

After Recording Return To:

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AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
SILVER SPRINGS SINGLE FAMILY
(FORMERLY KNOWN AS SILVER SPRINGS
DEVELOPMENT SUBDIVISIONS)
A PLANNED UNIT DEVELOPMENT
IN
SUMMIT COUNTY, UTAH

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AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR

SILVER SPRINGS SINGLE FAMILY

**(FORMERLY KNOWN AS SILVER SPRINGS DEVELOPMENT
SUBDIVISIONS)**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SILVER SPRINGS SINGLE FAMILY (hereinafter the “Declaration”) is adopted by Silver Springs Single Family Home Owners Association (hereinafter the “Association”) and is effective as of the date it is recorded in the Summit County Recorder’s Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
- B. Certain real property in Summit County, Utah, known as Silver Springs Development Subdivisions was subjected to certain covenants, conditions and restrictions pursuant to the Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated July 6, 1979, was recorded on July 16, 1979, as Entry No.157620, in Book M137, at Page 104, in the public records of Summit County, Utah.
- C. A Supplementary Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated January 9, 1981, was recorded on January 9, 1981, as Entry No. 175088 in Book M176, at Page 793, in the public records of Summit County, Utah.
- D. A Supplementary Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, was recorded January 26, 1981, as Entry No. 175698 in Book M178, Page 274, in the public records of Summit County, Utah.
- E. A Supplementary Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated January 9, 1981, was recorded on February 26, 1981, as Entry No. 176773 in Book M180, at Page 705, in the public records of Summit County, Utah. This document was recorded twice and was also given the Entry No. 175698 in Book M178, at Page 274 – identical to the Entry No., Book and Page of the document above. However, despite having been recorded with the same Entry No, Book and Page, this document is not identical to the document listed above. This document references “Lots 65 through 171”, while the document listed above references “Lots 56 through 171.”

- F. An Amended Declaration to Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated April 15, 1982, was recorded on April 16, 1982, as Entry No. 190498 in Book M217, at Page 482, in the public records of Summit County, Utah.
- G. An Amendment to Amended Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated June 25, 1982, was recorded on July 6, 1982, as Entry No. 193368 in Book M225, at Page 194, in the public records of Summit County, Utah.
- H. A Supplementary Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Phase No. 1-E, dated September 1, 1982, was recorded on September 10, 1982, as Entry No. 195828 in Book M232, at Page 429, in the public records of Summit County, Utah.
- I. An Amended Declaration to Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, Summit County, Utah, dated October 14, 1985, was recorded on January 16, 1986, as Entry No. 244975 in Book 370, at Page 267, in the public records of Summit County, Utah.
- J. An Amendment to Amended Declaration of Covenants, Conditions and Restrictions for the Silver Springs Development and the Homeowners Association, dated May 6, 1989, was recorded on June 26, 1989 as Entry No. 309692 in Book 525, at Page 672, in the public records of Summit County, Utah.
- K. An Amendment to Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated February 17, 1991, was recorded on May 2, 1991, as an Entry No. 340160, in Book 606, at Page 314, in the public records of Summit County, Utah.
- L. An Amendment to Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, dated February 8, 1993, was recorded on May 23, 1994, as Entry No. 405079 in Book 00807, at Page 765, in the public records of Summit County, Utah.
- M. An Amendment to Declaration of Covenants, Conditions and Restrictions for Silver Springs Development Subdivisions, Summit County, Utah, dated November 10, 1994, was recorded on November 17, 1994, as Entry No. 00419440 in Book 00851, at Page 334, in the public records of Summit County, Utah.
- N. The Association hereby adopts this Declaration which (along with and subject to any future amendments) shall be the sole Declaration for the Project, excepting any master declaration. This Declaration supersedes and replaces in its entirety the Original Declaration and any other previously recorded or unrecorded declarations or amendments thereto of the Silver Springs Development Subdivisions, including, but not limited to, the declarations and amendments listed in recitals B through M.
- O. The Neighborhood was previously known as the Silver Springs Development Subdivision, but by recording of this Declaration shall be known as Silver Springs Single Family.

- P. The Association was previously known as the Silver Springs Homeowner’s Association, but by filing new or amended articles of incorporation it shall be organized as a nonprofit corporation named the Silver Springs Single Family Home Owners Association.
- Q. The Bylaws of the Association attached hereto supersede and replace any previous bylaws of the Association and any amendments thereto.
- R. The Association is the authorized representative of the Owners of certain real property known as the Silver Springs Single Family, located in Summit County, State of Utah and more particularly described on Exhibit A attached hereto and incorporated herein by this reference.
- S. This Declaration is adopted to define the rights of the Association and the Owners, to provide for a general plan for managing the Neighborhood, and in furtherance of the Association’s efforts to efficiently and economically provide a quality living environment and to enable the Association to protect and enhance the value of the Lots in the future.
- T. The Owners, through the Association, desire to establish the Terms and Conditions for the mutual benefit and burden of the Association and all current and future Owners, Occupants, Lenders, and others acquiring any property interest in the Neighborhood.

NOW, THEREFORE, for the reasons recited above and subject to the Terms and Conditions set forth below, the Association hereby amends and replaces the prior declarations and any amendments thereto with the following:

ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1. **“Act”** shall mean the version of the Community Association Act codified beginning at Section 57-8a-101, Utah Code Annotated, in effect at the time this Declaration is recorded.
- 1.2. **“Allocated Interest”** shall mean the equal interest of each Owner in the Common Expense liability, the equal interest for the purposes of voting in the Association, and equal interest for other purposes indicated in this Declaration or the Act.
- 1.3. **“Articles”** shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4. **“Assessments”** shall mean any monetary charge imposed on or assessed to an Owner by the Association as provided for in this Declaration.
- 1.5. **“Association”** shall refer to THE SILVER SPRINGS SINGLE FAMILY HOME OWNERS ASSOCIATION, the membership of which shall include each Owner in the Neighborhood. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.

- 1.6. **“Board of Trustees” or “Board”** shall mean the entity with primary authority to manage the affairs of the Association.
- 1.7. **“Board Member”** shall mean a duly-qualified and elected or appointed member of the Board of Trustees.
- 1.8. **“Bylaws”** shall mean the Bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded in the records of the Summit County Recorder.
- 1.9. **“Common Expenses”** shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of any fixtures, land, or infrastructure that the Association is responsible for pursuant to the Governing Documents; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) insurance and bonds required or allowed by this Declaration; (d) the establishment of reserves; (e) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (f) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.10. **“Declaration”** shall mean this Declaration, including all attached exhibits which are incorporated by reference, and any and all amendments to this Declaration.
- 1.11. **“Governing Documents”** shall refer to this Declaration, the Plats, the Bylaws, the Rules, any Articles, and any other documents or agreements binding upon all of the Owners.
- 1.12. **“Lender”** shall mean a holder of a mortgage or deed of trust on a Lot.
- 1.13. **“Lot”** shall mean and refer to any one of the parcels in the Neighborhood, and may be designated on the Plat as a “Lot” or “Parcel”. Except where the context specifically requires otherwise, reference to a Lot shall include reference to the Allocated Interest appurtenant to such Lot.
- 1.14. **“Manager”** shall mean any entity or Person engaged by the Board to manage or assist in managing the Neighborhood.
- 1.15. **“Neighborhood”** shall refer to the Property and all structures and improvements thereon including the Lots.
- 1.16. **“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living on a Lot in the Neighborhood, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Lot against trespass, fails to take action necessary and appropriate to remove trespassers, or previously lawful Occupants, immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Lot or of any unauthorized entry and use of the Lot (which shall include the duty to verify the physical condition and occupancy of the Lot at least monthly, if it is left unoccupied).
- 1.17. **“Owner”** shall mean the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the

records of the County Recorder of Summit County, State of Utah; however, Owner shall not include a trustee or beneficiary of a deed of trust.

- 1.18. **“Person”** shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.19. **“Plat”** shall mean the record of survey map, or maps, of the Neighborhood recorded in the records of the County Recorder of Summit County, State of Utah and all amendments and supplements thereto.
- 1.20. **“Property”** shall mean the property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.21. **“Rules”** shall mean and refer to any rules and regulations adopted by the Association.
- 1.22. **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.23. **“Underdrain System”** shall mean the ground water drain system and associated access manholes residing within and under platted private property drainage, utility, and roadway easements within the Neighborhood.

ARTICLE 2 THE NEIGHBORHOOD

- 2.1. **Binding Effect of Governing Documents.** The Association hereby confirms that the Property is part of the Neighborhood and declares and agrees that the Neighborhood and all of the Lots in the Property shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants running with the land and shall be binding upon, and inure to the benefit of, the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Lot such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2. **Nature of the Neighborhood.** The Neighborhood is a single-family home community that contains 188 Lots dedicated to single-family homes except for Lots that may be dedicated to another use, such as a trailhead. The Neighborhood is not a cooperative and is not a condominium.
- 2.3. **Neighborhood Name.** The Neighborhood is named “Silver Springs Single Family” and is located entirely in Summit County, State of Utah. The name used by the Association for the Neighborhood may be changed through amendments to this Declaration or the Plat. The name of the Neighborhood is separate and distinct from the name of the Association.
- 2.4. **Identification of Lots.** All of the Lots are referenced specifically and identified by location on the Plat.

- 2.5. **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association with the Utah Division of Corporations. At the time of the recording of this Declaration, the registered agent is: *[to be inserted prior to recording]*. The Board may change the registered agent or address without Owner consent by making the appropriate filing with the Utah Division of Corporations.

**ARTICLE 3
DESCRIPTION OF LOTS, ALLOCATED INTERESTS, & PLAT**

- 3.1. **Common Land.** The Association owns no land and there is no “common area” land or “limited common area” land.
- 3.2. **The Lots.**
- (a) The distinct Lot number that identifies the Lot on the Plat, may or may not be consistent with the mailing address of the Lot.
 - (b) Subject to further specification herein, each Lot generally consists of any and all improvements on or within the boundary of the Lot and all structures and related equipment or installation on or within the boundary of the Lot.
- 3.3. **Allocated Interest of Each Lot in the Votes of the Association.** The allocated interest of each Lot shall be equal to every other Lot. The Owners of each Lot shall be entitled to vote the Allocated Interest of their Lot for all matters related to the Association that Owners are permitted or required to vote or approve. Any difference in square footage, location, size, value, development status, or other aspect of any Lot shall not be a reason to alter or change any Allocated Interest. Any Owner of multiple Lots shall have one allocated interest per Lot.
- (a) At the time of the recording of this Declaration, (1) Lots 116, 117, and 124 have been physically combined into one parcel, but not into one Lot and, accordingly, the Owner of such combined Lot shall have three Allocated Interests, and (2) Lots 133 and 134 have been physically combined into one parcel, but not combined into one Lot, and the Owner of such combined Lots shall, accordingly, have two Allocated Interests. If such combined Lots are ever separated, the Owner of each separated Lot shall have one Allocated Interest.
 - (b) Lot 104 has been deeded to the Snyderville Basin Special Recreation District (“Basin Recreation”) for use as a trailhead. For so long as Lot 104 is owned by Basin Recreation or a successor municipal entity, used predominantly as a trailhead, and no single family residence is constructed on this Lot, then the Owner of such Lot shall not be entitled to vote its Allocated Interest and shall not be assessed any assessments.
- 3.4. **The Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein, are hereby incorporated into and made a part of this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

**ARTICLE 4
MAINTENANCE & UTILITIES**

4.1 Owner Responsibility for Maintenance of Lots.

- (a) Each Owner shall furnish and be responsible for, at the Owner's expense, all of the maintenance, repair, and replacement of the Owner's Lot, including, but not limited to, all of the structures, fixtures, and any and all improvements thereon. This maintenance obligation includes, but is not limited to, homes, out buildings, landscaping, driveways, and fences.
- (b) The Owner shall maintain the Lots in such a manner to preserve and protect the attractive appearance, good condition, and value of the Lots in the Neighborhood.
- (c) The Owner is responsible for the removal of snow from the driveways and any walkways within or appurtenant to the Owner's Lot.
- (d) All Lots and improvements to such Lots shall be kept and maintained by the Owner thereof in clean, safe and attractive condition and in good repair.
- (e) The Board may set forth any reasonable limits, restrictions, or guidelines on maintenance of Lots in the Rules.

4.2 Association Responsibility for Maintenance of Underdrain System. The Association shall be responsible for the maintenance, repair and replacement of the Underdrain System.

- (a) **Standard of Maintenance.** The Board may determine, in its sole discretion, the appropriate maintenance standard for the Underdrain System, so long as it is maintained in the best interest of the Owners and in such a manner to accomplish the functions for which it is intended.
- (b) If the Board determines that the need for maintenance or repair of the Underdrain System is caused by an Owner or an Occupant, the Association shall have the authority to assess to the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.
- (c) The Association shall have an easement across all Lots for the installation, access to, maintenance, and repair of the Underdrain System regardless of whether such easement is described on the Plat or in other Governing Documents of the Association.

4.3 Default in Maintenance. If an Owner or Occupant fails to: (1) maintain a Lot as required in the Governing Documents or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to comply with the requirements of the Governing Documents, then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner specifying the nature of the default, and the corrective action that the Board determines to be required and requesting that the same be carried out within a time period of not less than fourteen (14) days. If the remedy is not completed as specified by the notice, then the Association may take any action allowed

for a default of the Governing Documents. In addition, the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.

- 4.4 **Utilities.** All utilities (including power, water, sewer, gas, internet, and telephone) for individual Lots will be metered separately to each Lot and such utility charges shall be the responsibility of the Lot Owners.

ARTICLE 5

ARCHITECTURAL CONTROL

- 5.1 **Architectural Review Committee.** An Architectural Review Committee (ARC) may be created by the Board. At least one (1) ARC member must be a Board member. Such Committee may include more members at the discretion of the Board. The ARC shall be a Sub-Committee as defined in the Bylaws and shall act in accordance with the requirements of the Bylaws. Members of the ARC shall serve for a term of one (1) year but may be appointed for consecutive terms. If no ARC is created or if it should not perform any duties for any reason, the Board shall act as the ARC and shall have all powers and duties otherwise given to the ARC in the Governing Documents.

- (a) **Purpose.** The ARC shall regulate the external design, appearance, and location of any structure, fixture, or landscaping on any Lot so as to ensure compliance with the Governing Documents. The ARC may designate a standard design, style, model, and manufacturer for any exterior improvement or alteration, such as fences, driveways, trees, siding, and roofing. Such designations shall be for the purpose of achieving uniformity of appearance with existing structures and landscaping on the Lot and on the neighboring Lots, and preservation of property values.
- (b) **Right of Entry.** The Board of Trustees, the ARC, and their agents shall have the right to enter on any Lot for the purposes of assessing compliance with this Section with reasonable advance notice to the Owners.
- (c) **Professional Assistance.** With the prior approval of the Board, the ARC may hire an architect, engineer or other professional to assist it in its work. The Association may assess to an Owner any costs the Association incurs related to the review and approval of any requested modification to a Lot, but in no instance shall the fee exceed the actual costs incurred by the Association. The ARC shall give reasonable notice to an Owner, which may be specified in the Rules, prior to seeking professional assistance that might be charged to an Owner.
- (d) **Authority.** The ARC may deny requests for modifications or approvals if: (1) the requested modification does not comply with the requirements of the Governing Documents in the discretion of the ARC; or (2) the Owner requesting the modification does not comply with the requirements for obtaining approval such as by failing to provide sufficient information or information requested by the ARC related to the request.

5.2

Architectural Guidelines. The following architectural guidelines shall apply, in addition to architectural rules and guidelines that may be adopted by the Board in the Rules:

- (a) Neither the ARC nor the Board shall approve a proposed improvement unless the design, contour, materials, shapes, colors and general character of the improvement achieve uniformity of appearance with existing structures and landscaping on the Lot and on the neighboring Lots, and preserve property values.
- (b) Improvements shall be designed and located upon the Lot so as to minimize the disruption to the existing natural forms and vegetation cover.
- (c) Exterior construction materials shall be limited to stone, stone veneer, wood siding, stucco, or simulated wood siding, and shall be in earth tones indigenous to the area. Metal siding is permitted in earth tones so long as it makes up less than twenty percent (20%) of the exterior of the building. Metal roofing is permitted so long as the metal roof is a non-reflective earth tone.
- (d) No reflective finish, other than glass and surfaces of hardware fixtures, shall be used on exterior surfaces including, without limitation, the exterior surfaces of any of the following: retaining walls, doors, trim, fences, pipes, equipment, and mailboxes.
- (e) Roofs shall be limited to a minimum of 4/12 pitch. Roofs shall be constructed so that no reflective surfaces, other than roof valleys or flashing, are visible by other Owners.
- (f) Any light used to illuminate garages, patios, parking areas, or for any other purpose shall be so arranged as to reflect light down and away from adjacent residences and away from the vision of passing motorists.
- (g) Fences or walls shall be of natural materials to complement or match the exterior color of the house only and may not be painted, although they may be stained.
- (h) Unless otherwise approved by the ARC: (1) Exterior demolition and subsequent construction of all structures shall be completed within one (1) year following commencement of construction, (2) any exterior additions or alterations to existing dwellings shall be completed within a period of one (1) year following commencement of construction, and (3) the front, rear and side yard of each Lot shall be landscaped within a period of one (1) year following completion of a dwelling, as measured by the earlier of the time a certificate of occupancy is issued or the dwelling is substantially complete.

5.3

Approvals for Modifications. Prior to commencing any modification to a Lot (excluding interior modifications to single family homes that do not in any way alter the exterior of the home or otherwise violate the Governing Documents), Owners shall submit a request to the Association for approval and shall obtain written approval of the modification. Such requests shall be made in accordance with this Section and any procedures consistent therewith adopted by the Board.

- (a) An Owner must submit sufficient plans, drawings, samples, and other information to adequately describe the proposed modification. The ARC may require the owner to submit additional information related to a request as it determines in its

sole discretion is necessary to adequately review the proposed modification. Unless otherwise modified in the Rules, an Owner shall submit the following:

- (1) One complete sets of proposed architectural plans and specifications;
 - (2) A site plan showing the location of all proposed and existing structures and improvements on the Lot;
 - (3) Exterior elevations for the proposed structures showing locations of windows, doors, roof pitches, decks, and other exterior elements;
 - (4) Specifications of materials, color scheme, and other details affecting the exterior appearance of the proposed structures or improvements;
 - (5) Samples and/or a color board of key materials including but not limited to roofing, stone, stone veneer, windows, fencing, siding, flashing, window trim, and paint.
 - (6) A landscape plan or detailed description of the plans and provisions for landscaping and grading.
- (b) **Prohibitions.** Without prior written permission of the Board and regardless of whether any response from the Association is timely received or not related to a request for remodeling approval, none of the following shall occur at any time: (1) any use of the any roadways for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the roadways by vehicles, materials, or persons, (4) any failure of the Owner or any contractor, subcontractor or other agent of the Owner to keep a construction site in a neat, tidy and safe condition.
- (c) **Failure of ARC to Act.** If the ARC shall fail to respond within sixty (60) days to any written request submitted to it, such request shall be deemed to have been approved as submitted (subject to subparagraph (b) above), and no further action shall be required.

ARTICLE 6

ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 6.1 **Organization of Association.** The Association may serve as the organizational body for all Owners.
- 6.2 **Modifying or Changing the Name of the Neighborhood.** The name of the Neighborhood may be modified or changed pursuant to a lawful amendment to this Declaration.
- 6.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason, as required or permitted by law in any reorganization or reinstatement of the entity, the Association

shall, to the extent possible and subject to any legal requirements, adopt documents with terms substantially similar to the documents related to those of the expired or dissolved entity.

- 6.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest, and by the same type of tenancy, in which title to the Lot is held.
- 6.5 **Availability of Documents.** The Association shall make available to the Owners current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term “available” as used in this section shall mean available for inspection and copying within thirty (30) days, or such other legally required timeline, if requested by an Owner, after receiving a proper request, during normal business hours. The Association shall have the right to refuse to disclose information that the Board determines, in good faith, would reveal sensitive personal or financial information of another Owner, or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.
- 6.6 **Board of Trustees.** The governing body of the Association shall be the Board elected or appointed pursuant to the Bylaws. The Board shall consist of not more than seven (7) and not less than five (5) members. Except as otherwise provided in this Declaration or the Articles of Incorporation, the Board shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in the Declaration, Articles of Incorporation, or by applicable law, no Owner, or group of Owners, other than the Board may direct the actions of the Association.
- 6.7 **Board Members.**
- (a) **Qualification.** The Bylaws shall set forth the qualifications for serving as a Member of the Board.
 - (b) **Reasonable Ongoing Requirements for Board Members.** The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board.
- 6.8 **Limitation on Authority of Owners, Board Members, Officers, & the Board.**
- (a) Except as provided herein, or in the Bylaws, the Board, any individual Owner, and any individual Board Member or Officer shall have no authority to, and may not act or purport to act on behalf of the Association or the Board to:
 - (1) Amend or terminate any Governing Document;

- (2) Elect or remove members of the Board;
- (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board Members, or of the Board;
- (4) Authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Declaration; and
- (5) Enter into any service or supply contract (including, but not limited to, bulk services agreements such as cable, internet, or television, cellular site agreements, management agreements, and maintenance contracts) on behalf of the Association for a term of more than ten (10) years without the affirmative vote of Owners holding fifty percent (50%) of the Allocated Interests at a meeting called for that purpose.

6.9 **No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents.** No one may rely upon any authorization (from the Board or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given; and no claim or defense of estoppel, waiver or similar equitable or legal claim or defense, may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Lot in, the Association to verify that anything the Association does, does not do, or authorizes related to the Neighborhood, or the Association, is in compliance with the terms of the Governing Documents.

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

ARTICLE 7

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

7.1 **Rights and Responsibilities of the Association.** The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided for by law:

- (a) **Maintenance.** The Association shall operate, maintain, repair, and replace the Underdrain System.
- (b) **Paying Expenses.** The Association shall provide for the payment of Association expenses.
- (c) **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments, including Special Assessments, as necessary to operate the Association and fulfill its obligations consistent with the requirements of the Governing Documents.
- (d) **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Neighborhood in accordance with the Governing Documents and the Act. The Rules shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other

Governing Document. The Rules may supplement, clarify and add detail to issues addressed in the Governing Documents so long as they do not contradict the same. The Board of Trustees' determination as to whether a particular activity being conducted, or to be conducted, violates, or will violate, the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

- (e) **Hiring Managers and Delegating Responsibilities.** The Association may hire a Manager to assist the Board in the management and operation of the Neighborhood and Association and may delegate its powers and obligations in the Governing Documents to the Manager, employees or other agents as it deems appropriate; provided, however, that only the Board shall have the right to: (1) approve Association budgets, (2) authorize a fine to an Owner, and (3) authorize general and special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. Any management agreement must be terminable without penalty and, with or without cause, upon thirty (30) days' notice. **THE BOARD HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS.**
- (f) **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents including the right to retain professional services, including, without limitation, attorneys, accountants, and bookkeepers to assist in any Board function.
- (g) **Capital Improvements.** Capital Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
 - (1) Any capital improvement or change to the Neighborhood that does not materially alter the nature of the Neighborhood may be authorized by the Board, in its sole discretion. A material alteration to the Neighborhood is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a roadway, swimming pool, tennis court, playground equipment, or parking area. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
 - (2) Any capital improvement which would materially alter the nature of the Neighborhood must, regardless of its cost and prior to being constructed or accomplished, be authorized by written consent of Owners holding a majority of the Allocated Interests and must be approved by a simple majority of the Board.
- (h) **Enforcement Rights.** In addition to any other remedies allowed, or provided for in the Governing Documents, for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants, if

Owners fail to pay Assessments; and (3) take any other action, or seek any other remedy, allowed by the Act or other applicable Utah law.

- (i) Discretion in Enforcement.
 - (1) Subject to the discretion afforded in this section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
 - (2) The Board shall use its reasonable judgment to determine whether to exercise the Association's power to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis:
 - (i) Whether to compromise a claim made by or against the Board or the Association; and
 - (ii) Whether to pursue a claim for an unpaid Assessment.
 - (3) The Association may not be required to take enforcement action if the Board determines after fair review, acting in good faith and without conflict of interest, that under the particular circumstances:
 - (i) The Association's legal position does not justify taking any or further enforcement action;
 - (ii) The covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law;
 - (iii) That (A) a technical violation has or may have occurred; and (B) the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or
 - (iv) It is not in the Association's best interest to pursue an enforcement action based upon hardship, expense, or other reasonable criteria.
 - (4) Subject to Subsection (5), if the Board decides under Subsection (2)(ii) to forego enforcement, the Association is not prevented from later taking enforcement action.
 - (5) The Board shall not be arbitrary, capricious, or act against public policy in taking, or not taking, enforcement action.
- (j) Disclosing Conflicts of Interest and Relationships with Service Providers and Vendors. Only upon full disclosure of any of the following relationships and the affirmative vote of the non-conflicted Board members (excluding the vote of any Board Member involved in any disclosed relationship), the Association may permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; (2) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a one percent (1%) ownership or beneficial interest; or (3) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer,

employee, or owner of the Manager, or any relative of the same. The disclosure restrictions above related to the Manager, and relatives of the Manager, shall not apply to the management company as it relates to providing management services or other directly “contracted for” services by the Manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.

- (k) **Hearing Procedures.** In the event the Association has cause to take an adverse action related to any particular Owner or group of Owners which requires a hearing or hearing procedure either by law or in the Governing Documents, unless the law requires a different hearing or procedure, the following procedure shall apply: (1) the Owner may request a hearing within thirty (30) days of notice of the adverse action; (2) the hearing shall be conducted within thirty (30) days of the date the request is submitted; (3) the Owner shall be allowed a reasonable time, under the circumstances, to present any evidence or presentation regarding the adverse action; (4) the Board may establish, and shall state any further, reasonable rules for the hearing in the notice of hearing designating the time for the hearing; and (5) the Board shall render a decision no later than thirty (30) days from the date of the hearing.
- (l) **Annual Meeting.** The Association shall arrange for, and conduct, an annual meeting at least once a year as provided for in the Bylaws and shall arrange for, and conduct, such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- (m) **Payoff Information Fees.** The Association is specifically authorized to establish a fee of \$50.00 to provide payoff information related to the transfer, refinance or closing of a Lot. The Board may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.

ARTICLE 8

BUDGETS & ASSESSMENTS

- 8.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of: (a) promoting the health, safety and welfare of the Owners; (b) the management, maintenance, care, preservation, operation, and protection of the Neighborhood; (c) enhancing the quality of life of the Owners in the Neighborhood; (d) enhancing and preserving the value of the Lots in the Neighborhood; and (e) in the furtherance of carrying out, or satisfying, any other rights, duties, or powers of the Association.
- 8.2 **Budget and Regular Assessments.**
 - (a) The Board shall adopt a budget for the fiscal year sometime prior to thirty (30) days after the beginning of each fiscal year. The Board may revise that budget as it deems appropriate.
 - (b) The budget shall estimate the total Common Expenses to be incurred, which shall be broken down into reasonably detailed expense categories. The budget may

include savings for reserves and contingencies as the Board deems appropriate and as required by law.

- (c) The Board shall present the adopted budget to all Owners at a meeting of the Owners within a reasonable time after the adoption of a proposed budget or any revised budget.
- (d) Owners may disapprove a proposed budget pursuant to the provisions of § 57-8a-215 of the Act.
- (e) The Board shall determine the amount of a regular Assessment to be paid by the Owners of each Lot by dividing the total budget amount by the number of Lots having a voting Allocated Interest.

8.3 **Payment of Regular Assessments.** Unless otherwise established by the Board, each Owner shall pay to the Association the Owner's regular Assessment as an annual payment due no later than thirty (30) days following the date of assessment.

8.4 **Adjustments to Regular Assessments.** In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, each Owner shall, thereafter, pay the adjusted regular annual Assessment to the Association.

8.5 **Personal Obligation for Assessment.** Each Owner of any Lot, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument, hereby personally covenants and agrees with each other Owner, and with the Association, to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner, unless otherwise prohibited by law. Each such Assessment, together with such interest, collection charges, costs, and attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment becomes due.

8.6 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner as determined by the Board.

8.7 **Allocation of Assessment.** Except as otherwise provided herein, all Assessments (other than Special Assessments to individual Lots) shall be allocated to all Owners based on the Allocated Interest of each Lot. The Owner of any combined Lot shall pay one Allocated Interest for each Lot that has been combined. So long as Lot 104 is still being maintained as a trailhead as described in Section 3.4, the Owner of such Lot shall not pay any Assessments.

8.8 **Rules Regarding Billing and Collection Procedures.** The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration, and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing

interest (simple or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner, or an error in any such statement (other than a Certificate of Payment), shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

- 8.9 **Certificate of Payment/HOA Payoff Statement.** The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments, or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Lot have been paid and the amount of delinquency, if any. A reasonable charge of fifty dollars (\$50.00) or such other amount allowed by law, and provided for in the Rules, may be collected by the Board for the issuance of each such certificate. Each certificate/HOA Payoff Statement is conclusive in favor of a Person who relies on the written statement in good faith.
- 8.10 **Special Assessments.** The Association is expressly authorized to set and collect Special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses or Capital Improvements. Notwithstanding the wording or terms of any notice of Special Assessment, a Special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 8.11 **Special Assessments to Individual Lots.** Special Assessments may be levied by the Association against a particular Lot and its Owner for:
- (a) Any other charge designated as pertaining to an individual Lot in the Governing Documents;
 - (b) Fines, late fees, collection charges, and interest; and
 - (c) Attorneys' fees, costs and other expenses relating to any of the above.
- 8.12 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Lot in the Common Expenses of the Neighborhood.
- 8.13 **No Offsets.** All Assessments shall be payable at the time, and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and powers, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 8.14 **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest (or oldest) charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

- 8.15 **Loans.** Upon approval of Owners holding sixty-six percent (66%) of the Allocated Interests by vote at a meeting called for that purpose, the Association may borrow money and may provide such security as necessary for the loan, including, but not limited to, securitizing, pledging or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Lot shall be security for any loan to the Association without consent of the Owner.

ARTICLE 9

NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 9.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 9.
- 9.2 **Collection Charges and Interest.** If the Association does not otherwise adopt or establish billing and collection procedures, including the amount of late fees and interest, in the Rules, the following shall apply: (a) late fees shall be twenty-five dollars (\$25.00) for each month that an Owner's account has an unpaid balance after the due date; (b) in addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorneys' fees, interest (resulting in compounding of interest), late fees, and Assessments, at two percent (2%) per month; and (c) the Association may also assess to the Owner any other reasonable charges imposed on the Association by a Manager, related to collections, as the Board may establish in the Rules.
- 9.3 **Joint and Several Liability of Owners and Future Owners for All Past and Presently Accruing Unpaid Assessments.** The Owner and any future Owners of a Lot are jointly and severally liable for all Assessments accruing related to that Lot prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Lot to another Owner. The recording of a deed to someone, something, or any entity that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title. The obligation in this Section 9.3 is separate and distinct from any lien rights associated with the Lot.
- 9.4 **Lien.** The Association has a lien on each Lot for all Assessments, which include, but are not limited to, interest, collection charges, late fees, fines, attorneys' fees, court costs, and other costs of collection (which shall include all costs, and not be limited by those costs, that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of the initial Declaration for this Neighborhood and shall have priority over all encumbrances recorded after that date, except as otherwise required by law. If an Assessment is payable in installments, the lien shall be increased by each installment payment as the installment payment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Lot except only: (a) a lien or encumbrance recorded before this Declaration is recorded; (b) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (c) a lien for real estate

taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.

- 9.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Lot, and reasonable attorneys' fees and court costs will, thereafter, be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 9.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lots in trust, with power of sale, to Quinn A. Sperry, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Board may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 9.7 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any Homestead or exemption laws of the state of Utah now in effect, or in effect from time-to-time, hereafter.
- 9.8 **Requiring Tenant to Pay Rent to Association.** Pursuant to, and as provided for in, the Act, the Association shall have the right to demand and collect rent from any tenant in a Lot for which an Assessment is more than sixty (60) days late. Each Occupant, by moving into the Neighborhood, agrees to be personally liable and responsible to the Association for all rent payments after the Association gives proper notice that rent payments shall be paid to the Association.
- 9.9 **Attorneys' Fees Incurred as a Result of a Default.** In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorneys' fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to attorneys' fees incurred to: (a) obtain advice about a default; (b) collect unpaid payments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) examine the debtor or others through a formal or informal deposition, at a meeting conducted under 11 U.S.C. § 341, an examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure; (e) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (f) monitor any bankruptcy proceeding, including, but not limited to, reviewing an Owner's bankruptcy statements and schedules filed with the court, reviewing other pleadings and claims filed in an Owner's bankruptcy case, and regular monitoring of an Owner's progress of complying with a confirmed Chapter 13 or Chapter 11 plan for the duration of the plan; (g) litigate, seek and respond to discovery, introduce evidence, hire and pay

expert witnesses, file motions and other pleadings, attend trials, hearings, or other court proceedings as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the Owner's bankruptcy estate or co-debtors, to challenge exemptions, to challenge treatment under a proposed plan, to pursue any appropriate adversary proceeding for any other reason related to the ultimate attempt to collect unpaid Assessments; and (h) all fees and costs incurred in any foreclosure of a lien, securing lien rights, or providing for any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

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

ARTICLE 10

PROPERTY RIGHTS IN LOTS

- 10.1 **General Easements to Lots.** The Association shall have nonexclusive easements with the right of access to each Lot to make inspections, to accomplish any action allowed in this Declaration on the Lot, to prevent or mitigate damage to the Underdrain System, and to maintain, repair, replace or effectuate its restoration and those portions of any Lot that the Association is responsible for maintaining (if any) which are accessible from such Lot. Such rights shall be exercised only after the notice required in this Declaration. Notwithstanding anything to the contrary herein, the Association shall have a right to grant limited or exclusive permits or licenses upon, across, over, under, and through the easement area for the Underdrain System and to assign or otherwise alter maintenance obligations of the Underdrain System consistent with those rights.
- 10.2 **Public Utilities.** The Association has the power to grant and convey easements for the installation and maintenance of any public, quasi-public, or private utilities or facilities as may be helpful to serve the neighborhood. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner, and those claiming by, through or under an Owner, agrees to execute promptly all such documents and instruments, and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Lot.

10.3 **Material Alteration of Lot.** Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Lot shall be permitted without the written consent of the owners of the Lots to be changed.

10.4 **Views.** Views from a Lot and the Neighborhood are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Neighborhood, and each Owner and Occupant in such Owner's Lot acknowledges and agrees that there are no view easements or view rights appurtenant to the Lot or the Neighborhood.

ARTICLE 11

USE LIMITATIONS AND CONDITIONS

11.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Neighborhood is maintained and used in a manner consistent with the interest of the Owners. Pursuant to Utah Code § 57-8a-218(15), the requirements of Utah Code § 57-8a-218 are hereby modified and do not apply to the Association.

11.2 **Signs.** The Board may adopt Rules restricting signs in the Neighborhood, to the extent permitted by law. "Signs" shall include any type of object (including, but not limited to, flags, billboards, banners, plaques, A-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on or outside of a Lot with the apparent purpose, in whole or in part, of making it visible to people outside of the Lot. Unless and until the Board adopts Rules relating to signs, the following shall apply:

- (a) No signs will be permitted on any Lot, or within the Neighborhood, except for traffic control signs placed by the County, temporary signs warning of some immediate danger, or signs not in excess of six square feet identifying the contractor and/or architect of any dwelling unit while it is under construction. Signs indicating the Lot is for sale may be placed in accordance with County sign regulations, and no such sign may exceed three square feet. No permanent signs stating the address or the name of the Owner of the Lot may be installed without the advanced consent of the Board.

11.3 **Holiday Decorations.** The Board may adopt Rules related to holiday decorations.

11.4 **Nuisance.** No noxious or offensive activity shall be carried on within the Neighborhood, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Neighborhood in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

11.5 **Window Covers.** The Board may adopt Rules related to restrictions on window coverings.

- 11.6 **Temporary Structures.** No structure or building of a temporary character shall be placed upon the Neighborhood, or used therein, unless it is approved by the ARC.
- 11.7 **External Laundering.** The Board may adopt Rules related to restrictions on external laundering.
- 11.8 **Animals.** Owners may only keep animals in accordance with city, county and state laws and ordinances. Owners may have up to three (3) common household animals such as dogs and cats. Farm animals are prohibited. All dogs must be contained or otherwise controlled at all times within the Neighborhood, either within an Owner's Lot or by leash when outside an Owner's Lot. The Board may adopt Rules governing the behavior of animals in the Neighborhood and the responsibility of Owners and Occupants for such animals while in the Neighborhood. Notwithstanding the foregoing, no animal may be kept within the Neighborhood which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; (c) has caused an injury or property damage, or (d) in the good faith judgment of the Board, poses a credible threat of injury, or (e) is obnoxious, or unreasonably causes anxiety, to other Owners or Occupants within the Neighborhood. The Board may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Neighborhood. All pets and animals in the Neighborhood must be registered and inoculated as required by law. The Board may adopt Rules adding further Terms and Conditions related to animals in the Neighborhood not inconsistent with this Declaration, including, but not limited to, requirements for registration, specific fees or deposits for Owners of Lots that have animals, the use of leashes, and noise and barking limitations. An Owner of a lot in which an animal is visiting or residing is liable for any and all damage caused by such animal, and shall indemnify and hold harmless the Association and each other Owner from any loss, claim or liability of any kind arising from or related to such animal.
- 11.9 **Parking.** The Board may establish Rules related to parking that may limit the parking of certain vehicles on Lots and in the Neighborhood, establish time periods for parking in certain locations including roadways and Lots, allow or restrict parking on the roadways in and near to the Neighborhood, and establish other reasonable rules related to parking in the Neighborhood. Until the Board establishes Rules related to parking, the following provisions shall apply:
- (a) Except for "Customary Parking," "Temporary Parking," and "Garage Parking" (as defined below), and parking permitted by the Board in writing, no vehicles of any type including, without limitation, cars, trucks, commercial trucks, motorcycles, motorhomes, trailers of any kind, campers, vans, recreational vehicles, aircraft, or boats (all referred to herein as "Vehicles") shall be parked, stored, or located within any portion of the Neighborhood, including on any Lot.
 - (b) "Customary Parking" shall mean the parking of Customary Vehicles on the driveways and in the garage of a Lot.
 - (c) "Temporary Parking" shall mean parking in the driveway of the Lot of Temporary Vehicles for a period of not more than seventy-two (72) hours and only for the purpose of actively loading, unloading, or cleaning of the vehicle. Temporary parking is not for the storage of a vehicle. The intent of this section is to prohibit

storage, of any duration, of any type of RV or vehicle other than Customary Vehicles in the Neighborhood, other than as permitted in Garage Storage. The only time that any Recreational Vehicle may be in the Neighborhood, aside from being completely out of sight in a garage that is closed most of the time, is for the purposes of actively loading or unloading and/or cleaning. All such loading and unloading and cleaning must be conducted in a member's garage or on their driveway. RVs may not be resided in, for any length of time, within the Neighborhood.

- (d) "Garage Storage" shall mean the storage of any vehicle, including RVs, completely within any garage. Any vehicle may be stored or kept completely within any garage.
- (e) Definitions. For the purpose of this Section:
 - (1) "Customary Vehicles" shall mean cars, personal trucks or vans, and motorcycles used and/or operated by the Owner(s) as is customary for the non-commercial transportation needs of a household.
 - (2) "Temporary Vehicles" shall mean RVs, campers, boats, trailers, snowmobiles, 4-wheelers, golf carts, utility vehicles, motor homes, campers or recreational vehicles of any kind, delivery trucks, service vehicles, commercial trucks, and other commercial vehicles.
 - (3) "RV" includes without limitation, boats, trailers, motor homes, camper shells, campers, or other similar vehicles equipped with living space used primarily for leisure activities such as vacations and camping.

11.10 **Repairs of Equipment or Vehicles.** The Board may adopt Rules related to restrictions on the repair of machinery, equipment, fixtures and motor vehicles within the Neighborhood.

11.11 **Unsightly Items and Conditions.**

- (a) Unless otherwise provided in the Rules, Garbage and recycle containers may only be stored where they are not readily visible from any public street or road.
- (b) Unless otherwise provided for in the Rules, firewood may only be stored if it is stacked safely and neatly so as not to be unsightly.
- (c) No unsightly items or conditions shall be permitted within the Neighborhood. The Board may provide more detail of what is considered unsightly in the Rules.
- (d) Unless otherwise provided in the Rules, No vehicle, boat, or equipment shall be constructed, reconstructed, repaired, or stored within the Neighborhood, unless within a completely enclosed garage or for work of a minor nature completed in a driveway in less than twenty-four (24) hours.
- (e) Owners shall maintain their landscaping in a good and aesthetically pleasing condition so as to not detract from the community. Owner responsibilities shall include, but not be limited to: weed control, proper trimming and watering of landscaping; and the removal of dead or damaged landscaping,

- 11.12 **Fences.** No fence shall be allowed in the front yards or, in the case of side yards, further forward than the front corner point of the building that is furthest from the street. In corner Lot side yards, fences, hedges and landscaping will be permitted if it does not interfere with driving visibility. Fences may not exceed six (6) feet in height. Fences may only be constructed with prior approval of the ARC.
- 11.13 **Recreational Equipment and Courts.** Except as provided herein, recreational equipment, including, but not limited to: skateboard ramps, trampolines, baseball cages, ball return nets, goal nets and cages, and similar equipment may only be placed on a Lot if such equipment is not readily visible from the public right-of-way. Basketball hoops may be visible from a public right-of-way.. Sports Courts and tennis courts are prohibited without prior written approval by the ARC.
- 11.14 **Clotheslines.** Clotheslines are permitted if they are not visible from any public right-of-way.
- 11.15 **Household Items and Equipment:** Equipment used for normal Lot maintenance, including but not limited to: lawnmowers, leaf blowers, and snow blowers, shall be stored out of sight.
- 11.16 **Solar Panels.** Solar panels may be installed by an Owner only in accordance with Rules and with prior ARC approval. The Board may adopt Rules relating to solar panels, including, but not limited to the type, style, reflectivity, safety and installation requirements, maintenance, size, location, and color of the solar panels. The Board may include in the Rules requirements for payment of deposits and the Association’s expenses in responding to requests to install solar panels.
- 11.17 **Legal Changes to Lots.** No Lot shall be split, subdivided, or combined without the approval of: (a) the Association; (b) Summit County; (c) thirty percent (30%) of the Owners as evidenced by signatures on a consent form describing the proposed combination; and (d) approval of all of the Owners of Lots with any boundary within two hundred (200) feet of any proposed modification to Lots. Any combination of Lots shall not reduce the overall Assessments for those Lots. Any division of Lots must require each Owner of the new Lots to pay an equal undivided interest the same as all other Lots. No subdivision Plat or covenants, conditions, or restrictions shall be recorded with respect to any one Lot. No subdivision Plat or covenants, conditions, or restrictions related to any Lot or the Neighborhood shall be recorded on the Neighborhood unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. No Lot may be subjected to a timeshare interest, estate, or structure or removed or separated from the Neighborhood or Property. Any document, Plat covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect..
- 11.18 **Residential Occupancy.**
- (a) No trade or business may be conducted in or from any Lot unless:
 - (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the Lot;
 - (2) the business activity conforms to all zoning and other legal requirements;

- (3) the business activity does not cause an unreasonable increase in the amount of vehicular traffic or parking in the Neighborhood.
- (4) the business activity is consistent with the residential character of the Neighborhood and does not constitute a nuisance, hazardous use, offensive use, or threaten the security or safety of other Owners or Occupants of the Neighborhood;
- (5) the business activity does not involve the solicitation by any means of Occupants or Owners in the Neighborhood; or
- (6) the Owner of the Lot resides in the home in which the business activity is proposed for the entire time any business activity is conducted; and
 - (i) the Board's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- (b) No Lots may be used as a fractional ownership or time-share property.
- (c) Except as provided in Section 11.19(a), no Lot may be used for any purpose other than a residential purpose.

11.19 **Variiances.** The Board may grant variances from the Terms and Conditions set forth in this Article 11 if the Board determines by unanimous vote (of a Board of at least five (5) voting members): (a) either (1) that the Terms and Conditions would create an unreasonable hardship or burden on an Owner or Occupant, or (2) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial effect or any other substantial adverse effect on the Owners or Occupants of the Neighborhood, and is consistent with the high quality of life intended for residents of the Neighborhood. The Board, prior to the granting of any such variance, shall notify in writing to the Owner of each lot with a boundary within two hundred (200) feet of the Lot in which the variance would apply, and request comments concerning the variance from each such Owner either in writing or by their presence at a meeting in which the variance is to be discussed. Such notice shall include a description of the proposed variance. 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.

11.20 **Effect on Insurance and Violation of Law.** Except with the prior written consent of the Board, nothing shall be done to or kept in the Neighborhood that: (a) might result in the cancellation of any insurance policy on any portion of the Neighborhood; (b) might increase the rate of any such insurance policies; or (c) violates any statute, rule, ordinance, regulation, permit, or other requirement of any governmental body.

11.21 **Landscape Restrictions.** The Board may adopt Rules related to Landscaping including restrictions and requirements.

11.22 **Hazardous Substances.**

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the dangerous or illegal presence, use,

disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Neighborhood.

- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under, upon, or migrating into, under, from or through the Neighborhood, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Neighborhood. The obligations of each Owner under this Section shall survive any subsequent transfers of the Lot (voluntary or otherwise).
- (c) As used in this Section, “Hazardous Substances” are those substances defined as a toxic or hazardous substance by Environmental Law to include the following substances; gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section, “Environmental Law” means federal laws and laws of the jurisdiction where the Neighborhood is located that relate to health, safety and/or environmental protection.

ARTICLE 12

INSURANCE

- 12.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded policies, included coverage, or endorsements to other policies.
- 12.2 **Property Insurance.** To the extent that any structure that is normally insured under a property insurance policy is the Association’s obligation to maintain, the Association shall maintain a policy of property insurance covering the structure or facility, including all improvements, service equipment and fixtures thereon. The Board may use its discretion, to the extent allowed under the law, in consultation with the Association’s insurance agent, in determining the amount of coverage provided by the property insurance policy.
 - (a) **Earthquake and Flood Insurance.** The Association may purchase earthquake and flood insurance as the Board deems appropriate related to the Property insured by the Association.

- 12.3 **Comprehensive General Liability (CGL) Insurance.** For so long as the Association has maintenance responsibilities, the Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, and the Owners' membership in the Association, if possible. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) 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 would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 12.4 **Directors and Officers Insurance.** For so long as anyone serves on the Board, the Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association, to the extent such a policy is available, against claims such as wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract. Unless the following coverage is provided in another policy, this policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any Fair Housing Act or similar statute, or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. At the discretion of the Board, the policy may also include coverage for any Manager, and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 12.5 **Workers' Compensation Insurance.** If the Association has any employees, the Board shall purchase and maintain in effect Workers' Compensation Insurance for all employees, if any, of the Association to the extent that such insurance is required by law, and may purchase Workers Compensation Insurance even if the Association has no employees, as the Board deems appropriate.
- 12.6 **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 Lender.
- 12.7 **Named Insured.** The Named Insured under any policy of insurance shall be the Association. Each Owner shall also be a Named Insured under all property and CGL insurance policies.
- 12.8 **Association's Right to Negotiate All Claims and Losses and Receive Proceeds .** Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association, and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged Property, if the Property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged Property has been completely repaired or restored, any remaining proceeds shall be retained by the Association. If the Property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the Property has been paid for, shall be retained by the Association.

- 12.9 **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 to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 12.10 **Waiver of Subrogation against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any Person residing with an Owner who resides in the Lot, and the Association's agents and employees.

ARTICLE 13

EMINENT DOMAIN

- 13.1. **Total Taking of a Lot.** If a Lot is taken by eminent domain, or if part of a Lot is taken by eminent domain, leaving the Owner with a remnant that cannot be used to contain or construct a single family home, unless the decree otherwise provides, that Lot's Allocated Interest shall automatically cease. Upon such a taking and if necessary, the Association shall prepare, execute and record an amendment to the Declaration that accomplishes the adjustment required for this Section.
- 13.2. **Taking of Entire Neighborhood.** In the event the Neighborhood, in its entirety, is taken by eminent domain, the Neighborhood is terminated and the provisions related thereto in this Declaration shall apply.

ARTICLE 14

TERMINATION OF THE PROJECT

- 14.1. **Required Vote.** Except as otherwise provided in Article 13, the Project may be terminated only by the approval of Owners holding ninety percent (90%) or greater of the Allocated Interests.
- 14.2. **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Summit County, State of Utah and is effective only on recordation.

ARTICLE 15

AMENDMENTS

- 15.1. **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended by the affirmative vote of Owners holding Allocated Interests totaling not less than sixty-six percent (66%) of the total Allocated Interest. The vote must occur in a meeting of the Owners held for that purpose. The vote of approval

for any one Owner of a Lot is sufficient if there are multiple Owners of the Lot, and so long as any other Owner of the parcel does not vote inconsistently.

- 15.2. **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any changes to the rights, restrictions, obligations, and other terms in the Declaration.
- 15.3. **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Board, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Summit County, Utah.
- 15.4. **Changes to Plats or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Neighborhood, including any boundary to any Lot, or Lots, upon the approval by vote of sixty-six percent (66%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including the addition or removal of amenities, increasing the size of Lots, adding or designating common area land or limited common area land, or other changes in the layout of the Neighborhood. If any such amendment affects any boundary of a Lot then that Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power-of-attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.
- 15.5. **Amendment to Conform to Law.** The Board may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs, or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has significant experience and a regular practice in the area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section.
 - (b) The members of the Board must unanimously agree to the Amendment at the time it is recorded.

- (c) The Board must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this Section of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (i) notifies the Owner that it intends to amend the Declaration pursuant to this Section, (ii) provides the Owner a right to object to the amendment within thirty (30) days, and (iii) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (d) Within forty-five (45) days of providing the information to the Owners required by this Section, no more than thirty percent (30%) of the Owners have objected to the amendment. If more than thirty percent (30%) of the Owners object the Board may not record any amendment under this Section.
- (e) Having otherwise complied with all of the requirements of this Section, the Board members shall each sign the amendment instrument verifying that this Section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the Recorder of Summit County, Utah.

ARTICLE 16

INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 16.1. **No Waiver.** Failure by the Association, or by any Owner, to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach, and any such future breach of the same, or any other Term and Condition.
- 16.2. **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, the Bylaws, and then the Rules.
- 16.3. **Interpretation of Declaration and Applicability of the Act.** The Association intends that the Neighborhood shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Neighborhood to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control, and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4. **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of

such rights, options and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.

- 16.5. **Severability.** Invalidation of any one, or a portion, of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6. **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of maintaining and increasing the value of the property in the Neighborhood. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against, or strictly for or against, the Association, any Owner, or any other Person subject to their terms.
- 16.7. **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Neighborhood unless they are applicable as a matter of law, or unless the Association makes those amendments applicable by amendment to the Declaration.
- 16.8. **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9. **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like, applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable, in whole or in part, for any reason.

ARTICLE 17

NOTICE

- 17.1. **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner from the Association.
 - (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.

- (ii) By a written notice placed in the first-class, U. S. mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
 - (iii) By written email correspondence to an Owner: (A) that is sent to an email address provided by the Owner for the purpose of Association communications or (B) that is emailed to an email address from which the Owner has communicated relating to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed effective when received, or five (5) days after it is sent.
 - (iv) By facsimile (whether to a machine or to an electronic receiving lot) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed effective when received, or five (5) days after it is sent.
 - (v) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent.
 - (vi) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (2) Notwithstanding Subsection (1) of this section, the Association shall send all notices by first-class, U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.
 - (3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot, whether electronic or not. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot.
 - (4) In the case where posting of a notice on the Lot is permitted, such posting is effective when posted on the front or primary access door to the Lot, and any such posting may be removed by the Association the sooner of either (i) two (2) days after the event or action for which notice was given; or (ii) ten (10) days after the posting.

- (b) Special Notice Prior to Association Entry into a Lot.
- (1) The Association may enter a Lot as provided for in this Declaration. Entry into a Lot does not allow entry into a home or structure on the Lot and the Association shall have no right to enter any home or structure on the Lot absent permission of the Owner, a court order, or some other legal basis.
 - (2) In case of an emergency or condition requiring immediate entry in a Lot, as determined by the sole discretion of the Board or its authorized agent, before entering a Lot, the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Lot; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Lot on behalf of the Association, then wait one (1) minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
 - (3) If the Association enters a Lot for any purpose permitted in this Declaration other than those identified in the prior paragraph, before entering a Lot, the Association shall:
 - (i) Give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (A) that the Association or its authorized Persons will enter the Lot; (B) the date and time of the entry; (C) the purpose of entering the Lot; (D) a statement that the Owner or Occupant can be present during the time the Association is in the Lot; (E) the full names of any Person who will be entering into the Lot, and the phone numbers and addresses of the Persons entering the Lot, or of the company for whom the Persons entering the Lot are employed for the purpose of entering the Lot; and (F) any other information the Association deems appropriate to include; and
 - (ii) Post the written notice described above on the front door to the Lot at least seven (7) days prior to entry into the Lot.
- (c) Notice to a Lender. Notice to a Lender shall be delivered by first-class, U. S. mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.
- (d) Notice to Association from an Owner.
- (1) An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Manager, which shall be effective upon delivery.

- (ii) By a written notice placed in first-class, U. S. mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
- (iii) By written email correspondence to the Association: (A) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications; or (B) that is emailed to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed effective the sooner of when received, or five (5) days after it is sent.

ARTICLE 18

ATTORNEYS' FEES AND COSTS

18.1 **Legal Costs Associated with Disputes with Owners.**

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

ARTICLE 19

RESERVES

- 19.1 **Requirement for Reserves.** The Association shall obtain a reserve analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Underdrain System pursuant to the following provisions:
- (a) **Collection.** Reserve funds may be collected as part of regular or Special Assessments.
 - (b) **Amount.** In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Board determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
 - (c) **Owner Veto.** Within forty-five (45) days after the date on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the allocated voting interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
 - (d) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves.
 - (e) **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.
 - (f) **Reserve Analysis.** The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.
 - (g) **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis report shall be prepared by a Person or Persons with (1) experience in current building

and engineering technologies related to the underdrain system; (2) a solid working knowledge of building-cost estimating and life-cycle costing for the underdrain facilities; and (3) the tools and knowledge to prepare a report. Preferably, one of the Persons preparing the reserve study will have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.

- (h) **Summary and Copies of Reserve Analysis.** The Association shall annually provide Owners a summary of the most recent reserve analysis or update by posting it to the Association’s website. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

ARTICLE 20

LEASING AND NON-OWNER OCCUPANCY

- 20.1 **Declaration and Rules Govern Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Lot shall be governed by this Section, and procedures and Rules adopted as allowed in this Section.
- 20.2 **Definitions.** For the purpose of this Section:
 - (a) “Non-Owner Occupied Dwelling” means:
 - (1) for a Lot owned in whole or in part by a natural individual or individuals, the Dwelling is occupied by someone when no individual Owner occupies the Dwelling as the individual Owner’s primary residence; or
 - (2) for a Dwelling owned entirely by one or more entities or trusts, the Dwelling is occupied by anyone.
 - (b) “Family Member” means:
 - (1) the parent, sibling, or child of an Owner and that Person’s spouse and/or children, or
 - (2) in the case of a Dwelling owned by a trust or other entity created for estate planning purposes, a Person occupying the Lot if the trust or other estate planning entity that owns the Lot was created for the estate of (i) a current Occupant of the Lot; or (ii) the parent, child, or sibling of the current Occupant of the Lot.
- 20.3 **No Restriction on Leasing and Non-Owner Occupancy.** Subject to the requirements in Sections 20.4 and 20.5, any Dwelling may be leased or Non-Owner Occupied.
- 20.4 **Permitted Rules.** The Board of Directors may adopt Rules requiring:
 - (a) Reporting and procedural requirements related to Non-Owner Occupied Dwellings and the Occupants of those Dwellings other than those found in this

Article, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.

- (b) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

20.5 Requirements for Leasing and Non-Owner Occupancy. The Owners of all Dwellings must comply with the following provisions:

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least one (1) year, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident;
- (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board;
- (c) A Non-Owner Occupant may not occupy any Dwelling for transient, short-term (less than one (1) year), hotel, resort, vacation, or seasonal use (whether for pay or not) (this is intended to specifically prohibit any Non-Owner Occupancy of less than one (1) year through services and listing such as VRBO, Airbnb, Homeaway, VacationRentals, Flipkey, Wimdu, House Trip, and similar services); and
- (d) A Non-Owner Occupancy guest of an Owner may occupy a unit for a short term, once per year, with advance notice to the Association and so long as no compensation is paid to the Owner.

20.6 Exceptions. If a Non-Owner Occupied Lot is occupied by a Family Member then the following applies notwithstanding anything to the contrary herein:

- (a) Subsection 20.5 shall not apply to that occupancy;
- (b) No written agreement regarding occupancy needs to be created between the Occupant and the Owner; and
- (c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the Governing Documents and, if requested, may only be requested related to remedying or taking action as a result of such a violation

20.7 Joint and Several Liability of Owner and Non-Owner Occupants. The Owner of a Dwelling shall be responsible for the Occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for non-compliance with the Governing Documents, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of

the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

ARTICLE 21

GENERAL PROVISIONS

- 21.1 **Enforcement.** The Association, or any Owner, shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 **Non-Liability of Officials.** To the fullest extent permitted by applicable law, neither the Board, nor any officer of the Association, shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 21.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Underdrain System, and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Underdrain System and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Underdrain System and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Dwelling, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Lot, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Lot and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 21.5 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements, and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to affect the same. Such acceptance shall be deemed an

appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents, and to do such things on such Owner's or Occupant's behalf. Further, such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.

21.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Neighborhood. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason, including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Neighborhood acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct, and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Lot in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Board are not insurers of the safety or well-being of Owners or Occupants, or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

21.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Neighborhood that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else nor as a permanent waiver for that particular Lot or person.

21.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE NEIGHBORHOOD THAT THE ASSOCIATION AND THE BOARD OF TRUSTEES HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE NEIGHBORHOOD AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE NEIGHBORHOOD.

IN WITNESS WHEREOF, the Association has executed this Declaration.

DATED this ____ day of _____, 2016.

SILVER SPRINGS SINGLE FAMILY
HOME OWNERS ASSOCIATION

By: _____

Name: _____

Its [Title]: _____

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____,
2016, by _____.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION