Association nor any Owner of a Unit shall have the authority to waive or alter the conditions or requirements set out as notes on the Plat.

## **ARTICLE VIII ARCHITECTURAL CONTROL**

**Section 8.1. Organization of the Design Committee.** There shall be a Design Committee consisting of not fewer than three (3) members. The members of the Design

Committee need not be Owners. Declarant shall have the right to appoint, remove and increase the number of members of the Design Committee; provided that such right shall vest in the Board upon the conveyance of the last Unit in the Project to an Owner. Declarant may voluntarily relinquish control of the Design Committee to the Board at any time. Whenever the Design Committee consists of more than three (3) members, it may designate subcommittees each consisting of at least three (3) members. Unless authorized by the Board, the members of the Design Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Design Committee function.

**Section 8.2. Actions Requiring Approval.** No fence, wall, Dwelling accessory or addition to a Dwelling, or landscaping or other improvement of a Unit shall be constructed or performed, nor shall any alteration of any structure on any Unit, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Design Committee.

**Section 8.3. Standard of Design Review.** Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

**Section 8.4. Design Committee Rules and Architectural Standards.** The Board may, upon recommendation from the Design Committee adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications, including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.

**Section 8.5. Approval Procedure.** The Design Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Design Committee. The vote or written consent of a majority of the Design Committee or any authorized subcommittee shall constitute the act of the Design Committee. Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.

**Section 8.6. Variance Procedure.** If plans and specifications submitted to the Design Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards the party or parties making such submission may submit a request for variance to the Design Committee which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or

disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request' is submitted to the Design Committee, such request shall be deemed to be denied.

**Section 8.7. Nonwaiver.** The approval by the Design Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications.

**Section 8.8. Completion of Construction.** Once begun, any improvements, construction landscaping or alterations approved by the Design Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Design Committee.

**Section 8.9. Exemption of Declarant.** The provisions of this Article shall not apply to any improvement construction landscaping or alteration made or performed by Declarant on any Unit or portions of the Common Areas or Limited Common Areas at anytime during the twenty-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Weber County, Utah.

**Section 8.10. Estoppel Certificate.** Within thirty (30) days after written demand therefor is delivered to the Design Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Unit of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Unit by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

**Section 8.11. Disclaimer of Liability.** neither the Design Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of or the failure to approve or reject, any plans drawings and specifications (b) the construction or performance of any work whether or not pursuant to approved plans drawings and specifications, (c) the development or manner of development of any of the Property. or (d) any engineering or other defect in approved plans and specifications.

## **ARTICLE IX INSURANCE**

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

**Section 9.1. Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that

provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

**Section 9.2. Property Insurance.**

(a) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

(1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

(2) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(3) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(4) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(1) The Association's policy provides primary insurance coverage, and:

(i) the Owner is responsible for the Association's policy deductible; and

(ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

(2) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and

(3) If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

(c) Claims Under the Deductible. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible:

(1) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible;

(2) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and

(3) the Association need not tender the claim to the Association's insurer.

(d) Deductible Notice. The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.



(e) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

**Section 9.3. Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

**Section 9.4. Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Declarant, the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

**Section 9.5. Theft and Embezzlement Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, (c) officers, directors, and employees of any Manager of the Association, and (d) coverage for acts.

**Section 9.6. Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

**Section 9.7. Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.

**Section 9.8. Named Insured.** The named insured under any policy of insurance shall be the Association; and the Declarant shall be listed by name as an additional insured under any and all policies of insurance. The Declarant and each Owner shall also be an insured under all property and CGL insurance policies.

**Section 9.9. Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

**Section 9.10. Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.

**Section 9.11. Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

**Section 9.12. Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Declarant, the Association and the Owners and their respective affiliates, agents and employees.

**Section 9.13. Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

## **ARTICLE X CONDEMNATION**

**Section 10.1. Condemnation.** If at any time or times the Common Areas or Limited Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain all compensation and damages shall be payable to the Board and shall

be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas or Limited Common Areas. Upon completion of such work and payment in full therefor any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas or Limited Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Unit is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Unit in the Association and the Common Areas and Limited Common Areas to such Owner and any first mortgagee of such Unit as their interests shall appear, after deducting the proportionate share of said Unit in the cost of debris removal.

## **ARTICLE XI RIGHTS OF FIRST MORTGAGEES**

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

**Section 11.1. Preservation of Regulatory Structure and Insurance.** Unless the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant) and such Owners' first mortgagees, if any, shall have given their prior written approval the Association shall not be entitled:

(a) by act or omission to change waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of party walls or common fences and driveways. or the upkeep of lawns and planting on the Property.

(b) to fail to maintain insurance as required by Article XI. This Section 11.1 may be amended as provided in Section 15.2 hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

**Section 11.2. Preservation of Common Area and Limited Common Area; Change in Method of Assessment.** Unless the Association shall receive the prior written approval of (1) all first mortgagees of Units and (2) the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber sell or transfer the Common Areas or Limited Common Areas except to grant easements for utilities and similar or related purposes as reserved in Section 6.5 hereof; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Unit or the Owner thereof.

This Section 11.2 may be amended as provided in Section 13.2 hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

**Section 11.3. Written Consent Deemed Approved.** If an Owner or a mortgagee fails to approve or disapprove a request made pursuant to this Article XI or any other Article in this Declaration within sixty (60) days after such request is mailed, by certified mail, return receipt requested the request shall be deemed to be approved from such Owner or mortgagee.

**Section 11.4. Notice of Matters Affecting Security.** The Board shall give written notice to any first mortgagee of a Unit requesting such notice whenever:

(a) there is any default by the Owner of the Unit subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(c) there is any condemnation or taking by eminent domain of the Unit subject to the first mortgage or of the Common Areas; or

(d) any of the following matters come up for consideration or effectuation by the Association;

(1) abandonment or termination of the Planned Development established by this Declaration;

(2) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(3) any decision to terminate professional management of the Common Areas or Limited Common Areas and assume self- management by the Owners.

**Section 11.5. Notice of Meetings.** The Board shall give to any first mortgagee of a Unit requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

**Section 11.6. Right to Examine Association Records.** Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit securing the mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

**Section 11.7. Right to Pay Taxes and Charges.** First mortgagees may jointly or single pay taxes or other charges which are in default and which may or have become a charge against

any portion of the Common Areas or Limited Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas or Limited Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Area or Limited Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas or Limited Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

**Section 11.8. Exemption from Any First Right of Refusal.** Any first mortgagee who obtains title to the Unit subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Unit.

## **ARTICLE XII PARTY WALLS**

**Section 12.1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Dwellings upon the Property and placed on the dividing line between two Units shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 12.2. Repair and Maintenance.** Each Dwelling shall share one or two Party Wall(s) a common roof, a common exterior back wall, and a common exterior front wall, with adjacent Dwellings. The Owners acknowledge that certain repairs or maintenance to the roof or exterior walls of the Dwellings may become necessary, which repairs or maintenance cannot be performed on one Dwelling only, but may necessarily involve the other attached Dwellings. Therefore all repairs to the roof and exterior walls of all Dwellings will be made by the Association out of Association funds.

**Section 12.3. Destruction of Party Wall, Common Roof or Exterior.** If a Party Wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired by the Association to a condition equal to or better than immediately prior to the damage and the negligent Owner or Owner at fault shall reimburse the Association for any and all costs incurred by the Association to cure the damage. Should a Party Wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Residential Dwelling, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the Owners of the two affected Residential Dwellings, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Dwellings. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Residential Dwelling, the damage shall be rebuilt or repaired by the Association to a condition equal to or better than immediately prior to the damage, at the expense of the Association provided that any

amount received from insurance companies for such damage shall first be applied to the restoration of the affected Dwellings.

### **ARTICLE XIII USE RESTRICTIONS**

**Section 13.1.** Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Units.

**Section 13.2.** Use of Lots and Units. All Lots are intended to be improved with single-family Units and are restricted to such use. Except as may be approved to the contrary, each Unit shall be used only as a single-family Unit. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot or Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that: only normal residential activities would be observable outside of the Unit; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.

**Section 13.3.** Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof.

**Section 13.4.** Recreational Vehicles. No boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like belonging to Owners or other Occupants of the Project shall be parked within the Project for a period exceeding forty-eight (48) hours unless parked within the Owner's enclosed garage. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, Private Street or other Common Areas, except for emergency repairs to vehicles. The Board is authorized to adopt Rules that vary or expand upon the restrictions set forth in this Section.

**Section 13.5.** Pets. No more than one (1) pet may be kept on any single Lot, and no pet may be kept on a Lot that weighs more than 60 lbs. Within 30 days of the time a pet occupies a Unit, the Owner of the Unit shall register the pet with the Board using the Association's pet registration form. If an Owner fails to register a pet that has occupied a Unit for more than 30 days, the Association may fine that Owner \$200 per month until the pet is registered. No pets,

animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration, including, but not limited to, restrictions on the types of pets, additional requirements for registration with the Association, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area or Limited Common Area of another Member and shall be leashed or restrained whenever outside a Unit. The Association may levy individual assessments to Owners for any damages to the Common Areas and landscaping caused by a pet, including bum spots in the lawn from urine.

**Section 13.6. Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Unit or appurtenant structures.

**Section 13.7. Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes, but is not limited to, the following:

(a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;

(b) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

(c) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;

(d) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

(e) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

(f) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

(g) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;

(h) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;

(i) Too much traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

(j) Allowing a pet to be unleashed while outside of the Unit or fenced backyard;

(k) Continuous barking, meowing, or other animal noises; and

(l) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.

**Section 13.8. Smoking.** No Owner, family member of an Owner, tenant, lessee, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to as "Resident") shall smoke cigarettes, electronic cigarettes, cigars, or any other tobacco product, marijuana, illegal substance, or any other substance that emits smoke, including vaping, anywhere within the Association's Common Area or Limited Common Area that is within 25 feet of a Unit. This prohibition shall include, but not be limited to, Common Areas, enclosed Common Areas within the Project and all porches, patios and parking areas. The term "smoke," "smoking" or "tobacco" as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, vaping, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.

**Section 13.9. Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law. The Board may adopt Rules for the regulation of signs. Unless otherwise designated in the Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed outside the main entry of the Unit or as directed by the Board. All other signs may only be erected or maintained on the Project, whether in a window or otherwise, with the prior written approval of the Board of Directors. Signs may not exceed 18" X 24" in size and may only be posted into the ground with wire or stakes no more than 1" in diameter.



**Section 13.10. Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection. Garbage cans may be placed in the street for collection the afternoon or evening prior to the day of collection and must be removed from the street within twelve (12) hours of collection. The Association may adopt additional Rules for the storage and concealment of trash containers.

**Section 13.11. Parking.** No vehicles may be parked on the streets within the Project. Owners, Occupants, and tenants must first use their garages before other vehicles may be parked outside of the garage. No Occupant of the Project may park their vehicle in any of the guest parking stalls within the Project. No vehicle may be parked in the guest parking area for more than 24 consecutive hours. Vehicles shall not be parked at an entrance to or in front of a garage or walkway or at any other location within the Project, which would impair vehicular or pedestrian access, or snow removal. Common Area parking stalls (if any) shall be subject to and governed by Association Rules and may be assigned by the Board. The Association may charge a fee for the use of any Common Area parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

**Section 13.12. No Patio/ Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the Board.

**Section 13.13. Leases.** The leasing of Units is permitted. The Board may adopt Rules to regulate the leasing of Units which may include, but are not limited to: requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. Unless otherwise modified by Association Rule, the following leasing restrictions shall apply: no Owner shall be permitted to lease his/her Unit for transient, hotel, or seasonal purposes; all leases shall be for an initial term of no less than six (6) months; daily or weekly rentals are prohibited; no Owner may lease individual rooms to separate persons or less than his or her entire Unit; and all leases shall provide that the tenant is subject to and shall abide by this Declaration, the Bylaws and Rules and Regulations and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of this Declaration, the Bylaws and Rules and Regulations by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act

accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

**Section 13.14. Solar Energy Systems.** Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, Unit, or townhome buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the Design Committee as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The Design Committee or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

**Section 13.15. Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Association or other Owners of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

#### **ARTICLE XIV SPECIAL DECLARANT RIGHTS**

**Section 14.1. Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- (a) Any improvement shown on the Plat or included in the Project;
- (b) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

**Section 14.2. Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the

following rights, which shall remain in effect during the entire Period of Declarant Control, or for the maximum period allowed by law:

- (a) the right to maintain sales offices, model Units, and signs advertising the Project or any Unit at any location in the Project;
- (b) the right to use easements through the Common Areas as set forth in this Declaration;
- (c) the right to dedicate the roads and streets within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;
- (d) the right to convert any part of the Project to a different regime of residential ownership;
- (e) the right to create or designate additional Common Area or Limited Common Area within the Project;
- (f) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;
- (g) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (h) the right to set all assessments for the Association including annual, special, and individual assessments;
- (i) the right to set all fines and fees for the Association including but not limited to collection fees, architectural review fees, and fines for violations of Association Rules;
- (j) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;
- (k) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;
- (l) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and
- (m) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

**Section 14.3. Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

**Section 14.4. Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant' s prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

**Section 14.5. Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, 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 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 constructed or created by Declarant.

**Section 14.6. Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Weber County Recorder.

**Section 14.7. Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Unit prior to the contracting for the conveyance of the Lot to a purchaser.

**Section 14.8. Easements Reserved to Declarant.**

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

(d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

(e) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

(f) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

**Section 14.9. No Modification of Declarant Rights.** The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

**ARTICLE XV  
MISCELLANEOUS**

**Section 15.1. Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner. at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted to be given to the Design Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Design Committee.

**Section 15.2. Amendment.** Except as provided in Article XV, this Declaration may be amended by:

- (a) the affirmative vote of a two-thirds ( $\frac{2}{3}$ ) majority vote of the Owners, and
- (b) the written consent of Declarant, if such amendment is adopted the Period of Defendant Control.

**Section 15.3. Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all membership votes outstanding. The following additional provisions shall govern any application of this Section 15.3:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of votes outstanding shall however be effective in that regard and shall entitle the new Owner to give or withhold his consent.
- (d) Unless the consent of all Owners whose memberships are appurtenant to the same Unit are secured the consent of none of such Owners shall be effective.

**Section 15.4. Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

**Section 15.5. Interpretation.** 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 herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

**Section 15.6. 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 all inure to the benefit of Declarant, the Owners, all parties who hereafter acquire any interest in a Unit and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit or Dwelling shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by each and every provision of this Declaration.

**Section 15.7. Duration.** The covenants and restrictions of this Declaration shall remain in effect until twenty (20) years from the date this Declaration was first filed in the office of the County Recorder of Weber County, Utah, after which time they shall be automatically extended for successive periods often (10) years each unless terminated by an instrument filed in the office of the County Recorder to executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Units and their first mortgagees, if any voted in favor of such termination. If any of the privileges covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall in any event terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Donald J. Trump, the current President of the United States at the time this Declaration was recorded.

**Section 15.8. Enforcement.** In the event a Dwelling Owner or occupant fails to maintain a Dwelling or fails to cause such Dwelling to be maintained or fails to observe and perform all of the provisions of this Declaration; the applicable rules and regulations, or any other agreement, document, or instrument affecting the Property or administered by the Association, in the manner required, the Association, or the city of West Haven shall have the right" but not the affirmative obligation to proceed in a court of appropriate jurisdiction to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, and to charge to Dwelling Owner for the sums necessary to do whatever work is required to put the Dwelling Owner or the Dwelling in compliance.

**Section 15.9. Effective Date.** This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

**"DECLARANT"**

**STAG INVESTMENTS LLC**, a Utah limited liability company

By: \_\_\_\_\_  
Lowell Farr, Member

By: \_\_\_\_\_  
Tyler Farr, Member

By: \_\_\_\_\_  
Ray Holmes, Member

By: \_\_\_\_\_  
Jordan Holmes, Member



**ACKNOWLEDGEMENTS**

STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On the \_\_\_\_ day November, 2020, personally appeared before me Lowell Farr who being by me duly sworn did say that he is a Member of Stag Investments LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said limited liability company acknowledged to me that he executed the same.

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

STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On the \_\_\_\_ day November, 2020, personally appeared before me Tyler Farr who being by me duly sworn did say that he is a Member of Stag Investments LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said limited liability company acknowledged to me that he executed the same.

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

STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On the \_\_\_\_ day November, 2020, personally appeared before me Ray Holmes who being by me duly sworn did say that he is a Member of Stag Investments LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said limited liability company acknowledged to me that he executed the same.

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

STATE OF UTAH                                    )  
  : ss  
COUNTY OF WEBER                            )

On the \_\_\_\_ day November, 2020, personally appeared before me Jordan Holmes who being by me duly sworn did say that he is a Member of Stag Investments LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said limited liability company acknowledged to me that he executed the same.

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Notary Public

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PROPERTY

The following real property located in Weber County, State of Utah, to-wit:

A tract of land being located in the Southeast Quarter of Section 23, Township 6 North, Range 2 West, Salt Lake Base and Meridian, the boundary of which having a basis of bearing of South 89°25'22" East along the monumented section line between the South Quarter corner (having Weber County Surveyor coordinates of N=3609524.16 E= 1493236.70 U.S.ft.) and the Southeast corner (having Weber County Surveyor coordinates of N=3609497.52 E= 1495877.65 U.S.ft.) of said Section 23, being more particularly described as follows:

COMMENCING at a point located 1045.00 feet South 89°25'22" East along said section line, FROM said South Quarter corner of Section 23;

RUNNING thence North 00°34'38" East 33.00 feet, to the North right of way line of 1800 South Street;

Thence along the arc of a curve to the Left 26.34 feet, having a radius of 17.00 feet and a chord bearing and distance of North 46°11'40" East 23.78 feet;

Thence North 01°48'42" East 65.58 feet;

Thence along the arc of a curve to the Right 98.80 feet, having a radius of 1943.70 feet, and a chord bearing and distance of North 03°16'04" East 98.79 feet, to the point of reverse curve;

Thence along the arc of a curve to the Left 97.98 feet, having a radius of 1927.70 feet and a chord bearing and distance of North 03°16'04" East 97.97 feet;

Thence North 01°48'42" East 45.56 feet;

Thence North 88°11'18" West 143.36 feet, along an existing fence line, to the west boundary of a tract of land described in a Quit Claim Deed Entry No. 1208043 B1649 P2880 recorded January 8, 1993, said tract being evidence by an existing fence line;

Thence North 01°35'00" East 671.49 feet, along or near said existing fence line, to the northwest corner of said Entry No. 1208043, being a common corner with a Quit Claim Deed Entry No. 2245955 recorded March 2, 2007;

Thence North 01°49'54" East 288.00, along or near said existing fence line being the evidence of the west boundary of said Entry No. 2245955;

Thence North 02°19'54" East 13.52 feet;

Thence North 58°32'52" East 36.93 feet;

Thence along the arc of a non-tangent curve to the Left 71.93 feet having a radius of 177.00 feet and a chord bearing and distance of South 43°05'41" East 71.44 feet, to the point of a reverse curve;

Thence along the arc of a tangent curve to Right 54.61 feet, having a radius of 223.00 feet and a chord bearing and distance of South 47°43'16" East 54.48 feet;

Thence South 76°23'54" East 43.87 feet;

Thence South 00°48'42" West 5.14 feet;

Thence South 88°11'18" East 169.45 feet, to the west boundary of a tract of land described in a Warranty Deed Entry No. 1665256 B2036 P1350 recorded on September 30, 1999;

Thence South 01°48'42" West 1246.48 feet, along said west boundary of Entry No. 1665256 and the west boundary of Granite Acres Subdivision Phase 2 Amended as recorded in Plat Book 54

page 89 on October 18, 2001, to the Southwest corner of said subdivision being the monumented south section line of said Section 23;

Thence North 89°25'22"·West 210.31 feet, along said monumented section line, to the point of beginning.

Containing 8.6263 acres, more or less.

**SUBJECT TO** the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

**EXHIBIT "B"**

**RECORD OF SURVEY PLAT**

See attached.

## **EXHIBIT "C"**

### **COMMON AREAS**

The Common Areas within Wilson Cove Townhome Association shall include the open areas between the Dwellings as shown and described on the Plat.

### **LIMITED COMMON AREAS**

The Common Areas within Wilson Cove Townhome Association, shall include the area immediately to the rear of a Dwelling and immediately to the front of a Dwelling, as shown and described on the Plat.

# **EXHIBIT "D"**

## **BYLAWS**

### **BYLAWS**

#### **OF**

### **WILSON COVE TOWNHOME OWNERS ASSOCIATION (A UTAH NONPROFIT CORPORATION)**

#### **ARTICLE 1** **NAME AND LOCATION**

The name of the corporation is Wilson Cove Townhomes Owners Association (the "Association"). The principal office of the corporation is located in Weber County ("County"), Utah.

#### **ARTICLE 2** **DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article 2, for purposes of these Bylaws, shall have the meanings herein specified. Capitalized terms which are not otherwise defined have the meaning given such terms in the Declaration.

2.1 "Act" means the Utah Revised Nonprofit Corporations Act, UCA .

2.2 "Articles" means the Articles of Incorporation of the Association as filed with the Division, and as they may from time to time be amended.

2.3 "Association" means Wilson Cove Townhomes Owners Association, a Utah nonprofit corporation, including its successors and assigns.

2.4 "Board" or "Board of Directors" means the governing body of the Association, elected in accordance with the Bylaws and the Declaration.

2.5 "Bylaws" means these Bylaws, as amended from time to time.

2.6 "Code" means the Utah Code Annotated. Reference to a particular statute includes any amendment or successor of that statute.

2.7 "Common Elements" means all the real and personal property and Improvements (including easements) owned at any time by the Association for the common benefit, use and enjoyment of all of the Owners, if any, as further provided in the Declaration.

2.8 "Declarant" means Mike Schultz Construction of Utah, its successors and assigns to the extent provided in any written assignment of rights by Declarant and assumption of obligations by the assignee.

2.9 "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Coles Crossing, recorded with the Weber County, Utah Recorder, as amended, changed or modified from time to time.

2.10 "Fiscal Year" means the fiscal year of the Association.

2.11 "Governing Documents" means the Declaration, the Articles and the Bylaws, as they may be amended from time to time, and any exhibits thereto; and the Rules, each as established from time to time by the Board pursuant to the Declaration.

2.12 "Lot" means any numbered building lot shown on any official plat of all or any portion of the property included in the subdivision subject to the Declaration.

2.13 "Member" means a person entitled to membership in the Association.

2.14 "Member in Good Standing" means a Member whose voting rights have not been suspended in accordance with Section 14.2.

2.15 "Mortgage" means a mortgage, deed of trust or other security instrument encumbering a Lot.

2.16 "Mortgagee" means a beneficiary or holder of a mortgage, deed of trust or other security instrument encumbering a Lot.

2.17 "Owner" means the person or persons, including Declarant, holding a fee simple interest to a Lot, excluding those persons holding title as security for the performance of an obligation other than sellers under executory contracts of sale.

2.18 "Rules" means the rules and regulations adopted by the Board pursuant to the Declaration, as they may be amended from time to time.

### **ARTICLE 3** **MEMBERS**

#### 3.1 Qualifications.

(a) Each Owner of a Lot, by virtue of being such an Owner and for so long as he or she is such an Owner, shall be a Member of the Association.

(b) No person shall exercise the rights or privileges of membership in the Association until satisfactory proof of ownership has been furnished to the Board. Proof of ownership of a Lot may consist of a copy of a valid deed or a title insurance policy showing that person to be the Owner of a Lot, or such documentary or other proof as the Board, in its discretion, deems satisfactory.

3.2 Voting. The Association shall have one (1) class of voting membership as set forth in the Articles and in the Declaration.



**ARTICLE 4**  
**MEETINGS OF MEMBERS**

4.1 Annual Meetings. The annual meeting of Members shall be held annually on the second Thursday of February in each calendar year at a time and place specified by the Board. If an annual meeting date falls upon a legal holiday, then the annual meeting of Members shall be held at the same time and place on the next business day thereafter.

4.2 Regular Meetings. At each annual meeting, the Members shall, if required by the Act or elected by members, schedule a regular meeting of the Members to be held six months after the annual meeting as required by the Act or elected by the Members.

4.3 Special Meetings. Special meetings of Members for any purpose may be called by the President, a majority of the Board or a written request for a special meeting signed by Members representing at least 10% of the voting power of the Association.

4.4 Notices. Written notice of annual, regular and special meetings of the Association shall be given to the Members either personally or by sending a copy of the notice through the mail or by telecopy or email to such Member appearing on the books of the Association or supplied in writing by the Member to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given if mailed to the address of the Lot. Except as otherwise provided below, notices shall be given not less than ten (10) days and not more than sixty (60) days before each meeting. If notice is given by mail, the notice shall be mailed by first-class, registered or certified mail. Such notices shall specify the place, the date, and the hour of the annual, regular or special meeting and any other matter required by the Act, and include an agenda for the meeting that complies with the requirements of the Act.

If an assessment for a capital improvement is to be considered at a meeting or action is to be taken on an assessment for a capital improvement or a lawsuit requiring approval of the Members, notices shall be given not less than twenty-one (21) days before the meeting.

4.5 Quorum. The presence in person or by proxy in accordance with the Governing Documents of fifty percent (50%) of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, even though a quorum is not maintained throughout the meeting.

4.6 Adjourned Meetings and Notice Thereof. Any membership meeting, annual, regular or special, whether or not a quorum is present may be adjourned from time to time by the vote of a majority of the voting power present, but in the absence of a quorum no other business may be transacted at any such meeting.

Unless a meeting is adjourned for more than thirty (30) days, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken of the time and place of the adjourned meeting. When a membership meeting, either annual, regular or special, is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting. If a time and place for the adjourned meeting is not announced at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 4.4 hereof.

4.7 Record Date for Notice. Only those Members appearing in the official records of the Association on the date forty-five (45) days prior to the scheduled date of a membership meeting, as record Owners, shall be entitled to notice of that meeting.

4.8 Proxies. Every Member entitled to attend, vote at or exercise consents with respect to any meeting of the Members may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Secretary of the Association prior to the meeting to which it is applicable. A proxy may be revoked at any time by actual notice to the Board or by attendance in person by the Member giving the proxy at the meeting for which such proxy was given. A proxy is void if it is not dated or purports to be revocable without notice. In any event, no proxy shall be valid after the expiration of one (1) year from the date of the proxy, unless a shorter expiration is provided for in the proxy. Such powers of designation and revocation may be exercised by the guardian of a Member's estate or by his or her conservator, or in the case of a minor having no guardian, by the parent entitled to his or her custody, or during the administration of a Member's estate, by his or her executor or administrator where the latter's interest in such property is subject to administration in his or her estate.

4.9 Members in Good Standing. Notwithstanding any other provision contained in the Governing Documents, only those Members in Good Standing shall be entitled to vote, whether in person, by proxy or ballot.

4.10 Place of Meetings. Members' meetings shall be held within the State of Utah, at a meeting place reasonably convenient to the Owners taken as a whole.

4.11 Membership Approval. Except as otherwise provided, if there are any provisions in these Bylaws or the Declaration calling for membership approval of action to be taken by the Association then such approval shall be by the prescribed percentages of the voting power of the membership and, if none, then by a majority of the voting power of the Members.

4.12 Waiver of Notice. The transactions of any meeting of Members, either annual, regular or special, however called and noticed, shall be as valid as though transacted at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof.

4.13 Method of Voting and Actions without Meeting. Elections or questions (including advisory questions) to be submitted to all or any part of the membership of the Association may be decided at a meeting (by voice or by ballot), by mail or at polling places designated by the Board. Unless otherwise approved by the Board, all elections for Directors shall be by secret written ballot. The Board shall determine the method of voting by resolution and give notice thereof as provided in Section 4.4 of these Bylaws. Without limiting the foregoing, except as limited by Utah law (as now or hereafter in effect), any action that may be taken by the vote of Members at an annual, regular or special meeting, may be taken without a meeting. An action that may be taken at a regular or special meeting of Members (including the election of Directors, amendment of the Articles, adoption of a proposed plan of merger, consolidation or dissolution) or other questions that come before the Association, may be taken or considered without a meeting if the Association mails or delivers a written ballot to every Member entitled to vote on the matter.

In the case of a vote by mail, the Secretary of the Association will give written notice to all Members, which notice must: (a) set forth each proposed action or, if applicable, candidate; and (b) provide an opportunity to vote for or against each proposed action. The notice shall also include the following: (i) a proposed written resolution setting forth a description of the proposed action; (ii) a

statement of the number of responses needed to meet the requirement of a quorum and the percentage of approvals necessary to approve each matter other than election of directors; (iii) a statement of a date not less than 20 days after the date such notice will have been given by which all votes must be received; and (iv) the specified address of the office to which all votes must be sent. Votes received after that date will not be effective. Delivery of a vote in writing to the designated office will be equivalent to receipt of a vote by mail at such address for the purpose of this section. A written ballot may not be revoked.

Approval by written ballot under this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4.14 Vote Appurtenant to Lot. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Member may give a revocable proxy in the manner described above, or may assign his or her right to vote to a tenant actually occupying his or her Lot or the Member's Mortgagee for the term of the lease or Mortgage. Any sale, transfer or conveyance of a Lot to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a tenant or Mortgagee as provided herein.

## **ARTICLE 5** **BOARD OF DIRECTORS: ELECTION AND TERM OF OFFICE**

5.1 Number and Qualification of Directors. The affairs of the Association will be managed by a Board of three directors ("Directors"), all of whom shall be Members. Each Director must be familiar with the Governing Documents and the provisions of the Act.

5.2 Election of Directors; Term of Office of Directors After Declarant Control Period. At the first annual meeting of the membership, all Directors shall be elected by the Members to serve until the annual meeting of the Corporation. At the expiration of the initial term of office of each member of the Board of Directors, successor Directors shall be elected to serve for the following terms: one (1) for a one-year term, one (1) for a two-year term, and one (1) for a three-year term, and at each annual meeting thereafter a successor shall be elected for the term-then expiring. The Directors elected by the Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

5.3 Removal of Directors. Any Director may be removed, with or without cause, at any regular or special meeting of the Members by 55% of the votes of the Members entitled to vote for election of that Director. A successor to any Director removed may be elected at such meeting to fill the vacancy created by removal of the Director. A Director whose removal is proposed by the Members will be given notice of the proposed removal at least 10 days prior to the date of such meeting and will be given an opportunity to be heard at such meeting. Any director elected by the Members who has three consecutive unexcused absences from Board meetings or who is not a Member in Good Standing may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present.

5.4 Vacancies. Any vacancy occurring on the Board may be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. The term of the Director so elected will be coincident with the term of the replaced Director.

5.5 Compensation. No Director will receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties as a Director.

## ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS

6.1 Nomination. Nomination for election to the Board shall be made by the Board or by a nominating committee appointed by the Board. Nominations may also be made from the floor at the annual meeting of the Members. A nominating committee may be appointed by the Board prior to each annual meeting of the Members, to serve from the close of that meeting until the close of the next annual meeting, in which case the appointments shall be announced at each annual meeting. The Board or the nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may be made from among Members in accordance with the qualifications set forth in Section 5.1 above.

6.2 Election. Election to the Board shall be by secret ballot. At such elections, members (or their proxies) may cast, in respect to each vacancy, one vote. The person receiving the greatest number of votes for each vacancy shall be elected. Cumulative voting shall not be permitted.

## ARTICLE 7 MEETINGS OF DIRECTORS

7.1 Annual Organizational Meeting. An annual meeting of the Board for the purpose of organization, election of officers and the transaction of other business shall be held immediately following the adjournment of the annual meeting of the Members. Notice of such meeting is hereby dispensed with.

7.2 Regular Meetings and Notice Thereof. At each annual meeting of the Board, the Board shall adopt a schedule setting forth the time, date and place of other regular meetings of the Board to be held at least quarterly during the forthcoming year. Notice of the time, date and place of a regular meeting shall be given to the Members if and as required by the Act and also communicated to the Directors not less than five (5) days prior to such meeting; provided, however, that notice of a regular meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

7.3 Special Meetings and Notice Thereof. Special meetings of the Board may be called at any time by the President or, if he or she is unable or refuses to act, by the Vice-President or by any two (2) Directors. Written notice of the time and place of special meetings and the nature of any special business to be considered shall be sent to all Directors by first-class mail or electronic mail not less than four (4) days prior to the scheduled time of the meeting, or delivered personally or by telephone or telecopy not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice of a special meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. Notice of a special meeting shall also be given to the Members if required by the Act.

7.4. Quorum. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be the act of the Board; unless the law, the Articles, the Declaration or the Bylaws require a greater number.

7.5 Adjournment. A quorum of the Directors may adjourn any Directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of Directors present at the Directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

7.6 Entry of Notice. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such Director as required by law and these Bylaws.

7.7 Notice of Adjournment. Notice of any adjournment of any Directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were present at the time of the adjournment.

7.8 Meeting Place. All regular and special meetings of the Board shall be held within the State of Utah, in a location reasonably convenient to all Directors.

7.9 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though transacted at a meeting to be held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

7.10 Open Meetings. Regular and special meetings of the Board shall be open to all Members; provided, however, that Members who are not on the Board may not participate in any deliberations or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board or required by the Act, and, in any case, shall be subject to such reasonable limitations as the Board may impose.

7.11 Executive Sessions. The Board may, with the approval of a majority of a quorum of the Directors adjourn a meeting and reconvene in executive session to discuss and act upon matters described in Section 8.4, personnel matters, litigation in which the Association is or may become involved, orders of business of a similar nature and matters otherwise permitted by the Act to be discussed in executive session. The nature of any and all business to be considered in executive session shall first be announced in open session. Only Directors shall be entitled to attend Executive Sessions.

7.12 Action Without Meeting. The Board may take action without a meeting if all of the Directors consent in writing to the actions to be taken. If the Board resolves by unanimous written consent to take an action, an explanation of the action to be taken shall be given by the Board to the Members of the Association within three (3) days after all written consents have been obtained in the manner provided in Section 7.2 hereof for the giving of notice of regular meetings of the Board.

7.13 Telephonic Meetings. Unless otherwise restricted by the Articles or these Bylaws, Directors or Members of any committee designated by the Board, may participate in a meeting of the Board or committee by means of a conference telephone network or a similar communications method by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 7.13 constitutes presence in person at such meeting. Each person participating in the meeting shall sign the minutes thereof. The minutes may be signed in counterparts.

**ARTICLE 8**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

8.1 Powers. The Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association, which shall include the following powers and duties:

- (a) Adopt and amend the Bylaws and the Rules;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect Assessments for Common Expenses from Owners;
- (d) Hire and discharge Managers;
- (e) Hire and discharge employees, independent contractors and agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings in the Association's name, on behalf of the Association or two or more Owners on matters affecting the Common Elements;
- (g) Make contracts and incur liabilities so long as all contracts be for a period of time not more than two (2) years, or otherwise provide for the Association's right to terminate not less than every two (2) years;
- (h) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property;
- (k) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions through or over the Common Elements;
- (l) Impose and receive a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Elements;
- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and Regulations of the Association;
- (n) Impose a reasonable charge for the preparation and recording of amendments to the Declaration and statements of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and Board and maintain Directors' and officers' liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense assessments;

(q) Exercise any other powers conferred by the Act, Declaration or Bylaws;

(r) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association;

(s) Exercise any other power necessary and proper for the governance and operation of the Association;

(t) Direct the removal of vehicles (including, without limitation, boats and trailers) improperly parked, or otherwise in violation of the Declaration generally and Section 9.13 thereof particularly, on property owned or leased by the Association ; and

(u) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within 45 days of publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Board at its next regular meeting.

8.2 Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs, the records to include but not be limited to a membership register, books of account and minutes of meetings of the Members, and of the Board, and to present a statement thereof to the Members at the annual meeting of the Members, or at any regular or special meeting when such statement is requested in writing by one-fourth (1/4) of the Members in Good Standing who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot;

(2) send written notice of each assessment to every Owner subject thereto;  
and

(3) foreclose the lien against any Lot for which assessments are not paid or bring an action at law against the Owner personally obligated to pay the same.

(d) furnish or cause an appropriate officer or officers to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance;

(e) procure and maintain the liability and other insurance required by the Declaration with respect to property owned by the Association or otherwise subject to the Declaration;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Elements to be maintained as provided in the Declaration;

(h) at least thirty (30) days and not more than sixty (60) days prior to the commencement of each Fiscal Year of the Association, prepare and distribute to Members a budget and prior to the commencement of the Fiscal Year, the Board shall adopt a budget for the Association consisting of at least the following information:

(1) Estimated revenue and expenses on an accrual basis;

(2) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies; and

(3) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Elements and facilities for which the Association is responsible;

(i) cause a financial statement (including a balance sheet and income and expense statement) of the affairs of the Association to be made as of the last day of each Fiscal Year of the Association; and

(j) Make available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the Eligible Insurer, current copies of the Declaration, the Articles, these Bylaws, the Rules and all other books, records and financial statements of the Association. "Available" as used in the paragraph shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances.

### 8.3 Restrictions on Powers of Board.

(a) In addition to any restrictions contained in the Declaration, the Association shall be prohibited from taking any of the following actions without the vote or written assent of Members representing fifty-one percent (51%) or more of the voting power of the Members:

(1) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(2) Filling a vacancy on the Board created by the removal of a Director;

(3) Incurring aggregate expenditures payable by the Association for capital improvements to the Common Elements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(4) Selling any property of the Association; and

(5) Imposing an Assessment greater than the Assessment approved by the members at the immediately preceding annual meeting of the Association.



(b) The Association shall be prohibited from hypothecating any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred without the vote or written assent of two-thirds ( $\frac{2}{3}$ ) of the Members of the Association:

Notwithstanding the foregoing, for so long as there is any Lot for which this Association is obligated to provide management, maintenance, preservation or control, then, without the approval of one hundred percent (100%) of the Members, this Association or any person acting on its behalf shall not transfer all or substantially all of its assets or file a certificate of dissolution.

8.4 Hearing Procedure. The Board shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other occupant for violations of the Declaration or the Rules and Regulations unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (1) the alleged violation;
- (2) the action required to abate the violation; and
- (3) the time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(b) Notice. At any time within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its authorized representative shall serve the violator with written notice of a hearing to be held by the Board or an authorized committee thereof in executive session. The notice shall contain:

- (1) the nature of the alleged violation;
- (2) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;
- (3) an invitation to attend the hearing and produce any statement, evidence, and witness on his or her behalf; and
- (4) the proposed sanction to be imposed.

(c) Hearing. The hearing shall be held in executive session pursuant to this notice affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof that the required notice and invitation to be heard has been complied with shall be placed in the minutes of the meeting. Proof of notice shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(d) Appeal. If the hearing is before a committee of the Board, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Association within ten (10) days after receipt of notification of the decision.

8.5 General. Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and 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.

8.6 Reserves. As a part of the adoption of the regular budget pursuant to Section of the Declaration, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Element improvements.

## **ARTICLE 9** **OFFICERS AND THEIR DUTIES**

9.1 Enumeration of Offices. The officers of the Association shall be a President, together with a Vice President, Secretary, and Treasurer, such other officers as the Board may from time to time by resolution create, all of whom shall be Directors.

9.2 Election of Officers. The election of officers shall take place at the annual organizational meetings of the Board, which follows each annual meeting of the Members.

9.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

9.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

9.5 Removal and Resignation. Any officer may be removed either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

9.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 9.4 hereof.

9.8 Duties. The duties of the officers are as follows:

(a) President. The President shall be the chief executive officer of the Association, and, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. He or she shall preside at all meetings of all of the Members and at all meetings of the Board. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by these Bylaws. The President shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes of the Association (subject to Section 13.2 hereof). The President shall see that orders and resolutions of the Board are carried out.

(b) Vice-President. The Vice-President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall be responsible for recording the votes and keeping the minutes of all meetings and proceedings of the Board and of the Members; keeping the corporate seal of the Association and affixing it on all papers requiring the seal; serving notice of meetings of the Board and of the Members; keeping appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as may be required by the Board.

(d) Treasurer. The Treasurer shall be the chief financial officer of the Association and shall be responsible for the following duties: receiving and depositing in appropriate bank accounts all monies of the Association and disbursing such funds as directed by resolution of the Board; signing all checks and promissory notes of the Association (subject to Section 13.2 hereof); keeping proper books of account; causing an annual financial review of the Association books to be made by a certified public accountant at the completion of each fiscal year; and preparing the annual budget and a statement of income and expenditures required by these Bylaws.

## **ARTICLE 10** **BOOKS AND RECORDS**

10.1 Inspection. The original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, the membership register, books of account and minutes of meetings of the Members, the Board and of committees of the Board shall be kept at the office of the Association or at such other place within the Subdivision as the Board shall prescribe and shall be made available for inspection and copying by any Member of the Association, or by his or her duly-appointed representative, at any reasonable time and for a purpose reasonably related to his or her interest as a Member. The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents requested by a Member.

10.2 Inspection by Directors. Every Director shall have the absolute right at any reasonable 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, at his expense, to make extracts and copies of documents.

## ARTICLE 11 AMENDMENTS

Except as otherwise provided herein, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of fifty-one percent (51%) of the Members or by the written consent of such Members.

Notwithstanding the above or any other article of these Bylaws, the percentage of the voting power of the Association or of Members other than the Declarant necessary to amend a specific clause or provision of these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

## ARTICLE 13 MISCELLANEOUS

13.1 Fiscal Year. The Fiscal Year of the Association shall be as determined by the Board from time to time, and unless otherwise specified shall be the calendar year. The first Fiscal Year shall begin on the date of incorporation.

13.2 Checks, Draft, etc. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Association, shall require two signatures, one of which shall be that of the President or Vice-President and the other shall be that of the Treasurer, Secretary, or professional manager of the Association.

13.3 Contracts, Etc., How Executed. The Board, except as in the Bylaws otherwise provided, may authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; provided, however, that unless so authorized by the Board, no officer, agent or employee shall have engagement or to pledge the Association's credit or to render the Association liable for any purpose or to any amount.

13.4 Construction. Unless the context otherwise requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural includes the singular. The captions herein are for purposes of reference only.

## ARTICLE 14 MEMBERSHIP RIGHTS AND PRIVILEGES

14.1 Exclusive Board Rights. Except for certain rights of Declarant described in the Declaration, no Member shall have the right without the prior approval of the Board to exercise any of the powers or to perform any of the acts by these Bylaws delegated to the Board, as in Article 8 of these Bylaws more fully provided. Unless otherwise provided in the Declaration and subject to the rules and regulations adopted by the Board, each Member, his immediate family, guests and tenants shall have the right to use and enjoy the Common Elements.

14.2 Suspension of Member Rights. The membership rights and privileges, together with the voting rights of any Member may be suspended by the Board, in accordance with the procedures described in Section 8.4 hereof:

(a) Infractions. For a period not to exceed thirty (30) days for any infraction of the provisions of the Declaration or the Rules and Regulations.

(b) Failure to Pay Assessments. For any period of time during which the assessment on that Member's Lot remains unpaid, provided that neither the membership rights and privileges nor the voting rights of the Declarant may be suspended during the period in which the Declarant is not paying assessments, but is exercising its rights under the Declaration to control the Association or to improve, maintain, operate and repair the Common Elements.

(c) Limitation. Notwithstanding the foregoing, no such suspension shall affect the rights of that Member to access to his or her Lot.

14.3 Penalties. Reasonable monetary penalties may be adopted by the Association provided the adoption of such penalties is approved by the Board.

#### **ARTICLE 15** **REGISTERED AGENT**

The Association shall have a Registered Agent, who shall be chosen by the Board to hold office until his or her successor is chosen and qualifies. The registered agent may be either an individual or a corporation, located in the State of Utah. Corporate Servicing Solutions, having an office address of 2036 Lincoln Avenue, Suite 102B, Ogden, Utah 84401, is hereby appointed the initial Registered Agent for the Association.

#### **ARTICLE 16** **PRINCIPAL OFFICE**

The principal office for the transaction of the business of the Association shall be located in Weber County, Utah.

#### **ARTICLE 17** **INDEMNIFICATION OF DIRECTORS, OFFICERS,** **EMPLOYEES, AND OTHER AGENTS**

17.1 Definitions. For the purpose of this Article,

(a) "Agent" means any person who is or was a Director, Architectural Committee Member, officer, employee, or other agent of this Association, or is or was serving at the request of this Association as a Director, officer, employee, or Agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise;

(b) "Expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his position or relationship as Agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

(c) "Proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative, and

17.2 Successful Defense by Agent. To the extent that an Agent of this Association has been successful on the merits in the defense of any Proceeding referred to in this Article, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim. If an Agent either settles any such claim or sustains a judgment rendered against him, then the provisions of Sections 17.3 through 17.6 shall determine whether the Agent is entitled to indemnification.

17.3 Actions Brought by Persons Other than Association. Subject to the required findings to be made pursuant to Section 17.5 below, this Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any Proceeding (other than an action brought by, or on behalf of, this Association) by reason of the fact that such person is or was an Agent of this Association, for all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding.

17.4 Action Brought By or on Behalf of the Association.

(a) Claims settled out of court. If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of this Association, with or without approval, the Agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the Proceeding.

(b) Claims and suits awarded against Agent. This Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit brought by or on behalf of this Association by reason of the fact that the person is or was an Agent of this Association, for all expenses actually or reasonably incurred in connection with the defense of that action, provided that both of the following are met:

(i) The determination of good faith conduct required by Section 17.5, below, must be made in the manner provided for in that Section; and

(ii) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent should be entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

17.5 Determination of Agent's Good Faith Conduct. The indemnification granted to an Agent in Sections 17.3 and 17.4, above, is conditioned on the following:

(a) Required standard of conduct. The Agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he or she believed to be in the best interest of this Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he or she reasonably believed to be in the best interest of this Association or that he or she had reasonable cause to believe that his conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his conduct was unlawful.

(b) Manner of determination of good faith conduct. The determination that the Agent did act in a manner complying with subparagraph (a) above shall be made by:

(i) The Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or

(ii) If such a quorum of disinterested Directors so orders, by independent legal counsel in a written opinion; or

(iii) If such a quorum of disinterested Directors cannot be obtained, by independent legal counsel in a written opinion; or

(iv) The affirmative vote or written ballot of a majority of the votes of the Members represented and voting at a duly held meeting with the persons to be indemnified not being entitled to vote thereon; or

(v) The court in which the proceeding is or was pending. Such determination may be made on application brought by this Association or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney or other person is opposed by this Association.

17.6 Limitations. No indemnification or advance shall be made under this Article, except as provided in Sections 17.2 or 17.5(b)(v), in any circumstance when it appears:

(a) That the indemnification or advance would be inconsistent with a provision of the Articles, a resolution of the Members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

17.7 Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by this Association before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in this Article 17.

17.8 Contractual Rights of Non-Directors and Non-Officers. Nothing contained in this Article shall affect any right to indemnification to which persons other than Directors and officers of this Association, or any subsidiary hereof, may be entitled by contract or otherwise.

17.9 Insurance. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent of the Association against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, whether or not this Association would have the power to indemnify the Agent against the liability under the provisions of this Article.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the Secretary of WILSON COVE TOWNHOMES OWNERS ASSOCIATION, a Utah nonprofit corporation; and

THAT these Bylaws, comprising 21 pages (including this page), constitute the Bylaws of the Association, as duly adopted by written consent of the Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
SECRETARY



## EXHIBIT "E"

### MAINTENANCE ALLOCATION CHART

ITEM	HOA	OWNER	NOTES
GENERAL NOTE			Shared items are to be resolved between the Owners involved in use of the item.
A/C Pad & Unit		X	
Address Numbers	X		
Attic		X	
Cable/Satellite TV		X	
Ceiling		X	
Fireplace, Flue, & Vent Pipes - Cleaning & Repair		X	
Circuit Breakers for Unit		X	
Door and Door Frames - Exterior		X	
Door and Door frames - Interior		X	
Door Hardware		X	
Door steps/stoops/porch		X	
Doorbell		X	
Drains - Unit & Limited Common Patio/Porch		X	
Dryer Vent Cleaning		X	
Electrical Wiling/Panel		X	
Exterior Wall Finishes (Rock/Stucco/Siding, etc.)	X		
Fences the boarder the exterior of the Project	X		
Interior Fences (bordering Lots) - future replacement		X	
Interior Fences (bordering Lots) - repairs from wind/shifting		X	
Fence - repair damage caused by resident/guests		X	
Fireplace Component, including spark arrestor		X	
Floor Coverings		X	
Foundation - Structural		X	
Foundation - Cracks, cosmetic		X	
Front Landing/Porch		X	
Furnace		X	
Garage Door Openers, Springs, Hinges, Parts		X	
Garage Doors Paint, Repair, Replace		X	
Gas Pipes		X	
Gate Hardware & Locks		X	
Hose Bib/Faucet/Spigot		X	
Hot Water Heater		X	
Insurance Coverage -Property (attached buildings)	X		
Insurance Coverage - H06 Policy		X	
Insurance Coverage - Loss Assessment		X	

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

Sewer pipes that (a) serve more than one Lot, or (b) are located Outside of a Unit or within the Common Area	X		
Shutters		X	
Skylights		X	
Snow Removal - Driveways & Sidewalks on Lots or in Limited Common Areas		X	
Snow Removal - Private Roads and Sidewalks on the Common Area (per Plat)	X		
Storm Drains	X		*Private road areas only
Streetlights	X		
Streets - Private (excluding concrete approach to garage - Asphalt only)	X		
Termites, pests, rodents, insects, etc.			
Trash		X	
TV Reception		X	
Utility Doors		X	
Vent covers - Exterior		X	
Walkways to individual unit- not shared		X	
Wall - Bearing Interior Wall		X	
Wall - Partition Interior Wall		X	
Water - Culinary		X	
Water - Landscape	X		*Unless metered to the individual unit owner
Weatherstripping		X	
Window Boxes		X	
Window Frames		X	
Window Glass & Screens		X	