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**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
ECHO CANYON, PHASE 1**

Page
31 6.18

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	2
ARTICLE 2 DECLARANT'S RIGHTS AND OWNERS' OBLIGATIONS	7
2.1 Property Subject to this Declaration	7
2.2 Lots	7
2.3 The Residence Association	7
2.4 Initial Fixed Assessment Unit	8
2.5 Additional Land and Right to Expand	8
2.6 Incidents of Ownership	8
2.7 Owner's Obligation to Maintain the Lot and Residence	8
2.8 Responsibility for Residence Common Areas Damage	9
2.9 Reservation of Right to Construct Residences and Improvements	9
2.10 Declarant's Disclaimer of Representations	9
2.11 Security	9
2.12 Readjustment of Lot Line Boundaries	10
2.13 Development Plan	10
2.14 Residence Common Area Improvements	10
2.15 Right to Develop	10
2.16 Declarant's Control	10
ARTICLE 3 LAND USES, PERMITTED USES AND RESTRICTIONS	11
3.1 Land Uses	11
3.2 Use Restrictions	11
3.3 Residence Design Review Committee	14
3.4 Architectural Control	14
3.5 Architectural Review Fee	14
3.6 Municipal Authority Approval	15
3.7 Required Approvals for Further Property Restrictions	15
3.8 Lots and Improvements	15
3.9 Declarant's Exemption	16
ARTICLE 4 EASEMENTS	16
4.1 Owners' Easements of Enjoyment	16
4.2 Utility Easement	17
4.3 Easements for Ingress and Egress	18
4.4 Declarant's Use and Easements	18
4.5 Easement in Favor of Residence Association	18
ARTICLE 5 THE RESIDENCE ASSOCIATION; ORGANIZATION; ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	19
5.1 Formation of Residence Association	19
5.2 Registration with the Department of Commerce	19
5.3 Governing Board and Officers	19
5.4 Residence Association Rules	19
5.5 Hearing	20
5.6 Personal Liability	20
5.7 Borrowing Power	21
5.8 Express and Implied Rights	21

5.9	Acceptance and Control of Residence Association Property	22
5.10	Membership in the Residence Association	22
5.11	Votes in the Residence Association	22
5.12	Voting Procedures.....	22
5.13	Transfer of Residence Association Membership	23
ARTICLE 6 COVENANT FOR ASSESSMENTS		23
6.1	Creation of Lien and Personal Obligation of Assessments	23
6.2	Annual Assessment	23
6.3	Special Assessments	25
6.4	Specific Assessments	25
6.5	Reserves	25
6.6	Community Association Assessments	27
6.7	Working Capital Fund.....	28
6.8	Providing Payoff Information	28
6.9	Declarant and Declarant Affiliate Subsidy.....	28
6.10	Encumbrances	29
6.11	Effect of Conveyance.....	29
6.12	Statement of Account.....	29
6.13	Purposes for Which Residence Association's Funds May be Used.....	29
6.14	Surplus Funds.....	30
6.15	Reinvestment Fee.....	30
6.16	Transfer Fee	30
6.17	Notice for Meetings to Consider Special Assessments.....	31
6.18	Special Service Districts	31
ARTICLE 7 ENFORCEMENT OF PAYMENT OF ASSESSMENTS		31
7.1	Residence Association as Enforcing Body	31
7.2	Effect of Nonpayment of Assessments; Assessment Lien	31
7.3	Residence Association's Remedies to Enforce Payment of Assessments	32
7.4	Foreclosure.....	33
7.5	Subordination of Assessment Lien to First Mortgage; Priority of Lien.....	34
7.6	Termination of Delinquent Owner's Rights.....	34
7.7	Leased Residences	35
7.8	One-Action Rule Not Applicable; Abandonment of Enforcement Proceeding	36
7.9	Costs and Attorney Fees in Enforcement Action	36
7.10	Action to Recover Unpaid Assessment.....	36
ARTICLE 8 MAINTENANCE		36
8.1	Residence Common Areas and Public Right of Way	36
8.2	Lots and Residences.....	37
8.3	Installation of Landscaping	37
8.4	Assessment of Certain Costs of Maintenance and Repair.....	37
8.5	Improper Maintenance and Use of Lots.....	37
ARTICLE 9 INSURANCE.....		37
9.1	Scope of Coverage	37
9.2	Certificates of Insurance	39
9.3	Payment of Premiums and Deductibles	39
9.4	Payment of Insurance Proceeds	39
9.5	Repair and Replacement of Damaged or Destroyed Property	39

9.6	Owner Acknowledgement and Waiver	40
9.7	Annual Review	40
9.8	Owner to Insure	40
ARTICLE 10 MORTGAGEE REQUIREMENTS		41
10.1	Notice of Action	41
10.2	Availability of Residence Project Documents and Financial Statements	41
10.3	Subordination of Lien	41
10.4	Notice to Eligible Mortgagees	42
10.5	Payment of Taxes	42
10.6	Priority	42
ARTICLE 11 CONDEMNATION		42
11.1	Notice	42
11.2	Partial Condemnation; Distribution of Award; Reconstruction	42
11.3	Complete Condemnation	42
ARTICLE 12 TERM, TERMINATION AND AMENDMENT		43
12.1	Term; Method of Termination	43
12.2	Amendments	43
12.3	Unilateral Amendments	43
12.4	Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions	43
12.5	Prior Approval Required to Terminate this Declaration or Amend Article 8	44
ARTICLE 13 BINDING ARBITRATION FOR ENFORCEMENT OF PROJECT DOCUMENTS		44
13.1	Opt-Out Right	44
13.2	Arbitration Terms Defined	44
13.3	Arbitration of Claims	46
13.4	Fees	46
13.5	Governing Law	46
13.6	Appeal of Arbitrator's Decision	46
13.7	Jury Trial Waiver	46
13.8	Class Action Ban	46
13.9	Severability	47
13.10	Notice of Claim; Right to Address	47
ARTICLE 14 GENERAL PROVISIONS		47
14.1	Enforcement	47
14.2	Interpretation	47
14.3	Severability	47
14.4	Perpetuities	47
14.5	Change of Circumstances	48
14.6	Rules and Regulations	48
14.7	Laws, Ordinances and Regulations	48
14.8	References to this Declaration in Deeds	48
14.9	Gender and Number	48
14.10	Captions and Title; Section References; Exhibits	48
14.11	Notices	48
14.12	Indemnification	49

14.13	No Partition	49
14.14	Number of Days	50
14.15	Notice of Violation.....	50
14.16	Disclaimer of Representations	50
14.17	Amendments Affecting Declarant Rights	50
14.18	Conflicts	50
14.19	Use of Technology	50
14.20	Bulk Service Agreements	51

**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
ECHO CANYON, PHASE 1**

This DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS for Echo Canyon, Phase 1 (this "Residence Declaration" or "Declaration") is made as of this 7th day of July, 2025 by KCPD Phase I, LLC, a Utah limited liability company ("Declarant").

RECITALS

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

B. Declarant desires to develop a residential planned unit development known as Echo Canyon, Phase 1 on the Property, as generally depicted on the Plat (the "Project"). Declarant intends to develop the Project to consist of up to fourteen (14) Lots for residential use.

C. The Project possesses great natural beauty that Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Declaration. It is anticipated that the plan will provide for comprehensive land planning, and harmonious and appealing landscaping and improvements. It is assumed that each purchaser of a Lot in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

D. The Project will be part of a larger master planned community known as Echo Canyon, a planned community ("Echo Canyon" or the "Community") and will also be subject to the terms and conditions of that certain Community Declaration for Echo Canyon, as amended or supplemented from time to time, which is recorded against the Project ("Community Declaration").

E. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Project; maintaining and administering the Residence Common Areas; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. Echo Canyon, Phase 1 Owners Association, Inc., a Utah non-profit corporation ("Residence Association"), has or will be incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

F. The Residence Association shall constitute a "Development Tract Association" under the Community Declaration and shall also be a member of the Echo Canyon Community Association, Inc., a Utah non-profit corporation, organized for purposes set forth in the Community Declaration, and in certain instances referred to as "HOA" in the Plat ("Community Association"). This Declaration shall constitute a "Development Tract Declaration" under the Community Declaration.

G. Each Owner shall receive fee title to his or her Lot and Residence Association Membership in the Residence Association as provided herein.

H. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon a planned community.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE 1 DEFINITIONS

Each of the Recitals A through H are incorporated into and made a part of this Declaration for all purposes. Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Declaration shall have the meanings set forth in this Article 1. Certain terms not defined herein are defined elsewhere in this Declaration or in the Community Declaration.

1.1 Additional Land means, refers to, and consists of any real property Declarant, may own in fee simple now or in the future. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Project in accordance with the provisions of this Declaration.

1.2 Annual Assessments means the Assessments levied pursuant to Section 6.2.

1.3 Assessment means an Annual Assessment, Special Assessment Specific Assessment, or Community Association Assessment.

1.4 Assessment Lien means the lien created and imposed by Section 7.2

1.5 Assessment Unit means that number of Assessment Units set forth in the Notice of Annexation attributable to each Lot for calculation and payment of Community Association assessments and Community expenses as determined by the Community Board.

1.6 Association Official(s) shall have the meaning set forth in Section 14.12.

1.7 Board means the board of directors of the Residence Association.

1.8 Budget Meeting shall have the meaning set forth in Section 6.2.4.

1.9 Bulk Provider shall have the meaning set forth in Section 14.20.5.

1.10 Bulk Service Agreement shall have the meaning set forth in Section 14.20.6.

1.11 CAA shall have the meaning set forth in Section 2.1.

1.12 Certificate of Amendment shall have the meaning set forth in Section 12.2.

1.13 Common Expenses means expenditures made by or financial liabilities of the Residence Association, together with any allocations to reserves as further described in Section 6.5. Common Expenses shall not include those certain charges levied by a Special Service District.

1.14 Community shall have the meaning set forth in Recital D, including, but not limited to all "Property" as defined in the Community Declaration.

1.15 Community Association shall have the meaning set forth in Recital F.

1.16 Community Association Assessments means any assessment levied pursuant to the Community Declaration by the Community Association as described and set forth in Section 6.6.

1.17 Community Board means the board of directors of the Community Association.

1.18 Community Declaration shall have the meaning set forth in Recital D.

1.19 Community Developer means the developer of the Community as defined in the Community Declaration or any designated agent to act on its behalf from time to time.

1.20 Community Project Documents means the Community Declaration, the Final Approval, the Community Articles, the Community Bylaws, the Echo Canyon Design Guidelines, the Community Rules, and the Community Board's resolutions (as defined in the Community Declaration), as each document may be amended from time to time.

1.21 Declarant means KCPD Phase I, LLC, LLC, a Utah limited liability company, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.22 Declarant Affiliate means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.23 Declarant Control Period shall have the meaning set forth in Section 2.16.

1.24 Defaulting Owner shall have the meaning set forth in Section **Error! Reference source not found..**

1.25 Design Review Committee means either the Echo Canyon Design Review Committee or the Residence Design Review Committee if created by Declarant pursuant to Section 3.3 below.

1.26 Eligible Mortgagee means and refers to a First Mortgagee who has requested notice of certain matters from the Residence Association in accordance with Section 10.1 of this Declaration.

1.27 Final Approval means the Final Approval for the Project adopted by the Echo Canyon Preliminary Municipality, and related Notice of Annexation pursuant to the Community Declaration.

1.28 First Mortgage shall have the meaning set forth in Section **Error! Reference source not found..**

1.29 First Mortgagee shall have the meaning set forth in Section 1.38.

1.30 Foreclosure Notice shall have the meaning set forth in Section 7.4.3.

1.31 Improvement(s) means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any: (i) Residence, building, guest house, accessory dwelling unit (ADU), screening wall, other accessory building, fence or wall; (ii) walkway, garage, road, driveway or parking area; (iii) mailbox, sign, shed, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); (iv) swimming pool, basketball court, radio or television antenna or receiving dish; (v) paving, exterior

lights, curbing, trees, shrubs, hedges, grass, windbreak or other landscaping Improvements of every type and kind; (vi) excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment; and (vii) other structure of any kind or nature.

1.32 Lessee means the lessee or tenant under a lease, oral or written, of any Residence (or part thereof), including an assignee of the lessee's or tenant's interest under a lease.

1.33 Lot(s) means a portion of the Project intended for independent ownership and residential use and designated as a Lot on the Plat, and, where the context indicates or requires, shall include any Residence, building, structure or other Improvements situated on the Lot. Each Lot is intended for development with a single-family Residence.

1.34 Echo Canyon shall have the meaning set forth in Recital D.

1.35 Echo Canyon Design Guidelines means the written review standards promulgated by the Echo Canyon Design Review Committee pursuant to the Community Declaration, as amended from time to time.

1.36 Echo Canyon Design Review Committee means the design review committee for Echo Canyon created pursuant to the Community Declaration.

1.37 Mortgage means a deed of trust or a mortgage Recorded against a Lot, or any part thereof or interest therein. A "First Mortgage" means a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.38 Mortgagee means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot. A "First Mortgagee" means any Person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot or any part thereof or interest therein.

1.39 Municipal Authority means any applicable governmental entity or municipality which has jurisdiction over all or some part of the Project including without limitation Echo Canyon Preliminary Municipality.

1.40 Notice shall have the meaning set forth in Section 14.11.

1.41 Notice of Delinquency shall have the meaning set forth in Section 7.6.

1.42 Notice to Landlord shall have the meaning set forth in Section 7.7.1.

1.43 Notice to Tenant shall have the meaning set forth in Section 7.7.2.

1.44 Occupant means any Person other than an Owner who has actual use, possession or control of a Residence, or any portion thereof, or any other Improvement located on a Lot, and shall include, without limitation, residents who reside in any Residence.

1.45 Owner means (i) any Person(s), including the Declarant and/or Declarant Affiliates, who is/are record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot, or any portion thereof or interest therein including, without limitation, one who is buying a Lot, or any portion

thereof or interest therein, under a recorded contract or recorded notice of such contract, but excluding others who hold an interest therein merely as security; and (ii) any Person(s) entitled to occupy all of a Lot, Residence or portion thereof or interest therein, under a lease or sublease for an initial term of at least five (5) years in which case the lessee or sublessee, rather than the fee owner of the Lot or portion thereof, shall be deemed the Owner thereof for purposes of this Declaration during the term of said lease or sublease.

1.46 Owner's Rights shall have the meaning set forth in Section 7.6.

1.47 Person means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.48 Plat means that certain subdivision plat entitled "ECHO CANYON, PHASE 1" duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.49 Project shall have the meaning set forth in Recital B.

1.50 Project Governing Bodies shall have the meaning set forth in Section 2.11.

1.51 Property shall have the meaning set forth in Recital A. The term "Property" shall also include any of the Additional Land that is made subject to this Declaration by the Recordation of a Supplemental Declaration, which inclusion shall be effective from and after the date of recordation of such Supplemental Declaration and amended Plat.

1.52 Record, Recording, Recorded, and Recordation means placing or having placed an instrument of public record in the official records of Grand County, Utah.

1.53 Reinvestment Fee shall have the meaning set forth in Section 6.15.

1.54 Residence means a single-family detached dwelling constructed or placed on a Lot in compliance with applicable law and this Declaration. A Residence is intended for occupancy by one household or family unit, defined as a group of individuals related by blood, marriage, adoption, or legal guardianship. A Residence constitutes a "Dwelling Unit" as defined in the Community Declaration. A Residence shall not include any structure used or intended for use as a boarding house, rooming house, fraternity or sorority house, short-term group rental, or other use involving multiple separate rental agreements, or the operation of a business providing accommodations for compensation unless otherwise permitted by the Residence Association in writing.

1.55 Residence Articles means the articles of incorporation of the Residence Association, as amended from time to time.

1.56 Residence Association shall have the meaning as set forth in Recital E, and its successors and assigns.

1.57 Residence Association Member means any Person who is a member of the Residence Association as provided in Article 5.

1.58 Residence Association Membership means a membership in the Residence Association and the rights granted to the Residence Association Members, including Declarant, pursuant to Article 5 to participate in the Residence Association.

1.59 Residence Association Rules means the rules and regulations adopted by the Board pursuant to Section 5.4, as amended from time to time.

1.60 Residence Bylaws means the bylaws of the Residence Association, as amended from time to time.

1.61 Residence Common Areas means all land, and the Improvements situated thereon, within the Project that Declarant designates as common area or common space on the Plat or other Recorded instrument and other real property which the Residence Association now or hereafter owns in fee for the benefit of the Owners for as long as the Residence Association is the owner of the fee, which may include without limitation all certain Project parks and open space, landscaped areas, Project and street signage, lighting, sidewalks, clubhouse, community pool, swimmable lagoon, and other similar Improvements.

1.62 Residence Declaration or "Declaration" shall have the meaning set forth in the Preamble, as amended from time to time, and in certain instances referred to as "CC&R's" in the Plat.

1.63 Residence Design Guidelines means the written review standards promulgated by the Declarant pursuant to this Declaration (if any), or the Residence Design Review Committee if created by Declarant pursuant to Section 3.3 below, and in certain instances referred to as "Design Guidelines" in the Plat.

1.64 Residence Design Review Committee means the design review committee that may be created pursuant to this Declaration.

1.65 Residence Project Documents means this Declaration, the Residence Design Guidelines, the Residence Articles, the Residence Bylaws, the Residence Association Rules, and Board resolutions of the Residence Association, and the Community Project Documents, as each document may be amended from time to time, and in certain instances referred to as "Governing Documents".

1.66 Special Assessment means any Assessment levied pursuant to Section 6.3.

1.67 Special Service Districts shall have the same meaning as set forth in the Community Declaration and means one or more special service districts which may be or have been established to provide the Project with, among other things, waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for nonstandard street lights, culinary water and facilities including pump stations, snow plowing and school bus stop shelters.

1.68 Specific Assessment means the charge against a particular Residence Association Member or Owner directly attributable to the Residence Association Member or Owner, equal to: (i) the charge to such Residence Association Member or Owner for particular items, services, administrative fees or benefits provided by the Residence Association or Community Association at such Residence Association Member's or Owner's request; or (ii) the costs incurred by the Residence Association or Community Association for corrective action performed pursuant to the provisions of this Declaration or the Community Declaration, plus interest thereon and fees (including attorney's fees) and costs.

1.69 Subsidizing Party shall have the meaning set forth in Section 6.9.

1.70 Supplemental Declaration means any recorded declaration, except for the Community Declaration and this Declaration, covering Lots on the Property recorded by Declarant to subject all or a portion of the Additional Land to this Declaration as further described in Section 2.5 below, as such Supplemental Declaration may be amended from time to time.

1.71 Transfer means an Owner's transfer, conveyance, or other disposition of a Lot to a third-party person or entity not otherwise subject to the terms of this Declaration.

1.72 Transfer Fee means an obligation of each Owner imposed by the Residence Association to pay a fee as a result of such Owner's Transfer of their Lot to a future buyer. The Transfer Fee does not include an obligation imposed by a court judgement, order, or decree; an obligation imposed by the federal government or a state or local government entity; or the Reinvestment Fee.

1.73 Visible From Neighboring Property means, with respect to an object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of neighboring property, except where the object is visible solely through a fence and would not be visible if the fence were a solid fence.

ARTICLE 2 DECLARANT'S RIGHTS AND OWNERS' OBLIGATIONS

2.1 Property Subject to this Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Project in accordance with the Utah Community Association Act, Utah Code Ann. 57-8a-101 et. seq., as amended from time to time (the "CAA") in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration and the Community Project Documents, including any of the Additional Land hereafter made subject to this Declaration by the Recordation of a Supplemental Declaration, and related documents, including, but not limited to, any supplemental plat. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Residence Association and all Owners.

2.2 Lots. Subject to Declarant's right to expand the Project pursuant to the provisions of Section 2.5, the Project shall consist of up to fourteen (14) Lots or such greater number of Lots which may be approved or permitted by the controlling Municipal Authority, each of which is to be improved with a Residence. Declarant reserves the right to adjust the location of each Residence in order to facilitate proper planning in the sole and exclusive discretion of the Declarant, subject to the terms and provisions of Section 2.12. Moreover, for thirty (30) years following the recording of this Declaration, Declarant, to the extent permitted by law, reserves the unilateral right to reconfigure, eliminate and/or change the design and arrangement of the Residence Common Areas as it shall determine in its sole and exclusive discretion.

2.3 The Residence Association. The Residence Association shall maintain, as provided in this Declaration, the Residence Common Areas and all Improvements thereon, in a safe, sanitary and attractive condition. The Residence Association shall assess and collect fees from the Residence Association Members, in accordance with the provisions hereof and the Bylaws. The Residence Association shall also comply with all applicable provisions of the Community Declaration, including

assessments associated with the Community Association's operation, maintenance, repair, and replacement of Community Common Areas.

2.4 **Initial Fixed Assessment Unit.** Pursuant to the Community Declaration and the Final Approval, the Project has been assigned fourteen (14) Assessment Units, one (1) Assessment Unit per Lot, calculated in accordance with Section 6.6.3 below.

2.5 **Additional Land and Right to Expand.** Declarant reserves the right to subject all or a portion of the Additional Land to this Declaration by the recordation of one or more Supplemental Declarations without the prior consent of any other party or Owner except for the Owner of all or any portion of the Additional Land. Declarant shall identify in each Supplemental Declaration the Additional Land, specify the number of additional Lots, if any or if known, to be added to the Project, and the number of votes and Assessment units to be allocated to the Additional Land based upon the formulas described in this Declaration. The owner of such Additional Land, if different from the Declarant, shall also execute the Supplemental Declaration. Upon recordation of the Supplemental Declaration, the subject Additional Land shall be deemed added to the Property and the number of Lots, Assessment units and votes shall be automatically increased to include the Additional Land's Lots and other items for purposes of this Declaration. The Supplemental Declaration may modify any of the covenants, conditions and restrictions otherwise applicable to the Additional Land in the Supplemental Declaration where such changes are deemed necessary in the discretion of the Declarant to address a unique condition affecting or relating to the Additional Land that is the subject of the Supplemental Declaration or to more fairly allocate the benefits and obligations of membership within the Residence Association. In the event that Declarant and the owner of any of the Additional Land fail to reach an agreement on the terms of inclusion within the Project, the Additional Land will still have such rights of access and be subject to such limitations as are contained in any other agreements with the owners of the Additional Land. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Project in accordance with the provisions of this Section 2.5.

2.6 **Incidents of Ownership.** Every Lot shall have appurtenant to it one Residence Association Membership in the Residence Association, and a nonexclusive easement for each Owner for use, enjoyment, ingress and egress over the Residence Common Areas subject to such restrictions and limitations as are contained in the Residence Project Documents and subject to other reasonable regulation by the Residence Association. Each Residence Association Membership shall be appurtenant to and inseparable from ownership of the Lot. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot shall automatically transfer the Residence Association Membership to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.7 **Owner's Obligation to Maintain the Lot and Residence.** Each Owner shall maintain his, her or its Lot and Residence in a safe, sanitary and attractive condition. In connection with any maintenance or repair work to the exterior of a Residence, the Owner making such repair shall maintain, replace or repair any finish, surface or other materials with similar materials of at least the same quality, such that there is no reasonably observable difference between those portions of the Residence exterior being repaired or modified and the prior exterior finishes approved by the Design Review Committee. All maintenance, repair, and replacement costs are the responsibility of the individual Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his, her or its Lot, Residence or Improvement, the Board shall have the right to immediately enter upon the Lot to abate the emergency and individually charge the cost thereof to such Owner as a Specific Assessment or otherwise.

2.8 **Responsibility for Residence Common Areas Damage.** The cost of repair or replacement of any portion of the Residence Common Areas resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Residence Association. The Residence Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

2.9 **Reservation of Right to Construct Residences and Improvements.** In addition to the reservations of rights set forth in this Declaration, Declarant reserves the sole and exclusive right, without obligation, to approve the contractor for the construction of any Residence and Improvements to be erected on the Lots which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Lot.

2.10 **Declarant's Disclaimer of Representations.** Nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Declarant or any Declarant Affiliate shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration. Owners hereby acknowledge that neither Declarant, the Residential Association, nor the Community Association will be responsible for injury or damage to persons or property caused by radon.

2.11 **Security.** The Residence Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. NEITHER THE RESIDENCE ASSOCIATION AND ITS BOARD, THE DECLARANT, THE DESIGN REVIEW COMMITTEE, NOR THE COMMUNITY ASSOCIATION AND ITS BOARD, THE COMMUNITY DEVELOPER OR THE ECHO CANYON DESIGN REVIEW COMMITTEE (COLLECTIVELY, THE "PROJECT GOVERNING BODIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, HOWEVER, AND THE PROJECT GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGE THAT THE PROJECT GOVERNING BODIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE RESIDENCE DESIGN GUIDELINES OR THE ECHO CANYON DESIGN GUIDELINES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, TENANT, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE PROJECT GOVERNING BODIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO LOTS, TO PERSONS, TO RESIDENCES, TO IMPROVEMENTS AND TO THE CONTENTS OF RESIDENCES AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE PROJECT GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROJECT.

2.12 **Readjustment of Lot Line Boundaries.** Declarant hereby reserves for itself, Declarant Affiliate and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines for purposes of proper configuration and final engineering of the Project; provided that any such realignment and adjustment does not affect any existing Residence or Improvement (other than landscaping) on the affected Lot. The authority to realign and adjust such Lot boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Lot boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots in relationship to the development of the Project. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat shall be required to effectuate any Lot boundary line adjustments so long as such adjustments are made pursuant to Utah Code Ann. § 17-27a-608(7), as amended

2.13 **Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, and subject to the approval of the Community Developer and appropriate Municipal Authority, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Property owned by the Declarant or changing the nature or extent of the uses to which such Property may be devoted.

2.14 **Residence Common Area Improvements.** Declarant, so long as Declarant or a Declarant Affiliate owns a Lot within the Project, reserves the unilateral right to construct Improvements on any area of the Residence Common Areas and modify the location, type and nature of Residence Common Areas as it shall determine in its sole and exclusive discretion, including, without limitation, the right to construct or create garden plots, pavilions, recreational facilities, storage facilities, walking trails, picnic areas, covered porches, courtyards, or other Improvements thereon. Such construction and relocation rights shall not be subject to the consent of the Owners, Board, Mortgagees or any other person or entity. After the termination of Declarant's rights under Section 2.16 below, the Board shall have the right to exercise such construction and relocation powers in connection with the Residence Common Areas upon the vote or written assent of two-thirds (2/3) of the members of the Board present at any annual or special meeting of the Board pursuant to the approval procedures described in the Bylaws. In furtherance of this right, Declarant reserves for itself, and others it may designate, the right to inspect, monitor, test, redesign, and correct any Improvement or condition that may exist on any portion of the Project, including Lots and Residence Common Areas, and a nonexclusive easement of access throughout the Project to the extent reasonable necessary to exercise such right.

2.15 **Right to Develop.** Notwithstanding anything contained herein to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant's rights to develop the Project and to exercise the rights reserved by Declarant as hereinafter provided. Nothing in this Declaration shall be construed to require Declarant, or Declarant's successor or assigns, to develop any Lot or other Improvements in any manner whatsoever. Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, Residence Association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and Recorded. Upon such Recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

2.16 **Declarant's Control.** Notwithstanding anything herein to the contrary, Declarant, or a managing agent or some other person or persons selected by Declarant, may appoint and remove some or all of the members of the Board or some or all of the officers of the Residence Association or may exercise

the powers and responsibilities otherwise assigned by this Declaration or under Utah law to the Residence Association, its officers, or the Board. The "Declarant Control Period" as used in this Declaration and the other Residence Project Documents shall have the same meaning as the "period of administrative control" defined under the CAA. The right of the Declarant contained in this Section 2.166 shall terminate no later than the earlier of the following to occur:

2.16.1 Sixty (60) days after conveyance of eighty percent (80%) of the Lots owned by Declarant;

2.16.2 The day on which Declarant no longer owns any Lot or no longer possess any Development Right;

2.16.3 Seven (7) years after the day on which the Declarant has ceased to offer Lots, including Lots that may be created, for sale in the ordinary course of business; or

2.16.4 The date on which Declarant, in its sole and exclusive discretion, voluntarily relinquishes its control rights as evidenced by a Recorded notice.

ARTICLE 3

LAND USES, PERMITTED USES AND RESTRICTIONS

3.1 **Land Uses.** The purposes for which property within the Project may be used shall be residential uses consistent with the Community Declaration and this Declaration, as well as ancillary, complementary or subsidiary uses such as (without limitation), open space, Residence Common Areas, and the like. No Lot or Residence within the Project shall ever be occupied or used for any commercial or business purposes; provided, however, all Owners and occupants hereby agree and acknowledge that Declarant or any other Owner may provide overnight occupancy accommodations at such Owner's Lot or Residence. Furthermore, Declarant or any Owner may engage a third party to provide rental management services for such Owner's Lot(s) or Residence(s), including but not limited to entering into a long term contract with a service provider for such rental management services; provided further that nothing in this Section shall be deemed to prevent any Owner or the Owner's duly authorized agent from renting or leasing said Owner's Lot or Residence for residential uses, including for long term or transient rental. During the Declarant Control Period, any amendment to this Section (except for a unilateral amendment by Declarant or an amendment an necessary or proper to effectuate Declarant's rights) or the right to rent a Lot or Residence, shall require the affirmative vote of at least eighty-five percent (85%) of the total votes in the Residence Association. Following termination of the Declarant Control Period, any meeting of the Residence Association to discuss or vote on any amendment to this Section or the right to rent a Lot or Residence, shall require attendance of at least eighty-five percent (85%) of the Members and shall require the affirmative vote of at least sixty-seven percent (67%) of the total votes in the Residence Association.

3.2 **Use Restrictions.** Except as otherwise provided herein, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of a Residence in accordance with the Residence Project Documents. The Lots, Residences, Residence Common Areas and Improvements, except as otherwise permitted in writing by the Residence Association and/or Declarant, as applicable, shall be used in accordance with the restrictions outlined in the Residence Project Documents, including, but not limited to, any open space areas or open space use restrictions as further provided in the Community Declaration. Each Owner agrees, understands and acknowledges that his, her or its Lot is subject to certain use restrictions that may limit such Owner's use of the Lot and ability to construct the Residence and various Improvements thereon as specifically described in the Residence Project Documents. Such use restrictions shall include, without limitation, the following restrictions in addition to those described in the Community Declaration:

3.2.1 Vehicles. Except as otherwise approved by the Design Review Committee, no automobile, commercial vehicle, truck, recreational vehicle or trailer (either with or without wheels), camper, camper trailer or any other transportation device of any kind, shall be stored outside or parked on a Lot except within a garage. The Board may permit Owners to park a boat or other watercraft and a boat trailer on his, her or its Lot in accordance with the Echo Canyon Design Guidelines, the Residence Design Guidelines and the Residence Association Rules. No Owner or Occupant shall repair or restore any vehicle of any kind upon any portion of the Project, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

3.2.2 Tree Removal. Subsequent to final approval by the Design Review Committee, no trees shall be removed, except for (i) diseased or dead trees; and (ii) trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in writing by the Echo Canyon Design Review Committee and the Residence Design Review Committee.

3.2.3 Animals. Except as otherwise required by applicable law, including, but not limited to, the Americans with Disabilities Act, no animals other than two (2) ordinary household pets may be kept or allowed to remain on any particular Lot or Unit. All animals are subject to applicable Municipal Authority pet ordinances, leash ordinances and any pet rules and regulations promulgated by the Board. Except as otherwise prohibited by applicable law and subject to any Community Rules addressing pets or animals, Declarant during the Declarant Control Period, and thereafter the Board, in its sole discretion, shall have the right to revoke such authorization at any time in its subjective discretion and shall have the power to require any Owner or guest to remove any animal or other pet belonging to it which is not disciplined or which constitutes an undue annoyance or a danger to other Owners, their guests, or others.

3.2.4 Antennas and Satellite Dishes. Except for an Owner's rights under the Federal Communications Commission's over-the-air reception devices rule (OTARD rule, 47 C.F.R. § 1.4000), or other applicable laws, concerning the right to install and use an antenna or dedicated satellite dish to receive video services from direct broadcast satellite, broadband radio services, and television broadcast stations, the installation and use of any other antenna or satellite dish must be approved by Declarant or the Design Review Committee.

3.2.5 No Unsightliness. No unsightliness shall be permitted on or about the Project. Without limiting the generality of the foregoing (i) any unsightly structures, facilities, equipment, tools, vehicles other than automobiles, objects, and conditions shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs, excepting boats (and their trailers) which may be parked in private driveways subject to any rules or regulations promulgated by the Board regarding the same; (ii) no trailers (other than boat trailers), mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the Property; (iii) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (iv) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials, or scrap shall be kept, stored or allowed to accumulate on the Property; (v) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (vi) hanging, drying or airing of clothing or household fabrics shall not be permitted on a Lot or Residence if visible from buildings, Development Parcels, Lots, Units, or areas surrounding the Property; and (vii) hanging, mounting, or displaying signs, including but not limited to, for sale, for rent, or other signs shall not be permitted on Development Parcels, Common Elements, Lots or Units if visible from buildings, Development Parcels, Lots, Units, or areas surrounding the Property.

3.2.6 No Fences. No fences, walls, or other barriers shall be permitted for the purpose of enclosing or demarcating any property line boundaries without the prior written approval of the Declarant during the Declarant Control Period (as such term is defined in the Community Declaration), or thereafter the Design Review Committee, which approval may be withheld in the Community Developer's or the Design Review Committee's sole and exclusive discretion.

3.2.7 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements as approved by the Community Developer during the Declarant Control Period (as such term is defined in the Community Declaration), or thereafter the Design Review Committee, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

3.2.8 Transient Occupancy and Rental Regulation. The Board shall have the full and exclusive authority to adopt, amend, and enforce rules, regulations, and procedures governing transient occupancy and short-term rentals, including but not limited to rentals arranged through platforms such as Airbnb, VRBO, or similar services. This authority includes the power to prohibit such uses entirely or to permit them only under specific conditions deemed appropriate by the Board. For purposes of this Declaration, "Transient occupancy" means the lease, rental, or license to use any Residence, or portion thereof, for a period of less than thirty (30) consecutive days, or for any term that lacks the indicia of a primary single-family residential use. Any use involving hotel-like accommodations or revolving occupants shall also be considered transient in nature. No Owner may offer, advertise, or allow any transient occupancy of a Residence unless: (i) the Board has expressly authorized such use in writing; the use complies with all Residence Association Rules, including but not limited to registration requirements, occupancy limits, insurance standards, local compliance, and guest conduct rules; and (iii) the Owner remains in good standing with the Residence Association and is not in violation of any other provision of this Declaration or the Residence Project Documents. The Board may place time, frequency, duration, or numerical limits on authorized short-term rentals and may revoke any authorization at any time upon notice, with or without cause, if deemed necessary to protect the residential character or interests of the Project and as in accordance with the CAA. The Board shall have the authority to impose fines, suspend privileges, and pursue legal or equitable remedies against any Owner violating this provision. Each day a violation continues shall constitute a separate offense. The Residence Association may also recover reasonable attorney's fees, costs, and administrative charges incurred in enforcing this provision. The purpose of this provision is to protect the safety, security, and residential quality of the Project, to reduce commercial traffic and turnover, and to ensure a stable and harmonious living environment for all Owners. As may be further described in a rental policy adopted by the Board, the minimum rental restrictions shall include: (i) overnight rental of Residences shall be limited to a minimum of seven (7) nights rental; (ii) rental guests must be present for the entire rental period; (iii) there shall be no more than two (2) rental guests per each approved bedroom within a Residence; (iv) rental guests must comply with this Declaration and all Residence Association Rules, including noise and parking restrictions; (v) Owner shall be liable if their renter guests violate any provision of this Declaration or the Residence Association Rules; (vi) access to the Residence Common Areas or the Community Common Areas shall be limited to Owners and their immediate family members who have registered with the Residence Association in accordance with the Residence Rules and Regulations, and guests of Owners who are accompanied by Owners; and (vii) access to Residence Common Areas may be extended to non-Owner-accompanied rental guests, provided that the rental guests have been approved by the Residence Board and have

provided a damage deposit in favor of the Residence Association as established by the Residence Board, unless otherwise waived by the Board in writing.

3.3 Residence Design Review Committee. Declarant intends that all design review activities, reviews, approvals, rejections and hearings shall be conducted by the Echo Canyon Design Review Committee in accordance with the Community Declaration, the rules and regulations promulgated by such Committee, the Echo Canyon Design Guidelines and the Residence Design Guidelines. Notwithstanding the foregoing intention, Declarant reserves the right, without obligation, to organize and create the Residence Design Review Committee to first review, study and either approve, reject or request resubmittal of proposed developments and improvements to a Lot or Residence, all in compliance with this Declaration and as further set forth in the rules and regulations of the Residence Design Review Committee and the Residence Design Guidelines, prior to any review or approval by the Municipal Authority and/or the Echo Canyon Design Review Committee. If created, the Residence Design Review Committee shall have the right, but not the obligation, to promulgate, enforce and interpret the Residence Design Guidelines provided that the Residence Design Review Committee's determinations or functions do not contradict or supersede the Municipal Authority's and/or Echo Canyon Design Review Committee's duties and responsibilities as set forth in the Community Declaration. The Residence Design Review Committee shall be composed of the number and name of individuals or entities as the Declarant may determine in its sole and exclusive discretion, who need not be Owners.

3.4 Architectural Control. In addition to those certain approvals set forth in this Declaration, all Lots and Residences and Improvements constructed within the Project shall comply with the Echo Canyon Design Guidelines and the Residence Design Guidelines. The Board and all purchasers, transferees and Owners shall not construct, install, remove, add, alter, repair, change, devegetate, excavate, grade, plant, revegetate, or other do any work, or cause any work to be done, which in any way alters the appearance (including but without limitation, the exterior color scheme) of any property or Lot within the Project, or any Residences or Improvements located thereon, without the prior written approval of the Design Review Committee, which approval may be withheld for any reason in the Committee's sole and exclusive discretion. The Residence Association and any Owner or other Person desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Lot, or any Residence or Improvement located thereon, which would alter the exterior appearance of a Lot, Residence or other portion of the Project, or any Improvements located thereon, shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which the Board or such Owner or other Person desires to perform. The Design Review Committee shall review the Board's, Owner's or other Person's written request according to the procedures outlined in the Community Declaration and the Board, Owner or other Person shall pay design review fees promulgated thereunder. Notwithstanding the foregoing, the Design Review Committee shall have the right, but not the obligation, to waive any and all design review fees related to any request made by the Board.

3.5 Architectural Review Fee. The Design Review Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to the Community Declaration and this Declaration, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. Such fee, if established and charged by the Design Review Committee, shall be set at such reasonable level as the Design Review Committee may estimate will be necessary to defray the reasonable costs and expenses of the Design Review Committee in reviewing and evaluating any such request or application, and may include, if the Design Review Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Committee by an architect, engineer or attorney.

3.6 **Municipal Authority Approval.** The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, the Community Declaration or under any other governing Recorded instrument. The Design Review Committee may condition its approval of any application, plans or other items submitted to it on delivery to the Design Review Committee of evidence satisfactory to the Design Review Committee that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Committee shall cooperate reasonably with any other approving authorities or entities; provided, however, that the Design Review Committee shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity, unless otherwise required by law.

3.7 **Required Approvals for Further Property Restrictions.** The Property is subject to the following additional approvals:

3.7.1 No Lot, or portion thereof, shall be further subdivided, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant, so long as Declarant's Class B Membership exists, and thereafter, the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant, and is not intended to prohibit any Owner from renting his or her Lot as temporary short-term or overnight accommodations, subject to any Residence Association Rules governing such rental activities. No Owner of any Residence shall offer or sell any interest in a Residence under a timesharing, interval ownership, fractional, club, vacation or travel program, or similar program.

3.7.2 No site plan, subdivision plat, declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be Recorded, submitted to any Municipal Authority unless the same has first been approved in writing by the Design Review Committee; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Design Review Committee hereunder unless such changes or modifications have first been approved by the Design Review Committee in writing.

3.8 **Lots and Improvements.** Declarant shall not be restricted in the location or in the number of Residences, Residence Common Areas or other Improvements that may be created on the Property, except as may be required by the Residence Project Documents, applicable zoning requirements, ordinances or regulations, and provided that when completed, the Project shall not contain more than fourteen (14) Lots and fourteen (14) Residences, subject to Declarant's right to expand as provided in Section 2.5. The Lots and Residences to be located on the Property shall be subject to the use restrictions contained in the Residence Project Documents and the Community Project Documents. No structures other than Residences and Improvements approved by the Design Review Committee will be erected on the Property; provided, however, that Declarant reserves the right to create additional Residence Common Areas and Improvements on the Property without limitation. Declarant makes no assurances as to location, size, type or number of Residence Common Areas or other Improvements to be created on the Property.

3.9 **Notice of Environmental Conditions, Amenity Risks, and Proximity-Related Nuisances.**

3.9.1 **Proximity to the Colorado River and Environmental Hazards.** Owners and Occupants are hereby notified that the Project is located in the vicinity of the Colorado River, and that the physical proximity to a major waterway subjects the Project and certain Lots to inherent

natural conditions and environmental risks. These may include, without limitation flooding (including flash flooding), riverbank erosion, sedimentation, standing water, unstable soils, wildlife activity (including insects and reptiles), and other natural occurrences associated with riparian zones in the desert Southwest. Certain portions of the Project may be located within or adjacent to mapped Special Flood Hazard Areas as designated by the Federal Emergency Management Agency (FEMA) or other governmental agencies. Owners are encouraged to review applicable floodplain maps and consult with qualified insurance providers regarding the need for flood insurance, which may be required by lenders or deemed prudent for risk protection.

3.9.2 No Representations. Declarant nor the Residence Association makes no representation or warranty regarding the safety, insurability, or environmental stability of any Lot or Residence within the Project, and shall bear no responsibility for damages or losses related to natural waterway conditions or events.

3.9.3 Swimmable Lagoon — No Lifeguard on Duty. The Project may include a swimmable or recreational lagoon that constitutes Residence Common Area and maintained by the Residence Association. This feature is not monitored or supervised by any lifeguard or safety personnel, and no such supervision shall be provided by Declarant or the Residence Association at any time. All use of the swimmable lagoon is strictly at the risk of the user. Each Owner, by acceptance of a deed to a Lot, acknowledges and accepts the risks associated with swimming or entering the swimmable lagoon and releases Declarant and the Residence Association from any liability for personal injury, death, illness, or property damage arising from or connected to its use by the Owner, Occupants, or guests.

3.9.4 Lots Adjacent to Community Facilities. Certain Lots within the Project may be located adjacent to, or near, the community center, clubhouse, parking areas, recreational facilities, event lawns, or similar Residence Common Area improvements intended for use by all Owners and Occupants. Due to the nature and permitted uses of these areas, Owners of adjacent or nearby Lots may experience increased levels of activity, including but not limited to: amplified noise, outdoor lighting, foot traffic, music, vehicle movement, odors from cooking or gatherings, and general community use. Such conditions are not considered a nuisance and shall not give rise to any claim, demand, or action against Declarant, the Residence Association, or other Owners. By accepting title to a Lot, each Owner acknowledges and accepts these ordinary and foreseeable conditions as part of living in a planned community near active shared amenities.

3.10 Declarant's Exemption. No Residence Design Review Committee approval shall be required for (i) any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant; (ii) initial Improvements constructed by, at the direction of, or with the express written approval of Declarant; (iii) normal maintenance of Property or Improvements; (iv) rebuilding on Property or Improvements in accordance with its original design and dimensions; (v) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

ARTICLE 4 EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4, each Owner and Occupant shall have a non-exclusive right and easement of enjoyment in, to and over the Residence Common Areas, which right and easement shall be appurtenant to and shall pass

with the title to each Lot, subject to the provisions of the Residence Project Documents including, without limitation, the following:

4.1.1.1 Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Residence Common Areas shall be effective unless approved by Owners representing two-thirds (2/3) of the votes in each class of Residence Association Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Residence Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to dedicate portions of the Residence Common Areas to the public, or grant easements over, under or through portions of the Residence Common Areas to the public, to any Municipal Authority, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by any Municipal Authority or other entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

4.1.1.2 The Residence Association shall have the right to regulate the use of the Residence Common Areas through the Residence Association Rules and to prohibit access to such portions of the Residence Common Areas, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

4.1.1.3 The Declarant and the Residence Association shall each have the right to grant easements or licenses to Persons for the construction of Improvements on the Residence Common Areas, and the Declarant and the Residence Association shall each have the right to grant ingress and egress easements over the Residence Common Areas in the Project to Persons who are not Residence Association Members.

4.1.2 Occupants Use of the Residence Common Areas. If a Residence is leased or rented by its Owner, the Occupants of such Residence shall have the right to use the Residence Common Areas during the term of the lease, and the Owner of such Residence shall have no right to use the Residence Common Areas until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Residence Common Areas, certain portions of the Lots and other property as depicted on the Plat for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, internet, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Residence Common Areas, certain portions of the Lots and other property as depicted on the Plat. However, except within the public utility easements depicted on the Plat, no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Residence Common Areas, Lots, and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). Declarant reserves the right to record an instrument which narrows and limits any grant of a blanket utility easement to the actual easement width and location of such blanket utility easement within those certain areas of Project which actually contain a blanket utility easement as described in such instrument and for the purposes described therein. Such reserved right is subject to the utility companies' rights then located under the real property within the Project, including but not limited to the utility facilities. If any utility company requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Residence Common Areas, the Residence Association shall have the power and authority,

without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Residence Common Areas. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such private or public street and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and Residences and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Residence Common Areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of any Municipal Authority having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

4.4 Declarant's Use and Easements. So long as Declarant or a Declarant Affiliate owns a Lot within the Project, Declarant shall have and hereby reserves the following rights and easements for the benefit of itself and all Declarant Affiliates and their agents, contractors, members, officers, employees, and assigns:

4.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices and management offices throughout the Project and to maintain one or more advertising signs on the Property, including without limitation on the Residence Common Areas, with respect to the sales of Lots or other property in the Project or within any of the Additional Property. Declarant reserves the right to place management offices and sales and leasing offices on any Lots or other property owned by Declarant or a Declarant Affiliate and on any portion of the Project, including without limitation on the Residence Common Areas, in such number, of such size and in such locations as Declarant deems appropriate.

4.4.2 Declarant shall have the right and an easement on and over the Residence Common Areas to construct all Improvements Declarant may deem necessary and to use the Residence Common Areas and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.4.3 Declarant shall have the right and an easement upon, over and through the Residence Common Areas as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration or the Community Declaration, including an easement for communication facilities as provided in the Community Declaration.

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

4.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of portions of the Residence Common Areas accessible only from such Lot or Lots;

4.5.3 For correction of emergency conditions on one or more Lots or on portions of the Residence Common Areas accessible only from such Lot or Lots;

4.5.4 For the purpose of enabling the Community Association, Residence Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Residence Project Documents and the Community Project Documents; and

4.5.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Residence Project Documents.

ARTICLE 5

THE RESIDENCE ASSOCIATION; ORGANIZATION; ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 **Formation of Residence Association.** The Residence Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Residence Project Documents.

5.2 **Registration with the Department of Commerce.** The Residence Association shall register with the Department of Commerce within ninety (90) days of the Recordation of this Declaration. Within ninety (90) days after a change of any information provided in the Residence Association's registration with the Department of Commerce, the Board shall submit an updated registration in the manner established by the Department of Commerce and the CAA.

5.3 **Governing Board and Officers.** The affairs of the Residence Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Residence Project Documents specifically require the vote or written consent of the Residence Association Members, approvals or actions to be given or taken by the Residence Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Residence Association and the Residence Common Areas; the Board shall determine the compensation to be paid to any such manager. The initial number of directors on the Board shall be at least three (3) and, until the rights of Declarant under Section 2.16 are terminated, all directors, unless Declarant otherwise agrees in writing, will be appointed by Declarant. If the Declarant relinquishes its right to appoint the directors of the Board or its right to do so is otherwise terminated in accordance with the provisions of Section 2.16, the Board at the time of such relinquishment or termination shall continue in office until the next special or annual meeting of Owners who shall then have authority to elect a new Board in accordance with the Residence Bylaws. Moreover, the terms of the directors of the Board, the filling of Board vacancies and similar operational matters of the Board shall be conducted in accordance with the Residence Bylaws.

5.4 **Residence Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal the Residence Association Rules which generally pertain to: (i) the management, operation and use of the Residence Common Areas; (ii) traffic and parking restrictions including speed limits on the private street within the Project; (iii) minimum standards for any maintenance of Residence Common Areas, Lots, Residences and Improvements within the Project; (iv) transient occupancy rules and procedures; and (v) any other subject within the jurisdiction of the Residence Association.

Association. Residence Association Rules must comply with the limitations set forth in the CAA. In the event of any conflict or inconsistency between the provisions of this Declaration and the Residence Association Rules, the provisions of this Declaration shall prevail.

5.4.1 Enforcement of Residence Project Documents. All Owners, Occupants, guests, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the Bylaws, the Residence Association Rules and all other Residence Project Documents and decisions issued pursuant thereto. The Residence Association and any aggrieved Owner shall have a right of action against Owners, Occupants and guests who fail to comply with provisions of the Residence Project Documents or the decisions of the Residence Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; (ii) suspension of the Owner's voting rights; and/or (iii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of the Residence Common Areas, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the property manager, the power and authority to carry out disciplinary actions duly imposed.

5.4.2 Imposition of Fines. Pursuant to the CAA, as amended, the Board may assess a fine against an Owner or Occupant for a violation of the Residence Project Documents by such Owner, Occupant and/or his, her or its guests. Before assessing a fine under this Section 5.4.2, the Board shall (i) notify the Owner or Occupant of the violation; and (ii) inform the Owner or Occupant that a fine will be imposed if the violation is not remedied within the time provided in the Residence Association Rules, which shall be at least forty-eight (48) hours. Unpaid fines may be collected as an unpaid Assessment as set forth in this Declaration or under Utah law. A fine assessed under this Section 5.4.2 shall:

5.4.2.1 be made only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Residence Project Documents;

5.4.2.2 be in the amount specifically provided for in the Residence Project Documents for that specific type of violation or in an amount commensurate with the nature of the violation; and

5.4.2.3 accrue interest and late fees as provided in this Declaration for the payment of delinquent Assessments.

5.5 Hearing. An Owner or Occupant who is assessed a fine under Section 5.4.2 may request an informal hearing to protest or dispute the fine within 14 days from the date the fine is assessed. A hearing requested under this Section 5.5 shall be conducted in accordance with standards provided in the Residence Bylaws. No interest or late fees may accrue until after the hearing has been conducted and a final decision by the Board has been rendered.

5.6 Personal Liability. No member of the Board, the Design Review Committee, or any other committee of the Residence Association, no officer of the Residence Association and no manager or other employee of the Residence Association shall be personally liable to any Residence Association Member, or to any other Person including the Residence Association, for any damage, loss or prejudice suffered or

any member thereof, the manager, any representative or employee of the Residence Association, any officer of the Residence Association or any member of any other committee of the Residence Association; provided, however, the limitations set forth in this Section shall not apply to any person who has engaged in intentional misconduct.

5.7 **Borrowing Power.** The Residence Association may borrow money in accordance with

the Bylaws in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Residence Association Members. The Residence Association may secure such loans by pledging any of its properties including future Assessments and by granting interests in the Residence Common Areas to secure such loans.

5.8 **Express and Implied Rights.** The Residence Association may exercise any expressed or implied right or privilege given to the Residence Association expressly by the Residence Project Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege. In particular, subject to the rights of Declarant described in this Declaration, the business, property and affairs of the Residence Association shall be managed, operated, and maintained by the Board and by any manager it may designate and the Board, acting for and on behalf of the Residence Association, shall have, and is hereby granted, the following specific authority and powers:

5.8.1 Without the vote or consent of the Owners or any other persons, the Board may grant or create, to the extent permitted by law and on such conditions as it deems advisable, utility and similar easements and rights of way, over, under, across and through the Residence Common Areas;

5.8.2 The Board may execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by any vote or consent necessary to authorize such amendment;

5.8.3 The Board shall have the authority to enforce this Declaration on behalf of the Residence Association and its Residence Association Members;

5.8.4 The Board shall have the authority to prepare and administer an operational budget, collect Assessments, pay the Common Expenses, and open bank accounts for the funds held by the Residence Association;

5.8.5 The Board shall have authority to enter into contracts, deeds, leases, and other written instruments which in any way concern the Project on behalf of the Residence Association, so long as any vote or consent of the Owners which may be necessitated by the subject matter of the agreement has been obtained;

5.8.6 The Board may add any interest in real property obtained pursuant to Section 5.9 to the Project, so long as such action has been authorized by any necessary vote or consent of the Owners and Declarant;

5.8.7 The Board may adopt Residence Bylaws of the Residence Association;

5.8.8 The Board may promulgate, from time to time, such reasonable rules, regulations, and procedures as may be necessary or desirable to aid in carrying out the Residence Association's functions and/or to govern the reasonable use, maintenance, and operation of the Project;

5.8.9 The Board shall have the obligation and authority to maintain, repair, replace, ~~restore, operate, and manage the Residence~~ Common Area and private roads, and any property that may be acquired by the Residence Association, and to appoint a manager in regard to such activities, and to establish an adequate reserve fund for repair, replacement, and restoration thereof;

5.8.10 The Board may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate, and may engage the services of accountants, attorneys or other employees or agents and pay said persons a reasonable compensation therefor;

5.8.11 The Board may bring, prosecute, and settle litigation for itself, the Residence Association, and its members;

5.8.12 The Board shall have authority to secure fidelity bond coverage and such other policy or policies of insurance as the Board deems necessary or desirable in protecting the interests of the Residence Association and the Owners; and

5.8.13 The Board may perform any other acts and may enter into any other transactions which are permitted by the Bylaws, which may be deemed reasonably necessary by the Board for the Board to perform its function, and which Utah law shall permit.

5.9 **Acceptance and Control of Residence Association Property.** The Board shall have authority to purchase, otherwise acquire, and accept title to, in the name of the Residence Association, any personal property and/or interest in real property, and to convey or transfer any interest in real property, so long as such action has been authorized by any vote or consent of the Owners which may be necessary under the circumstances. Declarant or its designees may transfer to the Residence Association, and the Residence Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included with the Project. Prior to or immediately after the expiration of Declarant's control of the Residence Association, the Residence Association shall execute and deliver to Declarant a transition agreement or such similar instrument which shall contain such terms and conditions that Declarant deems is reasonable to effectuate transition of control of the Residence Association, as Declarant may determine in its sole and exclusive discretion.

5.10 **Membership in the Residence Association.** Every Owner, including Declarant, shall be a member of the Residence Association, and the Declarant shall be a member of the Residence Association so long as it owns any Lot, Residence, or part of the Project (unless and until the Declarant expressly relinquishes in writing its status as a Residence Association Member).

5.11 **Votes in the Residence Association.** The Residence Association shall have two classes of Residence Association Memberships which shall be entitled to the following voting rights:

5.11.1 **Class A.** Each Owner of a Lot shall be a Class A Member of the Residence Association and each Owner is allotted one (1) vote per Lot owned. Each Class A membership in the Residence Association shall be held jointly by all Owners of that Lot.

5.11.2 **Class B.** Declarant shall be a Class B Member of the Residence Association and shall be entitled to three (3) votes for each Lot held by Declarant as an Owner of a Lot.

5.12 **Voting Procedures.** A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded, or, in connection with Owners who are vendees, upon the execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provided satisfactory

evidence thereof. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among

themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Residence Association Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

5.13 **Transfer of Residence Association Membership.** The voting rights and assessment obligations of any Residence Association Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Residence Association Membership appurtenant to said Lot to the new Owner thereof. No Owner may transfer a Lot's undivided interest in the Residence Common Areas separate from a transfer of title to the Lot. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his, her or its name to the purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right, but not the obligation, to record the transfer upon the books of the Residence Association. All transfers shall be subject to the reinvestment fee described in Section 6.15.

ARTICLE 6 COVENANT FOR ASSESSMENTS

6.1 **Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Residence Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorney's fees, incurred by the Residence Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorney's fees, incurred by the Residence Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges which are not to exceed maximum amount set forth in the CAA) until the same are fully paid.

6.2 **Annual Assessment.** In order to provide for the operation and management of the Residence Association and to provide funds for the Residence Association to pay all Common Expenses and to perform its duties and obligations under the Residence Project Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot. Annual Assessments shall be computed and assessed against all Lots in the Project as follows:

6.2.1 Common Expense. Annual Assessments shall be based upon advance estimates of the Residence Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Residence Common Areas, and furnishing common utility services and other common items to the Residences. Such estimated expenses may include, without limitation, the following: landscaping costs, management expenses; real property taxes on the Residence Common Areas; premiums for all insurance that the Residence Association is required or permitted to maintain hereunder; repairs and maintenance; Community Association Assessments, wages of Residence Association employees, including fees for a manager; utility charges, including charges for utility services to the Residence Common Areas; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Residence Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Residence Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expenses, and all funds received from assessments under this Section shall be part of the common expense fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the common expense fund;

6.2.2 Apportionment. Common Expenses shall be equally apportioned among and assessed to all Residence Association Members. Each Owner, for each Lot that he, she or it owns, shall be liable for a 1/14th equal share of the Common Expenses, or such other fraction corresponding to an equal share for the then current number of Lots following the Recordation of a Supplemental Declaration annexing Additional Land into the Project;

6.2.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 1 of each year thereafter fiscal year. The Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year;

6.2.4 Budget Approval. The Board shall present the adopted budget to the Residence Association Members for their approval at a meeting of the Residence Association ("Budget Meeting"), which may be the same as the annual meeting of the Residence Association Members. A budget is disapproved if within forty-five (45) days of the Budget Meeting there is a vote of disapproval by at least fifty-one percent (51%) of the total votes of all the Residence Association Members at a special meeting subsequent to the Budget Meeting called for that purpose by the Residence Association Members pursuant to this Declaration. If the budget is disapproved, the budget the Board last adopted that was not disapproved by the Residence Association Members continues as the budget for the Residence Association unless and until the Board presents another budget to the Residence Association Members and that budget is not disapproved; provided, the Residence Association Members may not disapprove a budget during the period of Declarant control described in Section 2.16 above;

6.2.5 Notice and Payment. Beginning after the closing of a sale of the first Lot, the Board shall give notice of the Annual Assessment to each Owner at least ten (10) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the

Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Residence Association Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board. Regular Annual Assessments shall commence and be levied against all Residence Association Members upon the earlier to occur of (i) twenty-four (24) months from the date this Residence Declaration is Recorded; or (ii) thirty (30) days after the clubhouse, community pool, and swimmable lagoon constituting Residence Common Areas are open to Owners and Occupants for their use and enjoyment of such recreational facilities.

6.2.6 Effective Date of Assessments. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if Notice (as defined below) of the amount thereof is sent by the Board to the Owner subject thereto at least ten (10) days prior to the due date thereof as described in Section 6.2.5 above, or, if it is to be paid in installments, the due date of the first installment thereof. Written notice mailed, emailed or delivered to an Owner's Residence shall constitute notice to that Owner, unless the Owner has delivered written notice to the Board of a different address for such notices, in which event the transmission of the same to that last designated address shall constitute notice to that Owner.

6.3 Special Assessments. The Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be levied against each Lot and to each Residence Association Member associated therewith, and shall be payable in such manner and at such times, including installments over time, as the Board may determine. The Board may levy Special Assessments for any reason permitted by the Residence Project Documents or applicable law, as it shall determine in its sole and exclusive discretion, including without limitation Special Assessments for any purpose including defraying, in whole or in part, the cost of any design, permitting, construction, reconstruction, repair, and replacement of a capital improvement of or upon the Residence Common Areas, including fixtures and personal property related thereto, which shall be the responsibility of the Residence Association, except with respect to repairs or replacement resulting from a casualty as further provided in Section 9.5 below.

6.4 Specific Assessments. Specific Assessments levied by the Residence Association shall be levied against a particular Lot or Residence and to each Residence Association Member associated therewith, to cover costs, including overhead and, administrative costs, for:

6.4.1 Providing particular services, items, or benefits to a Lot, Residence or Improvement at the request of the Owner thereof or Residence Association Member associated therewith pursuant to a list of special services which the Board may authorize from time to time including, without limitation, landscape maintenance, and handyman services, and which Assessments may be levied in advance of providing such special services;

6.4.2 Enforcing any provision of the Residence Project Documents, including the Residence Declaration against any Residence Association Member or Owner, or of bringing any Lot, Residence or Improvement into compliance with such requirements; and

6.4.3 Maintenance, repairs, or replacements of or within the Residence Common Areas arising out of or caused by the willful or negligent act or omission of a Residence Association Member or an Owner or the Owner's guests.

6.5 Reserves.

6.5.1 Use of Reserve Funds. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Residence Common Areas for which the Residence Association is responsible and for which the reserve fund was established or for litigation involving such matters. Furthermore, the Board shall not use money in a reserve fund for daily maintenance expenses, unless a majority of the Residence Association Members vote to approve the use of the reserve fund money for that purpose. Upon the approval of a majority of the Residence Association Members, the Board may authorize the temporary transfer of money from the reserve account to the Residence Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Residence Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Residence Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations set forth in Sections 6.5.4.

6.5.2 Reserve Analysis. At least once every six (6) years the Board shall cause a reserve analysis to be conducted of the reserve account of the Residence Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, review the reserve account study at least every three (3) years and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve analysis shall include, at a minimum:

6.5.2.1 Identification of the major components which the Residence Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of no fewer than three (3) years but less than thirty (30) years that will reasonably require reserve funds;

6.5.2.2 Identification of the probable remaining useful life of the components identified in subparagraph 6.5.2.1 above, as of the date of the study;

6.5.2.3 An estimate of the cost of repair, replacement, and restoration of each major component identified;

6.5.2.4 An estimate of the total annual contribution to reserve funds necessary to meet the cost to repair, replace, or restore each major component during and at the end of its useful life; and

6.5.2.5 A reserve funding plan that recommends how the Residence Association may fund the annual contribution described in Section 6.5.2.4.

6.5.3 Providing Reserve Analysis to Owners. Each year the Residence Association shall provide a summary of the most recent reserve analysis, including any updates, to each Owner. Owners may receive a complete copy of the reserve analysis upon a request submitted to the Board. During the period of Declarant control described in Section 2.16 above, Declarant shall provide to each purchaser of a Lot a copy of the Residence Association's most recent financial statement that includes any reserve funds held by the Residence Association and any other financial disclosure as required by the CAA.

6.5.4 Reserve Fund Line Item. The Residence Association's budget shall include a reserve fund line item as determined by the Board, based on the reserve analysis and the amount the Board determines is prudent under the circumstances. Within forty-five (45) days after the day on which the Residence Association adopts its budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote at a special meeting called by the Owners for the purpose of voting whether to veto the reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved budget of the Residence Association that was not vetoed, the Residence Association shall fund the reserve account in accordance with that prior reserve fund line item.

6.6 Community Association Assessments.

6.6.1 Community Declaration. The Project is encumbered by, and is entitled to receive the benefits arising under, the Community Declaration. The Community Declaration permits certain development rights with respect to, and imposes certain land use and other restrictions on, the Project. The development, construction, reconstruction, ownership and use of the Project must comply with the terms and requirements of the Community Declaration.

6.6.2 Community Association Assessments. The Community Declaration grants certain easements and other rights that benefit the Project and imposes certain obligations on the Community Association for maintenance within the Community. The Community Association also imposes certain assessments and fees on the ownership, use, and transfer of the Lots. Each Owner by accepting a deed or conveyance to a Lot agrees to be bound by all of the terms and provisions of the Community Declaration and agrees to pay, as and when due, its applicable assessments, costs and fees arising under the Community Declaration. The Community Association shall levy certain Assessments against the Residence Association and each Owner hereby agrees to pay its pro rata share of the Assessments levied by the Community Association against the Residence Association and shall be included in the Common Expenses. The Residence Association will remit these amounts to the Community Association as required by the Community Declaration.

6.6.3 Initial Allocation of Assessment Units. At the time of Recordation of this Declaration, the Community Developer has allocated fixed Assessment Units equally among the Lots as set forth in the Notice of Annexation. Each Lot shall initially be allocated a monthly fixed assessment of \$500 per Lot which constitutes one (1) Assessment Unit, and each Owner shall be responsible for its share of the Community Association's budget based on such allocation. For a period of twenty-four (24) months following the first conveyance of a Lot to a non-Declarant Owner (the "**Initial Assessment Period**"), the Community Assessment per Lot shall not exceed the allocated Assessment Unit. During the Initial Assessment Period, the Assessment Unit shall remain fixed and shall not be modified by the Community Association or the Community Developer. After the expiration of the Initial Assessment Period, the Community Association shall have the authority to reevaluate and adjust the assessment units and annual assessments based on: (i) actual and projected expenses of the Community Association; (ii) the current physical and legal composition of the Community; and (iii) reasonable and equitable standards of cost-sharing among all Owners within the Community. Notwithstanding such reallocation procedures, no Lot's Assessment Unit may increase by more than twenty percent (20%) over the Assessment Unit except in the case a greater increase may be approved by the Community Association for emergency repairs or legal obligations of the Community Association. All Community Assessments shall be fairly and reasonably allocated among Lots in accordance with the benefits received, the burdens imposed, and the proportionate impact on the shared obligations of the Community Association as determined by the Community Board in a commercially reasonable manner.

6.6.4 No Duty to Collect the Community Association Assessments. Other than collecting and paying the Community Association Assessments as a part of the Assessments levied by the Residence Association as described in Section 6.6.2 above, the Residence Association has no responsibility, obligation or duty to collect or assess the Community Association Assessments. However, to the extent any Owner fails to pay its Community Association Assessments, the Residence Association may, at its option, exercise all of the lien rights and other remedies contained in this Article 6 to collect any such delinquent Assessments.

6.7 Working Capital Fund. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Residence Association to send a bill to a Residence Association Member shall not relieve any Residence Association Member of his, her or its liability for any Assessment or charge under this Declaration. However, no Assessment Lien shall be foreclosed or otherwise enforced until the Residence Association Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Residence Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during a fiscal year; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.8 Providing Payoff Information. The Residence Association may charge a reasonable fee (to be paid after closing) for providing payoff information needed in connection with the closing of an Owner's financing, refinancing, or sale of a Lot. The Board shall provide payoff information within five (5) business days after the closing agent for a transaction requests such information.

6.9 Declarant and Declarant Affiliate Subsidy. Notwithstanding any other provision of this Declaration to the contrary, prior to its transfer of control of the Residence Association pursuant to Section 2.16 above, Declarant reserves for itself and all Declarant Affiliates (collectively referenced as the "Subsidizing Party"), in its sole and exclusive discretion, the right to subsidize the Residence Association (rather than paying a full assessment share for each Lot it owns) for the amount by which the actual cost and expense of operating and administering the Residence Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies, all as provided in this Declaration, exceeds the total amount of Assessments levied against and collected from Owners other than the Subsidizing Party. The subsidy required of the Subsidizing Party under this Section may be in the form of cash or in the form of "in-kind" contributions of goods or services, provided that "in-kind" contributions of goods or services must directly reduce the Residence Association's costs and expenses for which an Assessment is being levied. The Subsidizing Party shall make payments or contributions in respect to its subsidy obligations under this Section at such time as the Board may reasonably request from time to time as necessary to ensure that there are sufficient funds available for payment of Residence Association costs and expenses and accumulation of adequate reserves (but in any event not more often than monthly). At the end of each fiscal year, either (i) the Subsidizing Party shall pay or contribute to the Residence Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by the Subsidizing Party during such fiscal year, to satisfy in full the Subsidizing Party's subsidy obligations under this Section for such fiscal year; or (ii) the Residence Association shall pay to the Subsidizing Party or credit against the Subsidizing Party's subsidy obligation for the immediately following fiscal year, as the Subsidizing Party may elect, the amount, if any, by which the total of all payments or contributions paid or made by the Subsidizing Party during such fiscal year exceeded the total subsidy obligation of the Subsidizing Party for such fiscal year under this Section. Within thirty (30) days of the end of each fiscal year, the Board shall make an accounting of the Subsidizing

Party's subsidy obligations for that period, what amounts have been paid by the Subsidizing Party (in cash, goods or services) with respect to such obligations, and what amounts are due. A copy of the accounting shall be made available for review by Residence Association Members upon request. Subsequent to Declarant's transfer of control of the Residence Association pursuant to Section 2.16 above, the Subsidizing Party shall pay twenty-five percent (25%) of the Annual Assessment attributable to each Lot which it owns until completion and sale of the Residence on such Lot to an unrelated third-party Owner. Subsequent to the Subsidizing Party's sale, conveyance and/or transfer of a Lot to a third-party Owner, such Owner shall pay the full Assessment attributable to such Lot for that remaining portion of the year during which he, she or it owes.

6.10 **Encumbrances.** Any encumbrancer holding a lien on a Lot may pay any amounts secured by the Assessment Lien created by this Article 6, and upon such payment such encumbrancer shall be subrogated to all rights of the Residence Association with respect to such lien, including priority.

6.11 **Effect of Conveyance.** In any voluntary conveyance, except to a First Mortgagee in lieu of foreclosure of the First Mortgage, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments against the Lot for his, her or its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth.

6.12 **Statement of Account.** Upon payment of a reasonable fee and upon written request of any Owner or any lien holder, prospective lien holder, or prospective purchaser of a Lot, the Board shall issue, within twenty (20) days following such request, a written statement setting forth: (i) the amount of the unpaid Assessments, if any, with respect to such Lot; (ii) the amount of the current yearly Annual Assessment and the date that such Assessment becomes or became due, and (iii) any credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Residence Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days following a written request, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligation of the purchaser shall be released automatically if: (i) the statement is not furnished within such twenty (20) day period and (ii) the purchaser subsequently acquires the Lot.

6.13 **Purposes for Which Residence Association's Funds May be Used.** The Residence Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Residence Association may seek to aid, promote and provide for such common benefit: social interaction among Residence Association Members and Occupants, maintenance of landscaping on Residence Common Areas and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Residence Common Areas, recreation, insurance, communications, ownership and operation

of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Residence Association, employment of professional managers, hiring professional consultants such as architects, engineers, attorneys and accountants, and pledging future Assessments as collateral to secure Residence Association financing.

6.14 **Surplus Funds.** The Residence Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Residence Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Residence Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Residence Association and the accomplishment of its purposes.

6.15 **Reinvestment Fee.** Each purchaser of a Lot or Residence within the Project, other than a purchaser initially purchasing a Lot or Residence directly from Declarant, shall pay to the Residence Association at closing a Reinvestment Fee immediately upon becoming the Owner of the Lot or Residence in such amount as is established from time to time by Declarant or the Board, subject to applicable law, including Utah Code Ann. § 57-1-46. The purpose of the Reinvestment Fee is for the payment of Common Expenses and reserves, payment for common planning, facilities, infrastructure, obligations arising from an environmental covenant, community programming, resort facilities, open space, recreation amenities, charitable purposes, and any other authorized use of such funds under the CAA. Currently, the Reinvestment Fee is equivalent to three (3) months of the then current Assessments for such Lot or Residence (unless otherwise determined by the Board). In no event shall the Reinvestment Fee exceed the maximum amount permitted by applicable law, including Utah Code Annotated § 57-1-46. Nothing in this Section shall be interpreted as a restriction, limitation, or cap on the amount of Assessments that may be levied by the Residence Association. Should the amount of three (3) months of Assessments ever exceed the reinvestment fee amount permitted by applicable law, the Reinvestment Fee will automatically be reduced to the maximum amount permitted by applicable law. Declarant or the Board shall have the right to collect and enforce the payment of the Reinvestment Fee in the same manner as enforcement and collection of delinquent Assessments as further described in this Declaration. In the event that the Reinvestment Fee is not paid at closing to the Residence Association, then Declarant or the Board shall have the right to impose a charge against the new Owner of the Lot or Residence in an amount as determined by the Board from time to time in its sole and subjective discretion. In accordance with Utah Code Ann. § 57-1-46(10), before imposition of the Reinvestment Fee, a majority of voting interests in the Residence Association must approve the Reinvestment Fee. After a vote approving the Reinvestment Fee, the Residence Association may set the amount of the Reinvestment Fee in accordance with this Section 6.15; and upon providing notice in accordance with Utah Code Ann. § 57-8a-214. Members of the Residence Association may remove or amend the Reinvestment Fee by holding a vote at a special meeting: (a) called by the Members for the purpose of removing or amending the Reinvestment Fee; and (b) at which: (i) at least 51% of the voting interests attend and vote; and (ii) a majority of the voting interests that attend vote to remove or amend the Reinvestment Fee.

6.16 **Transfer Fee.** Each purchaser of a Lot or Residence within the Project, other than a purchaser initially purchasing a Lot or Residence directly from Declarant, shall pay to the Residence Association at closing a Transfer Fee immediately upon becoming the Owner of the Lot or Residence in such amount as is established from time to time by Declarant or the Board, subject to applicable law, including Utah Code Ann. § 57-1-46(9). The purpose of the Transfer Fee is to reimburse the Residence Association for costs incurred by the Residence Association in connection with transfer of title to such new Owner and any other authorized use of such funds. In no event shall the Transfer Fee exceed the maximum amount permitted by applicable law, including Utah Code Annotated § 57-1-46. Nothing in this Section shall be interpreted as a restriction, limitation, or cap on the amount of Assessments that may be levied by the Residence Association. Declarant or the Board shall have the right to collect and enforce the payment

of the Transfer Fee in the same manner as enforcement and collection of delinquent Assessments as further described in this Declaration. In the event that the Transfer Fee is not paid at closing to the Residence Association, then Declarant or the Board shall have the right to impose a charge against the new Owner of the Lot or Residence in an amount as determined by the Board from time to time in its sole and subjective discretion.

6.17 Notice for Meetings to Consider Special Assessments. All written notices of any meeting called for the purpose of approving the establishment of any Special Assessment shall be sent to all Residence Association Members in accordance with the time periods and provisions set forth in the Bylaws.

6.18 Special Service Districts. In connection with the development of the Project, Special Service Districts have been or will be formed in order to provide the Project with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters. The Special Service Districts have or will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. Each Owner hereby agrees and acknowledges that the Project is a part of certain Special Service Districts, and may become a part of future Special Service Districts, and that Special Service Districts have or shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within such Special Service Districts. Each Owner will be subject to all charges levied by such Special Service Districts and will pay such charges directly to the same. All charges levied by such Special Service Districts against owners of taxable property are and shall be the personal and individual obligation of each Owner, and such charges do not constitute a Common Expense. Each Owner hereby agrees and acknowledges that it shall pay his, her or its proportionate share of the Special Service District assessments currently allocated to the Project, as determined by the Declarant (during the or Declarant Control Period) or the Board following termination of the Declarant Control Period in its sole and absolute discretion.

ARTICLE 7 ENFORCEMENT OF PAYMENT OF ASSESSMENTS

7.1 Residence Association as Enforcing Body. The Residence Association, as the agent and representative of the Residence Association Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Residence Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Residence Association Member may enforce them at his, her or its own expense by any appropriate action, whether in law or in equity.

7.2 Effect of Nonpayment of Assessments; Assessment Lien.

7.2.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at a rate not to exceed the maximum amount set forth under the CAA. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due, in an amount not to exceed the maximum amount set forth in the CAA. Before imposing a fee, if any, the Board shall adopt a fee schedule that describes the amount and provide a copy of the fee schedule to each Residence Association Member.

7.2.2 If any installment of an Assessment assessed by the Board is not paid within thirty (30) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

7.2.3 The Residence Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Residence Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Board may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Residence Association, the legal description of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

7.2.4 The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any Municipal Authority or assessment district; and (iii) the lien of any First Mortgage as provided in this Section 7.2.4. The lien of the Assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed First Mortgage on a Lot recorded prior to the date on which such lien of the Residence Association is recorded and any holder of such First Mortgage which comes into possession of a Lot pursuant to the remedies provided in the First Mortgage, foreclosure of the First Mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid installments of assessments and charges against the Lot which (i) are so subordinate to such First Mortgage and (ii) became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner by virtue of such process. The foregoing will not relieve any successor Owner from the obligation for Assessments accruing thereafter.

7.2.5 The Board shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Residence Association by the Owner of the Lot have been paid in full.

7.3 Residence Association's Remedies to Enforce Payment of Assessments. If any Residence Association Member fails to pay the Annual, Specific Assessment or Special Assessments or installments of such when due, the Residence Association may enforce the payment of the Annual, Specific Assessments, Special Assessments, and/or Assessment Lien by taking one or more of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Residence Association does not prejudice or waive its right to exercise the other remedy):

7.3.1 Bring an action at law and recover judgment against the Residence Association Member personally obligated to pay the Annual or Special Assessments.

7.3.2 Foreclose the Assessment Lien against each Lot in accordance with then prevailing Utah law relating to the foreclosure of mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Title 38, Chapter 1a, Utah Code Ann., or any other means permitted by law, and the Lot may be redeemed after foreclosure sale if provided by law.

7.3.3 Notwithstanding subordination of an Assessment Lien as described in Section 10.3, the delinquent Owner shall remain personally liable for the Assessments and related costs after his, her or its membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

7.4 **Foreclosure.** Any foreclosure pursuant to Section 7.3.2 above shall be conducted in accordance with the following procedures:

7.4.1 **Scope of Lien.** In any foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Residence Association any Assessments against the Lot which shall become due during the period of foreclosure, and all such amounts shall be secured by the lien being foreclosed.

7.4.2 **Trustee.** The Declarant, Residence Association, and each Owner hereby convey and warrant pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to Inwest Title, with power of sale, the Lots, Residences, and all Improvements for the purpose of securing payment of Assessments under the terms of this Declaration. Provided, however, the Residence Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code Ann. The Residence Association may, through its duly authorized agents, bid on the Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The trustee appointed hereunder, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any liens against Lots arising pursuant hereto.

7.4.3 **Nonjudicial Foreclosure.** At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Residence Association shall provide notice ("Foreclosure Notice") to the Owner that is the intended subject of the nonjudicial foreclosure. The Foreclosure Notice shall: (i) notify the Owner that the Residence Association intends to pursue nonjudicial foreclosure with respect to the Owner to enforce the Residence Association's lien for unpaid assessments; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested and be included with other Residence Association correspondence to the Owner; and (iv) be in substantially the following form:

**NOTICE OF NONJUDICIAL FORECLOSURE AND
RIGHT TO DEMAND JUDICIAL FORECLOSURE**

The Echo Canyon Phase 1 Owners Association, Inc., a Utah nonprofit corporation (the "Residence Association"), the Residence Association for the project in which your Lot is located, intends to foreclose upon your Lot and allocated interest in the common areas using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Residence Association's lien against your Lot and to collect the amount of an unpaid assessment against your Lot, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a

lawsuit with the oversight of a judge. If you make this demand and the Residence Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my Lot," or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand attention to: KCPD Phase I, LLC, 10446 N. Iverson Ln, Highland, Utah 84003.

7.4.4 Demand for Judicial Foreclosure. The Residence Association may not use a nonjudicial foreclosure to enforce a lien if an Owner mails the Residence Association a written demand for judicial foreclosure: (i) by U.S. mail, certified with a return receipt requested; (ii) to the address stated in the Foreclosure Notice; and (iii) within fifteen (15) days after the date of the postmark on the envelope of the Foreclosure Notice.

7.5 Subordination of Assessment Lien to First Mortgage; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any First Mortgage and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as otherwise provided herein, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a First Mortgage to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust of sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such First Mortgage foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

7.6 Termination of Delinquent Owner's Rights. The Board may terminate a Delinquent Owner's (defined below) right to vote in the Residence Association and access to and use of recreational facilities within the Project, except for ingress and egress (together the "Owner's Rights"). Before terminating the Owner's Rights, the Board shall give the Delinquent Owner notice ("Notice of Delinquency") of such termination. The Notice of Delinquency shall state: (i) that the Residence Association will terminate any of the Owner's Rights, if the Residence Association does not receive payment of the assessment owed to the Residence Association within fourteen (14) days after the Delinquent Owner receives the Notice of Delinquency; (ii) the amount of the Assessments due, including any interest or late payment fee; and (iii) the Owner's right to request a hearing. A Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the amounts due. Such request shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the Notice of Delinquency. The Board shall conduct the informal hearing in accordance with the standards provided in the Bylaws. If a Delinquent Owner requests a hearing, the Residence Association may not terminate the Owner's Rights until after the Board conducts the hearing and enters a final decision. If the Residence Association terminates the Owner's Rights, the Residence Association shall take immediate action to

reinstate the service or right following the Owner's payment of the Assessments, including any interest, late payment fee or other charges. The Residence Association may assess an Owner for the cost associated with reinstating a utility service that the Residence Association terminates and demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in the Notice of Delinquency. As used in this Section, "Delinquent Owner" means an Owner who fails to pay an Assessment or other amounts owed to the Residence Association when due.

7.7 Leased Residences. If an Owner fails to pay Assessments or other amounts due under this Declaration for a period of more than sixty (60) days after such amounts are due and payable, the Residence Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Residence Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the Residence Association is paid the Amount Owing (defined below), in accordance with the procedure set forth below.

7.7.1 Notice to Owner. Before requiring a Tenant to pay Lease payments to the Residence Association, the Board shall give the Owner notice ("Notice to Landlord"), which notice shall state: (i) the amounts due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (iii) that the Residence Association intends to demand payment of future Lease payments from the Owner's Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

7.7.2 Notice to Tenant. If an Owner fails to pay the Amount Owing within fifteen (15) days after the Board gives the Notice to Landlord, the Residence Association may collect Lease payments by the Board delivering written notice to the Tenant of Owner ("Notice to Tenant"), which notice shall state that: (i) due to the Owner's failure to pay an assessment within the required time, the Board has notified the Owner of the Residence Association's intent to collect all Lease payments until the Amount Owing is paid; (ii) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Residence Association, until the Amount Owing is paid; and (iii) the Tenant's payment of Lease payments to the Residence Association does not constitute a default under the terms of the Lease with the Owner. The Board shall mail a copy of the Notice to Tenant to the Owner.

7.7.3 Payments to Residence Association and Credit under Lease. A Tenant to whom the Notice to Tenant has been given shall pay to the Residence Association all future Lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (ii) until the Residence Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Residence Association under this Section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Residence Association as required under this Section. Within five (5) business days after the Amount Owing is paid, the Board shall notify the Tenant in writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Residence Association. The Board shall deposit money paid to the Residence Association under this Section in a separate account and disburse that money to the Residence Association until the Amount Owing is paid and any cost of administration, not to exceed the maximum amount set forth in the CAA (if any) is paid. The Residence Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance.

7.7.4 **Terms.** As used in this Section “Amount Owing” means the total of any assessment or obligation under this Declaration that is due and owing together with any applicable interest, late fee, and cost of collection; “Lease” means an arrangement under which a Tenant occupies a Residence in exchange for the Owner receiving a consideration or benefit, including a fee, service, gratuity, or other compensation; and “Tenant” means a person, other than the Owner, who has regular, exclusive occupancy of an Owner’s Residence.

7.8 **One-Action Rule Not Applicable; Abandonment of Enforcement Proceeding.** §78B-6-901, Utah Code Ann., does not apply to the Residence Association’s judicial or nonjudicial foreclosure of a Lot under this Article 7. The Residence Association may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff’s sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff’s sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff’s sale is not complete.

7.9 **Costs and Attorney Fees in Enforcement Action.** A court entering a judgment or decree in a judicial action brought under this part shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the Residence Association is the prevailing party, any costs and reasonable attorney fees that the Residence Association incurs collecting the judgment. In a nonjudicial foreclosure, the Residence Association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing the Assessment Lien.

7.10 **Action to Recover Unpaid Assessment.** The Residence Association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the Assessment Lien.

ARTICLE 8 MAINTENANCE

8.1 Residence Common Areas and Public Right of Way.

8.1.1 The Residence Association, or its duly delegated representative, shall manage, maintain, repair and replace the Residence Common Areas and all Improvements located thereon (subject to Section **Error! Reference source not found.**), except the Community Association may, but shall not be obligated to, maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain.

8.1.2 The Residence Association shall be the sole judge as to the appropriate maintenance of all Residence Common Areas and other properties maintained by the Residence Association. In the event of any disagreement or uncertainty, the Board shall have the sole and exclusive power and authority to determine which real property and Improvements constitute Residence Common Areas to be maintained by the Residence Association, which determination shall be conclusive, final and not subject to appeal. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Residence Association or by its duly delegated representative.

8.1.3 So long as Declarant is a Class B Member, the Residence Association may not elect to sell, convey, transfer or otherwise dispose of all or part of the Common Areas without the prior written approval of Declarant and the Design Review Committee. Thereafter, the Residence Association may not elect to sell, convey, transfer or otherwise dispose of all or part of the Common

Areas without a vote of sixty-seven percent (67%) of the Residence Association, as well as written consent by Declarant and the Design Review Committee.

8.1.4 In accordance with the CAA, during the Declarant Control Period, Declarant may not sell any part of the Common Areas unless allowed for as convertible land or convertible space within a condominium project; or as provided for under the CAA.

8.2 **Lots and Residences.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his, her or its Lot and Residence, and all other Improvements situated thereon. All Residences and other Improvements shall at all times be kept in good condition and repair. All Lots upon which no Residences or other Improvements have been constructed shall be maintained in a weed free and attractive manner.

8.3 **Installation of Landscaping.** All grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) must be installed in accordance with plans approved in writing by the Design Review Committee.

8.4 **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of the Residence Common Areas or any other area maintained by the Residence Association is caused through the willful or negligent act of any Residence Association Member, his, her or its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Residence Association Member and the Residence Association Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Residence Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

8.5 **Improper Maintenance and Use of Lots.** In the event any portion of any Lot or Residence is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Residence is being used in a manner which violates the Residence Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Residence Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

ARTICLE 9 INSURANCE

9.1 **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a purchaser, other than Declarant or a Declarant Affiliate, the Residence Association shall maintain, to the extent reasonably available, the following insurance coverage:

9.1.1 Property insurance on the Residence Common Areas insuring against all risk of direct physical loss, including loss and damage by fire and other perils normally covered by the

standard extended coverage endorsement, insured against in an amount equal to the maximum insurable replacement value of the insurable Improvements, Residence Common Areas, Lots, and Residences as determined by the Board; to the extent available at a reasonable cost, as the Board shall determine is advisable in its sole and subjective discretion, such property insurance includes all structural elements of and fixtures in the Residences, including without limitation those installed by Owners; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

9.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than Two Million Dollars (\$2,000,000). Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Residence Common Areas and other portions of the Project which the Residence Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

9.1.3 Workers compensation insurance to the extent necessary to meet the requirements of applicable law;

9.1.4 Fidelity bonding of the Board and employees of the Residence Association having control of, or access to, the funds of the Residence Association with loss coverage ordinarily not less than the maximum amount of funds of the Residence Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

9.1.5 Errors and omissions insurance coverage for the Board; and

9.1.6 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Residence Association or the Owners.

9.1.7 Each insurance policy purchased by the Residence Association shall, to the extent reasonably available, contain the following provisions:

9.1.7.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Residence Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

9.1.7.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

9.1.7.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

9.1.7.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Residence Association or other Owners or Occupants;

9.1.7.5 Statement that the policy is primary in the event the Owner has other insurance covering the same loss;

9.1.7.6 Statement naming the Residence Association as the insured;

9.1.7.7 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy; and

9.1.7.8 Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

9.2 **Certificates of Insurance.** An insurer which has issued an insurance policy under this Article 9 shall issue a certificate or a memorandum of insurance to the Residence Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article 9 shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Residence Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

9.3 **Payment of Premiums and Deductibles.** The premiums for any insurance obtained by the Residence Association pursuant to this Declaration shall be included in the budget of the Residence Association as a Common Expense and shall be paid by the Residence Association. The Residence Association shall set aside an amount equal to the amount of the property insurance policy deductible or, if the policy deductible exceeds Ten Thousand Dollars (\$10,000.00), an amount not less than Ten Thousand Dollars (\$10,000.00). Owners affected by any loss covered by insurance maintained by the Residence Association shall pay such Owner's share of any deductible; Owners may obtain insurance to cover such deductible. Any deductibles paid by the Residence Association pursuant to insurance obtained by the Residence Association shall also constitute Common Expenses. The Board shall provide notice to Owners of the amount of the deductibles and any change thereto.

9.4 **Payment of Insurance Proceeds.** With respect to any loss to the Residence Common Areas covered by property insurance obtained by the Residence Association, the loss shall be adjusted with the Residence Association, and the insurance proceeds shall be payable to the Residence Association and not to any Mortgagee. Subject to the provisions of Section 9.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Residence Common Areas.

9.5 **Repair and Replacement of Damaged or Destroyed Property.** The Community Association shall not be responsible for reconstruction or replacement of Residence Common Areas in the event of destruction or casualty. The Residence Association will be responsible, as further provided in this Section in the event of destruction or casualty occurring within the Project. Any portion of the Residence

Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Residence Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (ii) Owners representing at least seventy-five (75%) percent of the total votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Residence Association. If the entire Residence Common Areas, Lots, or Residences are not repaired or replaced, insurance proceeds attributable to the damaged Residence Common Areas, Lots, or Residences shall be used to restore the damaged area to a condition which is in conformity with the Echo Canyon Design Guidelines, approved by the Echo Canyon Design Review Committee and is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be: (i) retained by the Residence Association as an additional capital reserve; (ii) used for payment of operating expenses of the Residence Association if such action is approved by the affirmative vote or written consent of Residence Association Members representing seventy-five percent (75%) or more of the votes in the Residence Association; and/or (iii) distributed in equal shares per Residence Association Membership to the Owners of each Lot as their interests appear.

9.6 Owner Acknowledgement and Waiver. By acceptance of a deed to a Lot, each Owner hereby acknowledges his, her or its independent insurance obligations as outlined in Utah Code Annotated §57-8a-405 and such insurance shall apply to deductibles under the Association's master policy. Each policy shall be carried with a company rated X or better in "Best's Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and such policy shall require thirty (30) days' notice to the Board before the policy can be cancelled. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the Association for loss covered by the Association's master policy insurance. It is understood that such subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board. The Board may unilaterally adopt, amend, and modify, in its sole and subjective discretion, rules and regulations regarding insurance requirements for Owners without amendment to this Declaration.

9.7 Annual Review. Insurance policies may be reviewed annually by the Board to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed and to determine their compliance with the provisions of this Declaration. In the event any of the insurance coverage provided for in this Article 9 is not available at a reasonable cost or is not reasonably necessary to provide the Project with adequate insurance protection, as determined by the Board, the Board shall have the right to obtain different insurance coverage or insurance coverage which does not meet all of the requirements of this Article 9 so long as, at all times, the Board maintains insurance coverage on a basis which is consistent with the types and amounts of insurance coverage obtained for projects similar to the Project. Additionally, the Board shall give Owners notice within seven (7) days if any such insurance is not reasonably available.

9.8 Owner to Insure. Notwithstanding anything in this Article 9 to the contrary, it shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage insurance on such Owner's personal property and furnishings. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Residence as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage maintained by the Residence Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Residence Association and the Owner. An Owner shall be liable to the Residence Association for the amount of any such diminution of insurance proceeds to the Residence Association as a result of insurance coverage maintained by the Owner,

and the Residence Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Board on behalf of the Residence Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Residence Association.

ARTICLE 10 MORTGAGEE REQUIREMENTS

10.1 **Notice of Action.** The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein and in Section 1.26 above. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below ("Eligible Mortgagee"). The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

10.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

10.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

10.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Residence Association.

10.2 **Availability of Residence Project Documents and Financial Statements.** The Residence Association shall maintain and have current copies of the Project Documents, membership register, books, records, and financial statements available for inspection by Residence Association Members or by Eligible Mortgagee as required under the CAA. Generally, these documents shall be available during the Residence Association's normal business hours and may be maintained and kept at the office of the manager for the Residence Association. The Residence Association may, as a condition to permitting a Residence Association Member to inspect the membership register or to its furnishing information from the register, require that the Residence Association Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Residence Association and the Residence Association Member's interest in the Residence Association.

10.3 **Subordination of Lien.** The Assessment or claim against a Lot for unpaid Assessments or charges levied by the Residence Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Lot shall take the same free of such lien or claim for unpaid Assessment or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or

which obtains title to a Lot, shall be collected or enforced by the Residence Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned. The provisions of this Section 10.3 shall be in addition to the rights of a First Mortgagee under Section 7.2.4.

10.4 **Notice to Eligible Mortgagees.** The Residence Association shall give timely written notice of the events listed in Section 10.1 above to any Eligible Mortgagee who requests such notice in writing.

10.5 **Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Residence Common Areas are not timely paid, or in the event the required hazard insurance described in Section 9.1 lapses, is not maintained, or the premiums therefore are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

10.6 **Priority.** No provision of this Declaration or the Articles gives or may give a Residence Association Member or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Residence Association Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Residence Common Areas. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

ARTICLE 11 CONDEMNATION

11.1 **Notice.** Whenever all or any part of the Residence Common Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Residence Association Member shall be entitled to notice of the taking, but the Residence Association shall act as attorney-in-fact for all Residence Association Members in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

11.2 **Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Residence Association as trustee for all Residence Association Members to be disbursed as follows: If the taking involves a portion of the Residence Common Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Residence Association Members representing at least sixty-seven percent (67%) of the total votes of the Residence Association shall otherwise agree, the Residence Association shall restore or replace such Improvements so taken on the remaining land included in the Residence Common Areas to the extent lands are available therefore, in accordance with plans approved by the Board and the Design Review Committee. If such Improvements are to be repaired or restored, the provisions in Article 9 to be repaired shall apply. If the taking does not involve any Improvements on the Residence Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to Residence Association Members in proportion to their respective Residence Association Membership Interests, first to the Mortgagees and then to the Residence Association Members.

11.3 **Complete Condemnation.** If all of the Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Residence Common Areas shall

be distributed to Residence Association Members based upon the relative value of the Lots prior to the condemnation.

ARTICLE 12

TERM, TERMINATION AND AMENDMENT

12.1 **Term; Method of Termination.** This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of twenty (20) years each, unless there is an affirmative vote to terminate this Declaration by the then Residence Association Members casting eighty percent (80%) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any twenty-year extension. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the president or vice president and attested by the secretary or assistant secretary of the Residence Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Residence Association shall be dissolved pursuant to the terms set forth in its Articles.

12.2 **Amendments.** This Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Residence Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Residence Articles and Residence Bylaws or by separate written ballot without a meeting, the Residence Association Members casting at least sixty-seven percent (67%) of the total votes of the Residence Association at the election voted affirmatively for the adoption of the amendment. During the Declarant Control Period, this Declaration may be amended or terminated only with the written consent of the Declarant.

12.3 **Unilateral Amendments.** Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Development Parcels, Residence Common Areas, Lots, Units or Improvements subject to this Community Declaration; or (iv) necessary to evidence the Assessment Unit allocation; provided, however, any such amendment shall not materially adversely affect the title to any Lot, Residence or Improvement unless any such Owner shall consent thereto in writing. Each Owner hereby agrees and acknowledges that Declarant's increase of Assessment Units pursuant to the terms and provisions of as described in the Community Declaration shall not constitute a "material adverse effect" to the title to any Lot, Residence or Improvement. Further, so long as the Declarant's Class B Membership in the Residence Association exists, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect title to any Lot without the consent of the affected Owner. The Board may not amend this Declaration.

12.4 **Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.** Anything in this Article or Residence Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA,

the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Residence Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

12.5 **Prior Approval Required to Terminate this Declaration or Amend Article 8.** Article 8 of this Declaration describes the duties and obligations of the Residence Association to repair, replace and maintain the Residence Common Areas and certain other physical portions of the Property and the Project. Notwithstanding any other provision described in this Declaration to the contrary, including without limitation the amendment powers described in this Article 12, Declarant, the Residence Association and each Owner hereby agree and acknowledge that the Residence Association's maintenance, repair and replacement duties set forth in Article 8 shall not be amended or deleted and this Declaration shall not be terminated without the prior written approval of Declarant (prior to Declarant's transfer of control of the Residence Association pursuant to Section 2.16 above). Such approval shall be evidenced by a written consent attached to or incorporated in such Recorded amendment or certificate of termination executed by Declarant (if necessary).

ARTICLE 13 BINDING ARBITRATION FOR ENFORCEMENT OF PROJECT DOCUMENTS

13.1 **Opt-Out Right.** IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, THE OWNER MUST SEND A LETTER TO DECLARANT, SIGNED BY THE OWNER (AND ANY CO-OWNER OF THE SAME LOT) AND ADDRESSED TO CRAIG WESTON, 10446 N. IVERSON LN., HIGHLAND, UTAH 84003 ATTN: ARBITRATION OPT-OUT. THE LETTER MUST BE SENT (I) WITHIN 30 DAYS AFTER THE DATE OF THE OWNER'S REAL ESTATE PURCHASE CONTRACT, OR (II) IN THE CASE OF A LOT UNDER CONTRACT ON THE DATE THIS DECLARATION IS RECORDED, WITHIN THIRTY (30) DAYS OF THE DATE THE DEED OF CONVEYANCE TRANSFERRING THE LOT IS RECORDED IN THE OFFICIAL RECORDS OF GRAND COUNTY, UTAH, AND MUST STATE THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS Article 13. ANY OPT OUT WILL RENDER THIS ARBITRATION PROVISION NULL AND VOID BUT WILL HAVE NO OTHER EFFECT ON THE OWNER'S RIGHTS.

13.2 **Arbitration Terms Defined.** In the arbitration provision described in this Article 13 ("Arbitration Provision"), the following capitalized words, phrases or terms have the meanings set forth below:

13.2.1 **"Institutional Party"** means Declarant and Declarant Affiliates; the Residence Association during the period of control pursuant to Section 2.16 above; any third party that

provides any product or service to a Consumer Party in connection with this Declaration, if and only if such third party is named as a co-party with another Institutional Party in a Claim asserted by a Consumer Party; their successors and assigns; and the agents, representatives, members, employees, officers and/or directors of the foregoing entities.

13.2.2 “Consumer Party” means the Owners; their heirs, successors and assigns; and the Residence Association after the period of control pursuant to Section 2.16 above.

13.2.3 “Bound Party” means any Institutional Party or Consumer Party who asserts a Claim or has a Claim asserted against such party.

13.2.4 “Claim” means any claim, dispute or controversy between an Institutional Party and a Consumer Party, other than an Exempt Claim, arising out of or relating in any way to this Declaration or any other Residence Project Documents, the Property, the Project, the Lots or the Residences, including any such claim, dispute or controversy regarding or arising over the marketing and sale of Lots or Residences; the terms of this Declaration or any other Residence Project Documents; the design, specifications, surveying, planning, supervision, testing, observation of construction or construction of an Improvement to, or survey of, the Property; or the maintenance or use of the Property. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation or common law; and disputes involving requests for declaratory relief, injunctions or other equitable relief.

13.2.5 “Exempt Claim” means any of the following Claims, which will not be subject to this Arbitration Provision: (i) any individual action brought by a Consumer Party in small claims court or a relevant state’s equivalent court, unless such action is transferred, removed, or appealed to a different court; (ii) any action to effect a judicial or non-judicial foreclosure; (iii) any eviction or other summary proceeding to secure possession of real property or an interest therein; (iv) any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (v) any action to quiet title; (vi) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; (vii) any self-help remedy, such as the refusal of an Institutional Party to allow a Consumer Party to use a Residence or Lot, or any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind; and (viii) any dispute concerning the validity and effect of Section 13.8 below, the ban on class actions and certain other proceedings (the “Class Action Ban”). Notwithstanding the prior sentence, at the request of a Consumer Party, the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (ii)–(vi) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (ii)–(vi) above, the Consumer Party may assert in court on an individual basis any related defenses or Claims such Consumer Party may have.

13.2.6 “Administrator” means either of the following companies to be selected by the Bound Party initiating the arbitration: JAMS, 18881 Von Karman Ave. Suite 350 Irvine, CA 92612, www.jamsadr.com or the American Arbitration Association (“AAA”), 1633 Broadway, 10th Floor, New York, NY 10019, <http://www.adr.org>. However, neither JAMS nor AAA may serve as Administrator, without the consent of all Bound Parties asserting or defending a Claim, if it adopts

or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Ban.

13.3 Arbitration of Claims. Unless a Consumer Party has opted out of this Arbitration Provision, upon the election of any Consumer Party or Institutional Party asserting or defending a Claim, such Claim shall be resolved by binding individual (and not class) arbitration. Notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

13.4 Fees. If a Consumer Party cannot obtain a waiver of any fees of the Administrator or arbitrator, the Institutional Parties will consider in good faith any request for them to pay such fees for the Consumer Party. Each Bound Party shall bear the fees and expenses of that Bound Party's attorneys, experts, and witnesses, provided that the Institutional Parties will bear the reasonable fees and expenses incurred by a Consumer Party if the Consumer Party prevails on a Claim the Consumer Party has asserted against the Institutional Parties. Also, the Institutional Parties will pay any arbitration, attorneys' and/or other fees and expenses they are required to pay by applicable law, or they are required to pay in order to enforce this Arbitration Provision. If a participatory arbitration hearing is requested, it will take place in Salt Lake County, Utah or, if the Administrator determines that such location would be unfair to a Consumer Party, at a location reasonably convenient to such Consumer Party and the Institutional Parties.

13.5 Governing Law. This Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "FAA") and not state arbitration laws, provided that Utah law shall govern to the extent that state law is relevant under the FAA in determining the enforceability of this Arbitration Provision. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any Claim. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys' fees and costs. Upon the timely request of any Bound Party, the arbitrator shall write a brief explanation of the grounds for his, her or its decision. In addition to the Bound Parties' rights under the Administrator's rules to obtain information prior to the hearing, any Bound Party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his, her or its sole discretion, after allowing the other Bound Party the opportunity to object.

13.6 Appeal of Arbitrator's Decision. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than Fifty Thousand Dollars (\$50,000.00), any Bound Party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Fees and costs associated with an appeal shall be governed by Section 13.4 above.

13.7 Jury Trial Waiver. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM, NO BOUND PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM.

13.8 Class Action Ban. NO BOUND PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE. NO BOUND PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN ARBITRATION. NO CLAIMS BY OR AGAINST A

BOUND PARTY MAY BE JOINED OR CONSOLIDATED WITH CLAIMS BY OR AGAINST ANY OTHER PERSON (EXCEPT FOR CLAIMS INVOLVING THE HEIRS AND SUCCESSORS OF SUCH CONSUMER PARTIES). THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTI-PARTY ARBITRATION INCONSISTENT WITH THIS SECTION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the above Class Action Ban shall be resolved by a court and not an arbitrator or the Administrator.

13.9 **Severability.** If a determination is made that any part of this Arbitration Provision is unenforceable (other than the Class Action Ban) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If the Class Action Ban is held to be unenforceable in connection with any Claim subject to the Class Action Ban, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding, provided that the Institutional Party seeking to enforce the Class Action Ban shall have the right to appeal at the earliest possible time any holding that the Class Action Ban is unenforceable.

13.10 **Notice of Claim; Right to Address.** Prior to asserting a Claim, the Bound Party with the Claim (the "Claimant") shall give the Bound Party that is the subject of the Claim written notice of the Claim and a reasonable opportunity, not less than thirty (30) days, to resolve the Claim. The Claimant's claim notice must include the Claimant's name, address and telephone number. Any claim notice must explain the nature of the Claim and the relief that is demanded. A Consumer Party may only submit a claim notice on his, her or its own behalf and not on behalf of any other party. The Claimant must reasonably cooperate in providing any information about the Claim that the other Bound Party reasonably requests. If: (i) a Consumer Party submits a claim notice in accordance with this Section on his, her or its own behalf (and not on behalf of any other party); (ii) the Institutional Party refuses to provide the requested relief; and (iii) an arbitrator subsequently determines that the Consumer Party was entitled to such relief (or greater relief), the arbitrator shall award the Consumer Party at least Five Thousand One Hundred Dollars (\$5,100.00) (not including any arbitration fees and attorneys' fees and costs to which the Consumer Party may be entitled under this Arbitration Provision or applicable law).

ARTICLE 14 GENERAL PROVISIONS

14.1 **Enforcement.** The Community Association, the Residence Association or any Owner shall have the right to enforce the Residence Project Documents.

14.2 **Interpretation.** Except for judicial construction, the Residence Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Residence Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. The term "include" and similar terms (e.g., includes, including, included, comprises, comprising, such as e.g., and for example), when used as part of a phrase including one or more specific items, are used by way of example and not of limitation.

14.3 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

14.4 **Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now

living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

14.5 **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

14.6 **Rules and Regulations.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Residence Association shall have the right to adopt, as part of the Residence Association Rules, additional rules and regulations with respect to any other aspects of the Residence Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Residence Project Documents.

14.7 **Laws, Ordinances and Regulations.**

14.7.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Design Review Committee, or the Community Association or the Echo Canyon Design Review Committee, with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

14.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

14.8 **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

14.9 **Gender and Number.** Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

14.10 **Captions and Title; Section References; Exhibits.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

14.11 **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Residence Project Documents or resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified in the Residence Project Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be

deemed satisfied if notice of such action, proposed action or meeting is: (i) sent by United States mail to the last known mailing address of the Owner or Occupant (as applicable), as shown in the records of the Residence Association;(ii) sent by electronic means, including text messaging or electronic mail if the Owners has provided the appropriate address or phone number to the Residence Association;(iii) if no address is reflected on the records of the Residence Association, then sent by United States mail to the mailing address of the Lot (as applicable) on file with the Grand County Assessor's Office; or (iv) if there is no such mailing address reflected in the records of the Residence Association and there is no then current address on file with the Grand County Assessor's Office, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Grand County, Utah ("Notice"). This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

14.12 **Indemnification**. The Residence Association shall indemnify each and every trustee and officer of the Residence Association, each and every member of the Design Review Committee, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Residence Association, former members of the Design Review Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Residence Association (except indirectly to the extent that such Association Official may also be a Residence Association Member and therefore subject to Assessments hereunder to fund a liability of the Residence Association), and the Residence Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Residence Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Residence Association the total of such funds advanced by the Residence Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid.

14.13 **No Partition**. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Residence Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate any funds or other assets of the Residence Association except in connection with the sale, conveyance or hypothecation of such Owner's Residence (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Residence Common Areas, which shall be subject to Article 4) which may or may not be subject to this Declaration.

14.14 **Number of Days.** In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

14.15 **Notice of Violation.** The Residence Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Residence Project Documents. The notice shall be executed and acknowledged by an officer of the Residence Association and shall contain substantially the following information: (i) the name of the Owner or Occupant; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Residence Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Residence Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Residence Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Residence Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

14.16 **Disclaimer of Representations.** While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

14.17 **Amendments Affecting Declarant Rights.** Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

14.18 **Conflicts.** In the event of any conflict or inconsistency between this Declaration and the other Residence Project Documents, priority shall be given to the Residence Project Documents in the following order: the Community Declaration, the Community Articles, the Community Bylaws, the Community Association Rules, this Declaration, the Residence Articles, the Residence Bylaws, and the Residence Association Rules, as each respective document may be amended from time to time. The foregoing to the contrary notwithstanding, in the event of any inconsistency between this Declaration, on the one hand, and or any applicable law, including the CAA, on the other, then in all events the applicable law shall control.

14.19 **Use of Technology.** In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Residence Association may, as a Common Expense, provide for or offer services, which make use of computers and other technological opportunities. For example, to the extent Utah law permits, and unless otherwise specifically prohibited in the Residence

Project Documents, Declarant or the Residence Association may send required notices by electronic means; hold Board or Residence Association meetings and permit attendance and voting by electronic means; send and collect Assessment and other invoices electronically; sponsor a Project cable television channel; create and maintain a Project intranet or Internet home page offering interactive participation opportunities for users; maintain an "online" newsletter or bulletin board; and provide funding for any of the above purposes.

14.20 Bulk Service Agreements.

14.20.1 The Board, acting on behalf of the Residence Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots both within the Property, or within one or more portions thereof, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services (i) which might not otherwise be generally available to such Owners and Occupants; (ii) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; and/or (iii) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally.

14.20.2 If all Lots within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to (i) include the Residence Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (ii) separately bill to each Owner his, her or its proportionate share of the Residence Association's costs under such Bulk Service Agreement, as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly. Such "separate billing" may be made as one or more separate line items on billings or invoices from the Residence Association to the affected Owner(s) for Assessments or other charges. If not all Lots within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (ii) above.

14.20.3 Declarant, for each Lot, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Section and all such amounts (i) shall be deemed to be a part of the Assessments against the Lots (or against or to whose Owners they are levied or charged); (ii) with interest, late charges and all costs, including but not limited to reasonable attorney's fees, incurred by the Residence Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (iii) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

14.20.4 No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board

shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Residence or other Improvement has been completed.

14.20.5 “Bulk Provider” means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants, Residences within the Property, Lots or within one or more portions thereof, pursuant to a “Bulk Service Agreement” (as defined below).

14.20.6 “Bulk Service Agreement” means an agreement between the Residence Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants or Lots.

14.20.7 So long as Declarant’s Class B Membership exists, the Board shall not, without the approval of Residence Association Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Residence Association, enter into a Bulk Service Agreement which imposes on the Residence Association or the Residence Association Members any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed Internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Residence Association Members of any Bulk Service Agreement which imposes on the Residence Association or the Residence Association Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Grand County area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

KCPD Phase I, LLC, a Utah limited liability company

By: M. Arnold
Its: Manager
Name: Trent Arnold

STATE OF ~~UTAH~~ Oregon)
County of Deschutes)
ss.

The foregoing instrument was acknowledged before me this 3rd day of July, 2025, by Arnold, Michael the manager of KCPD Phase I, LLC, a Utah limited liability company, on behalf of such entity.

Jennifer R. Clayton
Notary Public

My Commission Expires:

02/26/27

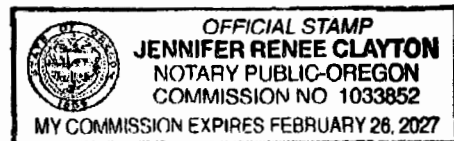


Exhibit A

Legal Description

ECHO CANYON, PHASE I, SUBDIVISION BOUNDARY LEGAL DESCRIPTION

Beginning at the Northeast corner of Lot 1, Section 15, Township 26 South, Range 21 East, Salt Lake Base and meridian, said point being North 26°33'38" East 2951.57 feet from the West Quarter corner of Section 15, T26S, R21E, SLB&M, and proceeding thence North 49°53'17" West 132.07 feet; thence with a curve having a radius of 1178.00 feet, to the left with an arc length of 152.44 feet, (a chord bearing of South 35°19'29" West 152.33 feet); thence South 31°37'03" West 176.71 feet; thence with a curve having a radius of 178.00 feet, to the left with an arc length of 94.04 feet, (a chord bearing of South 16°28'59" West 92.95 feet); thence South 00°08'20" West 8.79 feet; thence North 88°46'41" West 44.01 feet; thence North 00°08'19" East 8.40 feet; thence with a curve having a radius of 222.00 feet, to the right with an arc length of 12.65 feet, (a chord bearing of North 02°51'13" East 12.64 feet); thence North 85°31'53" West 32.03 feet; thence North 56°26'09" West 175.83 feet to the meander of the Colorado River; thence with said meander the following three courses: North 31°37'04" East 196.22 feet; thence North 31°37'04" East 147.57 feet; thence North 40°00'29" East 558.82 feet; thence South 49°57'43" East 113.60 feet; thence with a curve having a radius of 466.97 feet, to the right with an arc length of 116.86 feet, (a chord bearing of North 88°34'05" East 116.55 feet); thence South 83°52'27" East 5.70 feet; thence with a curve having a radius of 454.52 feet, to the right with an arc length of 238.97 feet, (a chord bearing of South 68°46'24" East 236.23 feet); thence South 53°43'58" East 57.93 feet; thence North 25°47'17" East 31.88 feet; thence South 65°27'18" East 35.76 feet; thence with a curve having a radius of 975.00 feet, to the left with an arc length of 46.15 feet, (a chord bearing of North 22°51'27" East 46.15 feet); thence North 21°30'05" East 212.01 feet; thence with a curve having a radius of 475.00 feet, to the right with an arc length of 62.71 feet, (a chord bearing of North 25°17'00" East 62.66 feet); thence North 29°03'55" East 30.17 feet; thence South 61°05'04" East 50.00 feet; thence South 65°48'48" East 56.26 feet; thence South 21°34'01" West 85.46 feet; thence South 22°49'39" West 153.51 feet; thence South 30°59'10" West 204.04 feet; thence South 11°08'57" West 264.27 feet to a point on the North line of said Section 15; thence with said Section line North 89°50'30" West 517.06 feet to the point of beginning, having an area of 468,258 square feet, 10.75 acres.

The above-referenced boundary description has since been subdivided and the updated legal description for Echo Canyon, Phase I subdivision is as follows:

All of Lots 1 through 14 and Tracts A through D of that certain Final Plat of Echo Canyon, Phase I, recorded on July 3, 2025 as Entry No. 556163 in Book 976, Page 603, in the office of the Grand County Recorder.