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DAVIS COUNTY, UTAH RECORDER
07/09/2021 09:30 AM
FEE $92.00 Pgs: 74
DEP RT REC'D FOR FARMINGTON CITY

# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS AND BYLAWS FOR FIORE TOWNHOMES

This Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements and Bylaws for Fiore Townhomes (the "Declaration"), is made and executed by Fiore Investments, LC., A Limited Liability Company, whose principal address is 273 N. East Capitol Street, Salt Lake City, Utah 84103 (hereinafter referred to as the "Declarant").

## RECITALS

A. Fiore Townhomes is a residential town home development located in Davis County, Utah ("Fiore Townhomes," or "Fiore Project" or the "Project").

B. The real property subject to the Declaration and comprising Fiore Townhomes project is described more particularity in Article II below (the "Property").

C. This Declaration of Covenants, Conditions, and Restrictions affects that certain real property located in Davis County; Utah described with particularity in Article II below (hereinafter referred to as the "Property").

D. Declarant is the owner of the Property.

E. Declarant has constructed or is in the process of constructing upon the Property a residential Planned Unit Development which shall include certain Lots, Common Area, and other improvements. The construction will be completed in accordance with the plans contained in the Plat Map to be recorded concurrently herewith.

F. Declarant intends to sell to various purchasers the fee title to the individual residential Lots contained in the Property, subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.

G. The Property is an area of unique natural beauty, featuring distinctive terrain.

H. By subjecting the Property to this Declaration, it is the desire, intent, and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

I. Declarant hereby declares that the Property shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Property and shall be binding upon all persons having or acquiring any right, title, or interest in or to the Property, or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion thereof.

## COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following declaration:

## I. DEFINITIONS

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

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, fines, penalties and sanctions, late fees, default interest, service fees, filing and recordation fees, and other similar charges incurred by or charged to the Association.

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

3. Articles of Incorporation shall mean the Articles of Incorporation of Fiore Townhomes Homeowners Association (a Utah non-profit corporation) on file or to be filed with the State of Utah.

4. Assessment shall mean any amount imposed upon, assessed, or charged an Owner or Resident at the Project.

5. Association shall mean Fiore Townhomes Homeowners Association comprised of all of the Owners at the Project acting or taken as a group in accordance with the Declaration. The Association shall have a corporate status, a Utah nonprofit corporation, created by the filing of the

Articles of Incorporation with the State of Utah.

6. Board of Directors or Board shall mean the governing board of the Association.

7. Building shall mean any of the structures constructed in The Project which consist of more than one Dwelling Unit.

8. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

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

10. Bylaws shall mean the bylaws of the Association attached as Exhibit "D, which may be changed from time to time.

11. Capital Improvement shall mean a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

12. Common Area shall mean all real property in the Project owned by the Association including but not limited to the following items:

(a) The real property shown on the Final Plat which is not dedicated to the public or part of a Lot;

(b) All Common Area specifically designated as such in the Final Plat;

() All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners, including by way of illustration but not limitation sewer, power, gas, storm drain and water (including but not limited to the main/common distribution lines running through the Project and Buildings);

(e) The Project's outdoor grounds; landscaping; open spaces; pool; clubhouse; furnishing, supplies and equipment for the benefit of all Owners and Residents; exterior lighting; common fencing; sidewalks and parking spaces; roadways not otherwise dedicated to the public; and walking trails (sometimes hereafter referred to as "Common Facilities" or "Facilities");

(f) All portions of the Project not specifically included within the individual Lots; and

(g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation, or management of the Property

owned by the Association for the common benefit of its Members.

13. Common Expense shall mean: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association or Board of Directors; (e) Expenses declared as common expenses by the Declaration; and (f) the Association's proportionate share of the cost of maintaining, repairing and replacing improvements that must be replaced on a periodic basis, and administering, operating and regulating the Common Area (collectively, "maintenance").

14. Community shall mean the Project and where the context clearly requires the entire Fiore Properties Development.

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

16. Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association incurred in taking corrective action against an Owner.

17. Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements, and Bylaws for Fiore Townhomes.

18. Dwelling or Dwelling Unit shall mean an individual living unit constructed upon a Lot.

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

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

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

22. Final Plat shall mean the Final Plat (or maps) of "Fiore Townhomes" on file in the office of the County Recorder of Davis County, as amended or supplemented from time to time.

23. Guest shall mean an invitee, visitor (there temporarily) or any person whose presence within the Project is approved by or is at the request of a particular Resident.

24. Improvement shall mean any physical change or addition to the Property to make it more valuable.

25. Limited Common Area shall mean that portion of the property (if any) owned by the Association shown on the Final Plat as dedicated to the exclusive use and enjoyment of a particular Lot or Lots.

26. Lot shall mean a separate physical part of the Property intended for independent use as shown on the Final Plat, including, when the context requires, the Dwelling Unit constructed thereon, one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, the ground located underneath the Lot and the air space above. Mechanical equipment and appurtenances located within any one Lot or Dwelling, or located without said Lot or Dwelling but designated and designed to serve only that Lot or Dwelling, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall windows and window frames, doors and door frames, and trim. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Lot or Dwelling or serving only the Lot or Dwelling, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Lot or Dwelling, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Lot or Dwelling is located shall be deemed to be part of the Lot. Each Lot shall be assigned a separate "parcel" or "tax identification" number by the appropriate governmental agency.

27. Lot Number shall mean the number, letter or combination thereof designating a particular Lot.

28. Majority shall mean those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.01%) percent of the total eligible number.

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

30. Member, unless the context clearly requires otherwise, shall mean the Owner of a Lot, each of whom is obligated, by virtue of his ownership to be a *member* of the Association.

31. Mortgage shall mean both a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

32. Mortgagee shall mean a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

33. Owner shall mean the owner of a Lot. There is a presumption that the Person who is the owner of record of a Lot in the official records of the office of the County Recorder of Davis County, Utah of a fee or an undivided fee interest in a Lot is the owner. A mortgagee or a beneficiary or trustee under a deed of trust is not considered the owner of a Lot unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

34. Period of Declarant's Control shall mean a period of time commencing on the date

this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) seven (7) years from the effective date of this Declaration, or (b) one hundred and twenty (120) days after one-hundred percent (100.0%) of the Dwelling Units constructed upon the Lots in the Project have been sold by the Declarant and the transactions settled and closed; or (c) the Declarant executes a written "Waiver" of its right to control.

35. Permanent Resident shall mean anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

36. Person shall mean a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

37. Phase shall mean a particular stage or area of development within the Project so designated by the Declarant.

38. Project shall mean Fiore Townhomes neighborhood.

39. Project Documents shall mean this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations.

40. Property or Land shall mean all of the land or real estate, improvements and appurtenances submitted to this Declaration.

41. Recreational, Oversized, or Commercial Vehicle shall mean any recreational, commercial or oversized vehicle, motor home, all-terrain vehicle (ATV), off-road vehicle (ORV), commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

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

43. Resident shall mean any person living or staying at the Project. This includes but is not limited to all natural persons residing in a Dwelling Unit (e.g. renters, occupants, etc.).

44. Residential Lot shall mean a Lot to be used for residential purposes, primarily for the construction of a Dwelling.

45. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable to (i) aid it in administering the affairs of the Association, (ii) insure that the Property is maintained and used in a manner consistent with the interests of the Owners, (iii) regulate the use of the Lots, Common Area and Limited Common Area and to regulate the personal conduct of the Members and their guests thereon, and (iv) establish penalties and monetary charges for the

infractions of the Project Documents, as such may be amended from time to time.

46. Single Family shall mean the term "single family" as defined by City ordinance. In the absence of a City ordinance the term shall mean *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three (3) unrelated persons who maintain a common household. A group occupying a boarding house, club, fraternity, or hotel shall not be considered a "single family".

47. Single Family Residence shall mean both the architectural style of a Building and the nature of the residential use permitted.

48. Fiore Properties Development shall mean the residential development consisting of Fiore Townhomes.

49. Trust Deed for Assessments shall mean the deed of trust created by this Declaration in Article III, subsection 36(i) to further secure the Owner's obligations to pay Assessments and to provide the Association with the power of non-judicial trust deed foreclosure provided for in Utah Code Ann. §57-1-19, *et seq.*, as amended from time to time.

50. Visible from a Neighboring Property shall mean with respect to any object, that such object is or would be visible to an individual six feet (6') tall, standing at ground level on any portion of the neighboring property.

## II. SUBMISSION

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

The Land is hereby made SUBJECT TO, and shall be governed by this Declaration.

The Land is also SUBJECT TO the right of the City to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is also SUBJECT TO the described easements and rights of way. Easements and rights-of-way in favor of the City include but are not limited to any dedicated roadways and public utility easements and are depicted on the Final Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including,

without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plat or otherwise existing; an easement for each and every Common Area and Common Facilities, including all equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Area and Common Facilities, including all equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

## III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. The significant improvements contained in The Project include or will include seven (7) residential Buildings and ten (30) Lots with corresponding Dwelling Units and appurtenant Common Area and Facilities. The Common Area and Facilities may include private roadways, private alleys, parking, landscaping and view corridors, to the extent the same are actually constructed by Declarant in Declarant's sole discretion. There will be a variety of residential Dwelling Unit models in the Project. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Final Plats for the entire development.

2. Description and Legal Status of the Property. The Final Plat shows the type and location of each Lot and its Lot Number, which are reserved for the exclusive use of a Lot or Owners, and the Common Area and Facilities in the vicinity. The Common Area shall be deeded to and owned by the Association. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. Membership in the Association, Classes of Membership and Voting Allocations. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed to be a member of the Association. The Association shall have two classes of membership – Class A and Class B – described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(1) One Vote. Each Lot shall have one (1) vote;

(2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities

themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Lot. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership and the Period of Declarant's Control shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (the "Event" or "Events"):

(1) Lots Sold. One hundred and twenty (120) days after one-hundred percent (100.0%) of the Dwelling Units constructed upon the Lots in the Project have been sold by the Declarant and the transactions settled and closed; or

(2) Seven Years. Seven (7) years from the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines and records a written "Waiver" in the office of the Davis County Recorder.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be considered a Class A Member entitled to one vote for each Lot owned. The Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

4. Corporate Status of the Association. It is the intent of the Declarant that the Association shall be incorporated. The Board may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved and may adopt the prior bylaws. The Association shall be properly registered with the State of Utah and the registration shall be updated as required by statute. The registration will include: (a) the name and address of the Association; (b) the name, address, telephone number, and, if applicable, e-mail address of the President of the Association; (c) the name and address of each member of the Board of Directors; (d) the name, address, telephone number, and, if the contact person wishes to use e-mail or facsimile transmission for communicating payoff information, the e-mail address or facsimile number, as applicable, of a primary contact person who will provide payoff information on a Lot or Lots if requested.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as

follows:

> All of [Lot No. _____] contained within FIORE TOWNHOMES [Phase No. _____ (if applicable) ], as the same is identified in the Final Plat recorded in Davis County, Utah as Entry No. 3398243 in Book 7798 at Page 307 of the official records of the County Recorder of Davis County, Utah (as said Final Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of FIORE TOWNHOMES recorded in Davis County, Utah as Entry No._____ in Book at Page _____ of the official records of the County Recorder of Davis County, Utah (as said Declaration may have heretofore been supplemented).

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Membership in the Association shall not be separated from the Lot to which they appertain; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use shall automatically accompany the transfer of the Lot to which they relate.

6. Rights of Owners. Except as may be specifically set forth in the Project Documents, neither the Board nor the Members may adopt any Rules and Regulations in violation of the following provisions, though where not specifically provided for otherwise the following provisions may be altered by an amendment to this Declaration if permitted by law:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

b) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Declaration limits residency in a Dwelling to a Single Family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair share use of the Common Area.

(d) Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create any unreasonable sound or annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation

of financial burdens among various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area and Limited Common Area, from adopting generally applicable rules for use of Common Area and Limited Common Area, or from denying use privileges to those who abuse the Common Area, violate Project Documents, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.

(f) Alienation. Subject to the restrictions found in Section 7 herein, no rule shall prohibit the leasing or transferring of any Dwelling or require consent of the Association or Board for leasing or transferring of any Lot.

(g) Reasonable Rights to Develop. No rule, amendment to this Declaration, or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plans, including, but not limited to, the rights of the Declarant as set forth herein.

(h) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such and which was in compliance with all Rules and Regulations in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to Rules and Regulations only; they shall not apply to amendments to this Declaration.

(i) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by any Person. The Project shall be used only for residential purposes, except as expressly set forth below, and the Common Area and Limited Common Area shall only be used in a manner consistent with the residential nature of the Project.

(j) Membership in Association is Mandatory. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

(k) Rules and Regulations. The Board of Directors may adopt, amend, modify, create, expand, or enforce rules and regulations as well as architecture and landscape design criteria. The rules, however, are subject to:

(1) Any express provisions, restrictions and limitations in the Declaration;

(2) The Business judgment rule[1]; and

1 The business judgment rule is a presumption of the law that the governing board is acting in best interest of the association and, as a result, the decisions it makes are protected from judicial review in the event there is a loss or the decision turns out to be wrong, so long as the board did not violate its fiduciary duty to act in good faith and not

(3) The right of Owners to notice and to disapprove.

Before it adopts or changes a rule or regulation, the Board of Directors must provide the Owners within fifteen (15) days of its meeting advance notice of its intention. Notice is not required in an emergency.[2] The governing board must provide an open forum at a board meeting and provide Owners with a chance to be heard. The Owners may, within sixty (60) days, and by a vote of at least a majority of the total ownership at a special meeting called for this purpose disapprove the proposed rule or regulation.[3]

(l) Equal Treatment; Rule Limitations.

(1) The rules must treat similarly situated people the same, although the rules may vary according to the type of service provided.

(2) The rules may not violate the right of Owners to display religious and holiday signs inside their dwelling, although the rules may define the time, place, and manner of displays visible from outside the Dwelling Unit or Lot.

(3) The rules may not regulate the content of political signs, although the Rules may define the time, place, and manner of displays visible from outside the Dwelling Unit or Lot.

(4) The rules may not interfere with an Owner's determination of the composition of his or her household, although they may legally require the occupants to be members of a single housekeeping unit and may limit the total number of occupants permitted in a Dwelling Unit based its size, configuration and a fair use of the common areas.

(5) The rules may not interfere with activities within a Lot or Dwelling Unit if the activity is legal. Limits may be made if the activities are not considered typical for a residential neighborhood, or if the activities create an additional expense for the association, or if the activities are dangerous or pose a health concern, or if the activities constitute a nuisance, create unreasonable noise or traffic, or are unsightly or annoying, or create secondary smoke issues.

(6) If federal, state or local law permits, rules may be adopted regulating use or behavior inside a Dwelling Unit or Lot, including by way of illustration but not limitation smoking, rentals, noise, traffic and nuisance.

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commit a fraud, self-deal or have a conflict of interest, essentially, not to be guilty of intentional misconduct.

[2] Imminent risk of immediate and substantial harm to person or property.

3 Note: The Board of Directors is NOT required to call a special meeting unless a petition is submitted to it in accordance with the requirements of the Bylaws for a petition to require a special meeting.

(7) The rules may address a variety of matters such as user fees, the availability of the Common Area and Facilities, the denial of access and use to trespassers, violators, misusers or abusers, the transfer of lots, rental terms, the disposal of personal property, etc.

(8) The rules may regulate the maintenance and use of the Common Area and Facilities, late fees, accruing interest, indemnity, etc.

(9) No rule may be in conflict, inconsistent or incongruent with the Declaration and Bylaws. If any provision of this subsection is held to be illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This subsection will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this subsection will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this subsection. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this subsection, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

(m) Restrictions and Limitations of Use. The use of the Lots is subject to the following limitations and restrictions:

(1) Parties Bound. All provisions of the Project Documents, including without limitation the Declaration, Bylaws, and Rules and Regulations shall be binding upon all Owners, Residents and Permanent Residents, and their family members, guests, visitors, invitees, and employees.

(2) Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about Fiore Properties Development. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Lot, appurtenant Limited Common Area or the Common Area;

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

c. The storage of any substance, thing or material upon any Lot, Limited Common Area or in the Common Area that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot, Limited Common Area or the Common Area;

e. Actions or activities tending to cause embarrassment,

discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

g. Creating or allowing an unreasonable amount of noise or traffic in, on or about any Lot, Limited Common Area or the Common Area, especially after 10:00 p.m. and before 8:00 a.m.; and

h. Violation of U.C.A., Section 78-38-9 (1999) (i.e., drug houses and drug dealing; gambling; group criminal activity; prostitution; weapons; parties), as it may be amended or supplemented from time to time.

(3) Signs. No "For Sale" or "For Rent" or other signs or banners are permitted in the Common Area or so as to be Visible From a Neighboring Property or the street, unless approved in writing by the Board; provided, however, the Association may not prohibit the display of a U.S. flag inside a Dwelling Unit, Lot or Limited Common Area, if the care of the flag and display is consistent with federal law. The Association may control and restrict the display of a flag in the Common Area. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(4) Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be deposited in a suitable container and regularly removed from the Lot, and shall not be allowed to accumulate thereon. The Association shall arrange for garbage pickup and removal. Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated dumpsters or garbage receptacles.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting of graffiti, within The Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or occupant shall place upon any part of The Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.

(8) Trees, Shrubs and Bushes. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the

Common Area. The Board may alter or remove any objects planted or placed in violation of this subsection.

(9) Energy Conservation Equipment. In accordance with local, state and federal guidelines energy collector panels, other energy conservation equipment or attendant hardware are encouraged. Installation may be subject to written Board approval.

(10) Business Use. No Business Use or Trade may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto The Project who do not reside in The Project or door-to-door solicitation of residents of The Project; and (d) the business activity is consistent with the residential character of The Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

(11) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about The Project shall be subject to the Rules and Regulations adopted by the Board and as they may be modified from time to time.

a. The parking areas are not designed for Recreational, Oversized, or Commercial Vehicles (as defined in Article I herein) and the Board has the right to make Rules and Regulations restricting or prohibiting their use within the Project. All such vehicles shall be parked in garages or outside the Project, except for purposes of loading and unloading. Eighteen wheelers may not be parked within the Project.

b. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, Recreational, Oversized, or Commercial Vehicle or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any parking amenity, sidewalk, walkway, driving lane, Building or Lot, or in an unauthorized portion of the Common Area.

c. Residents may only park their motor vehicles within their driveways, garages, or in other designated Common Area.

d. No parking is allowed in "red zones," "fire lanes," or unauthorized areas.

e. Visitors or guests shall park their motor vehicles in Common Area designated for "guest" or "visitor" parking. Owners, Residents and Occupants shall not park in "guest" or "visitor" spaces.

f. No Owners or Residents shall disassemble, assemble, repair or

restore any vehicle of any kind in, on or about any Lot, Limited Common Area or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

g. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Building, driving lane, parking space, driveway, garage, entry, exit, or parking area.

h. All parking areas shall be used solely for the parking of motor vehicles used for personal transportation. Disabled or inoperable vehicles, motor vehicles not currently licensed or registered, or vehicles with more than $1,000 damage may not be stored in the street, driveway, or other place so as to be visible to the general public or Residents of the Project.

i. No garage may be used or altered so that it parks less than the number of motor vehicles for which it was originally designed.

j. The nature of the intended use of a garage as a parking garage for motor vehicles may not be changed or altered without the prior express written consent of the Board.

k. Vehicles parked in violation of this Declaration or parking Rules and Regulations adopted by the Board may be immobilized, impounded, and towed **WITHOUT ADDITIONAL NOTICE** and at the Owner's sole expense. By virtue of bringing a motor vehicle on to the Property, the driver agrees to indemnify, save and hold the Association, Board and members of the Board harmless from any loss, damage or claim caused by or arising out of the immobilizing, impounding, or towing of a motor vehicle pursuant hereto.

(12) Bicycles. Bicycles in the Common Area must be parked or stored in the bicycle racks or storage areas designated by the Board.

(13) Aerials, Antennas, and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is located within the Lot or another location approved by the Board. Permitted Devices attached to a Building or mounted on the patio, balcony, or deck must extend no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna or dish. The Board may adopt Rules and Regulations establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such Rules and Regulations do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, it is the intent of this document to at all times comply with the applicable federal, state and local laws, and regulations adopted by the FCC – as they may be amended from time to time. DO NOT INSTALL AN ANTENNA OR SATELLITE DISH OUTSIDE YOUR LOT OR IN THE COMMON AREA WITHOUT FOLLOWING THE PROVISIONS OF THIS SECTION. Antennas or Satellite dishes installed by an Owner or resident

in violation of this section may be removed by the Board without further notice or warning and at the owner's sole risk and expense.

(14) Window Coverings. No-aluminum foil, newspapers, reflective film coatings, sheets, bedspreads, or any other similar materials may be used to cover the exterior windows of any residential structure on a Lot. Sunshades are not allowed on the exterior of any Building.

(15) Windows. All windows and window units in The Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.

(16) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Lot are allowed; however, the Board may adopt Rules and Regulations regarding restrictions on size and weight of pets. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts or omissions shall be considered a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents; or (j) violating a pet ordinance. Pets in the Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied or tethered in the Common Area, or left unattended in the Limited Common Area. The Board may establish Pet Rules and charge a pet deposit and/or a registration fee.

(17) Wildlife. Capturing, trapping or killing wildlife within the Property is prohibited, except in circumstances posing an imminent threat to the safety of persons or pets using the Property.

(18) Vegetation. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.

(19) Lubricants, Oil and Gas. Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials (as may be determined in the Board's reasonable discretion and as defined by applicable law) anywhere within the Property is prohibited.

(20) Electronic Transmitters. No electronic or radio transmitter of any kind, other than garage door openers, shall be located or operated in or on the Property without the prior consent of the Board.

(21) Erosion, Dust or Pollen. Behavior which causes erosion or unreasonable amounts of dust or pollen is prohibited.

(22) Driveway, Entry, Deck, Patio and Balcony. The Board may adopt reasonable Rules and Regulations to regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Project, including by way of illustration but not limitation a regulation limiting items on the patio to "patio furniture"; prohibiting clotheslines and the hanging of clothes and other items over the railings; planters and plants; and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view.

(23) Insurance. Nothing shall be done or kept in, on or about any Lot or in the Common Area or Limited Common Area which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board, but for such activity, would pay.

(24) Laws. Nothing shall be done or kept in, on or about any Lot or Common Area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(25) Damage or Waste. No damage shall be caused to, or waste of, the Common Area and Facilities or a Limited Common Area by any Owner or Resident, or their family members, guests or invitees; and each Owner and Resident shall indemnify and hold the Board and the other Owners in The Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, or their family members, guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(26) Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Area and Facilities or Limited Common Area shall be done or permitted by any Owner without the prior, express written consent of the Board. Structural alterations within the footprint of the Building or Roof as shown on the Final Plat may be authorized by the unanimous consent of the Board (and governmental agency responsible for the issuing of all building permits, licenses, etc.), and the additional approval of the other Owners shall not be required.

7. Leasing or Rental of Townhomes

(a) Owners may lease, rent or otherwise grant occupancy rights to their Lots subject to the following restrictions:

(1) No owner shall be permitted to lease his Dwelling for short term, transient, hotel, vacation, seasonal or corporate purposes, which for purposes of this Section shall be deemed to be any rental with an initial term of less than six (6) months;

(2) Daily or weekly rentals, and rentals for less than thirty (30) days, are prohibited; and

(3) No Owner may lease individual rooms to separate persons or less than his entire Dwelling Unit without the written consent of the Board of Directors.

(b) The Association or the Board may require that Owners use lease forms approved by the Board (or include specific terms in their leases) and may impose a review or administration fee on the lease or transfer of any Lot or Dwelling.

(c) The Association or Board may charge an impact fee or a rental deposit.

(d) Except as expressly set forth herein there are no rental restrictions.

8. Easements.

(a) Property Subject to the Easement. Declarant hereby declares that the following property shall be held, sold, conveyed, transferred, constructed, operated, maintained, leased, and occupied subject to the easements and rights of way (the "Property" or "Easement Area"). Further, in the event of any sale, conveyance, or transfer of the Property to a third party, no further actions or agreements shall be necessary to effectuate such easements and said easements shall remain effective against and for the Property for the term hereof.

(b) Grant of Easement. Declarant grants, declares, and covenants that the Property shall be benefited and burdened by a perpetual, non-exclusive easement for ingress and egress by vehicular and pedestrian traffic, including by way of illustration but not limitation access by emergency and service vehicles, over and across the Easement Area including Lots and Buildings; and the location and installation, operation, regulation, use, maintenance, repair and replacement of utility lines included but not limited to sewer, water, storm drain, power, gas lines and the Common Area and Facilities. The Property shall be subject to all the benefits, burdens, rights, restrictions and costs described herein (collectively, the "Benefits and Burdens").

(1) Right of Entry. The Association and any person authorized by the Association may at reasonable time enter upon any Lot or Building for the purpose of performing maintenance responsibilities of the Association. Except situations deemed by the Board to be emergencies, notice of entry shall be made in advance. Entry shall be made at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) Mutual Benefits and Burdens. The mutual benefits and burdens herein include:

(1) Easement. A non-exclusive easement over, to, from, under, across and through the Easement Area for the purpose of pedestrian and vehicular traffic, including by way of illustration but not limitation access by emergency and service vehicles.

(2) No Barriers. No Owner or association of Owners shall permit or suffer to be constructed or placed upon any portion of the Easement Area any gate, fence, wall,

barricade or other obstruction, whether temporary or permanent in nature, which would unreasonably limit or impair vehicular or pedestrian traffic from one portion of the Easement Area to another or shall otherwise unreasonably obstruct or interfere with the movement of pedestrians or vehicles upon or over the Easement Area, except (a) as may be reasonably necessary or appropriate during periods that construction activities are ongoing or (b) to the extent that it may be necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights in the public in any portion thereof or to the extent objectively necessary to prevent eminent damage to the Easement Area, provided that any obstruction or interference permitted under this clause shall be done in a manner reasonably calculated to minimize its impact upon, and in reasonable cooperation with, the Owners of Lots comprising the Property.

(d) Restrictions of Use and Development.

(1) No Construction. No Owner shall construct any building or other structure of whatsoever nature or allow any use of their respective portions of the Property if such construction or use would impair the use of the Easement Area or violate any law, ordinance, or regulation.

(2) No Parking. The Easement Area and the easements and other rights granted herein shall not be used for parking, except to the extent the parking occurs without impeding or impairing in any way ingress or egress to or use of the Easement Area.

(3) Emergency and Service Vehicles. No parking or standing of any vehicle of any kind shall be allowed that could block access by fire or other emergency personnel.

(e) Common Use of Easement. The non-exclusive easements created hereby and the Easement Area are to be used in common by Fiore Townhomes and the individual Owners.

(f) Construction Easement. The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over, to, from, under, across and through the Easement Area for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for Fiore Properties Development. The Owners by acceptance of a deed or other document of conveyance do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Property until all improvements are complete and do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

(g) Locations of Facilities Easement. Declarant hereby reserves for itself and its affiliates and assignees a non-exclusive easement over, to, from, under, across and through the Easement Area to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all Common Area and Facilities of Fiore

Properties Development in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner or Mortgagee.

(h) Easements for Utilities, Drainage and Irrigation. Easements for utilities, the common secondary water system and any weir, filter and pump station, drainage systems and facilities, irrigation and sprinkler systems are reserved hereby and on the recorded Final Plat over, to, from, under, across and through the Easement Area. No Person may do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of such utilities, facilities, systems, and patterns, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the established channels in the easements and rights of way. If any such improvements, facilities, systems or patterns are altered, the Declarant expressly reserve the right to enter onto the property in order to restore the area without being guilty of a trespass. The Person responsible for the damage and the work shall be liable for the costs of repair and restoration.

(i) Drainage. No Person may change the direction or flow of drainage channels or obstruct or retard the flow of water through the channels established by the Declarant over, to, from, under, across and through the Easement Area.

(j) Encroachment. If any part of a Lot, Building or Common Area improvement encroaches or shall hereafter encroach upon another Lot, Building or Common Area improvement, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a Building or improvement, by error in the Final Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Building or Common Area improvement, or any part thereof.

(k) Joint or Common Utility Easements with Neighboring Subdivisions, Projects or Developments. The Declarant for itself and/or its successors in interest (including but not limited to the Association) hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or grant easements to adjoining subdivisions, projects or developments any and all reasonable and necessary access, utility or related easements or rights of way for ingress, egress, gas, water, power, sewer, storm drain systems or the like over, to, from, under, across and through the Easement Area.

(l) General Access Easements and Rights of Way. Declarant hereby grants and conveys to Fiore Townhomes Association, and the Owners, their successors and assigns, a non-exclusive and perpetual right to use and access the roads and common walk ways throughout the Easement Area vehicular and pedestrian traffic, ingress, egress and access, including all fire, emergency and maintenance vehicles. No Owner or Person shall obstruct, impede, block fence, gate,

wall-off, barricade or take any action or fail to take any action which materially limits or impairs the free and unimpeded use of the foregoing access easement and right of way granted hereby. In addition, every Owner, Lot and Unit shall have the right and non-exclusive easement to use and enjoy all of the Common Area and Facilities. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (1) The right of the Associations to limit the number of guests, occupants and residents; (2) The right of the Associations to suspend the voting privilege; and (3) The right of the Associations to dedicate or transfer all or any part of the Common Area and Facilities to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Period of Declarant's Control, any such dedication or transfer shall be effective only if approved in writing expressly by the Declarant. Subject to the Project Documents, each Owner shall be entitled to the exclusive ownership and possession of his Lot, to the exclusive use of Limited Common Area appurtenant thereto (if any), to use the Common Area and Facilities.

(j) Entry and Entry Monument Easements. The Declarant hereby reserves for itself and grants to the Fiore Townhomes Association an easement for the Entry to the Project and Entry Monument, and corresponding easements for the utility, drainage and irrigation systems and facilities. No Owner or resident may do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of such improvements, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner or resident, then the Declarant reserves to itself and grants to its successors and assigns the right to enter onto the property to restore the area at the cost of the Owner or resident, and without being guilty of a trespass.

(k) Construction. All conveyances of a Lot hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to this Declaration, even though no specific reference to such easements appears in any such conveyance.

(l) Private Easement. The easements and rights of way created hereby and the land benefitted or burdened thereby are intended to be used as a private non-exclusive easement for the use and benefit of Fiore Association and not for the general public.

9. Liability of Owners and Residents For Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his negligence.

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

11. Board. The Association shall be managed by a Board comprised of three (3) Owners

who shall be duly qualified and elected, except that during the Period of Declarant's Control the Board need not be comprised of Owners.

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

(a) Access. The Board or Manager shall have and are hereby granted the right to have access to each Lot, Limited Common Area, Building and the Common Area and Facilities, all utility systems (including the main gas and sewer line or lines located within the Buildings), throughout the Project: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Area and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Area and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry; and (3) for providing access to fire and other emergency vehicles. For purposes of this subsection the term "emergency" means an event or occurrence which threatens to cause substantial and imminent damage to person or property.

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

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

(d) Standing. The power to sue and be sued.

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

(f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer, in accordance with the Utah Revised Nonprofit Corporation Act, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Eligible Votes of the Association Members.

(g) Add or Purchase Property. The power and authority to purchase, otherwise

acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Eligible Votes of the Association Members.

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

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

(j) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Area and regulation of The Project to a professional Manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

(k) Common Area Utilities. Pay all common utility bills.

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

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

14. Owners Meetings. The Association shall meet at least annually at a time and place set by the Board.

15. Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Board shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (b) the name and address of each Resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board with written evidence verifying that the transfer

has occurred, that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Davis County, Utah, and that the transferee has received a copy of the Declaration and Bylaws then in force. The Board may for all purposes act and rely on the information concerning Ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Board is otherwise advised in writing.

16. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and Residents within the Common Area and Facilities; in, near, or about the Project there are utility lines or utility substations; there are also improvements of a less significant nature. Notwithstanding anything contained herein or in any of the Project Documents, neither the Association, Board, Members of the Board, Officers of the Association, Manager, nor the Declarant shall be liable or legally responsible for, or in any manner a guarantor or insurer of the health, safety or welfare of any Owner or Resident of any Lot or his family members, tenants, guests, or invitees while at the Project, or for any property of any such Persons. Each such Person by accepting a deed or other document of conveyance to a Lot or coming onto the Property hereby assumes all risks associated with the use and enjoyment of the Project, including negligent acts. No provision of the Project Documents shall be interpreted as creating a duty of the Association, Board, Members of the Board, Officers of the Association, Manager, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose. Each Owner by virtue of his acceptance of title to his Lot and each other Person having an interest in or lien upon, or making any use of, any portion of The Project (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, Board, Members of the Board, Officers of the Association, Manager, and the Declarant, and their employees, agents, contractors, subcontractors, successors, and assigns from or connected with the foregoing items.

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

(a) Board Discretion/Expenditure Limit. Any Capital Improvement to The Project which cost ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Board alone (the "Capital Improvement Ceiling").

(b) Expenditure Limit With Consent of Owners. Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the Eligible Votes of the Members.

(c) Improvements Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of The Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the Eligible Votes of the Members.

18. Recycling Programs. The Board may establish a recycling program and recycling center within the Project, and in such event all Residents of Lots shall support such program by

recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

19. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. Project water charges and storm water fees shall be paid as a Common Expense.

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

21. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations for the benefit of the Project, the Association, its Members and Residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

22. Relationship with Adjacent Projects. Adjacent to or in the vicinity of the Project are projects which have been or, in the future, may be developed as independent commercial or residential areas, or combinations thereof (including, but not limited to, rental apartments, retail or other business areas). The Declarant or the Association may enter into an agreement to share costs and facilities with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in the manner set forth in this Declaration, the owners of real property adjacent to or nearby The Project shall not be entitled to vote on Association matters, and shall not be subject to assessments or other conditions or restrictions set forth in this Declaration.

23. Amenities Reciprocal Use Agreements. Declarant may cause the Association to, and

the Association may from time to time, enter into amenities reciprocal use agreements ("Amenities Agreement(s)") with other master planned communities. Persons associated with such other master planned communities shall be entitled to use the Association's recreational facilities and other amenities, and the Members and their guests, as described in such agreements, shall be entitled to use the recreational facilities and other amenities in such other master planned communities to the extent specifically identified in the Amenities Agreement. The provisions of any Amenities Agreement entered into by the Board shall be subject to the approval of the Declarant, as long as the Declarant owns any of the Property. Amenities Agreements shall be subject to termination in the discretion of the Board, subject to the approval of the Declarant as long as Declarant owns any of the Property. All Members and their guests, as described in the Amenities Agreements, shall be entitled to enjoy the benefits of any Amenities Agreements to which the Association is a party, to the extend provided in the Amenities Agreement. In consideration for such rights, if any, each Member shall be responsible for user fees for the use of the facilities by such Member and such Member's guests, in accordance with any applicable Amenities Agreement. Rights to use any or all recreational facilities and other amenities shall be subject to any priorities for use established under the Amenities Agreements and any rules and regulations established by the parties to such Amenities Agreements. The Association may enter into more than one Amenities Agreement and may amend Amenities Agreements for any purpose, including but not limited to, adding additional parties in accordance with the terms of such Amenities Agreements.

24. The Maintenance Responsibility of the Association. The Association shall maintain, replace, and keep in a state of good repair the following items within the Project (collectively "Area of Common Responsibility):

(a) all Common Area within the Project;

(b) all landscaping, trees, bushes, shrubs, planting beds, flower beds, grass and other plant life in the Common Area, Lots and public utility easements, including the park strip on Clark Lane, 1525 West, and Filly Drive adjacent to the Project. This includes the fenced in areas on the rear of units 101-110;

(c) all common water service and drainage facilities;

(d) all common sidewalks and walkways;

(e) all walls and fences which serve as common walls or fences for the Project or which separate any Lot from Common Area, whether or not located on a Lot;

(f) all landscaping and irrigation systems in the Common Area;

(g) all common signage;

(h) all private streets, roadways and rights-of-way and streetlights within The Project (including all streets dedicated to the public if a majority of the Eligible Votes of the Members of the Association approves such maintenance);

(i) all foundations, columns, girders, beams, supports, and main walls;

(j) all roofs and exterior surfaces;

(k) all common parking areas and storage spaces;

(l) all installations and maintenance of common utility services, such as power, gas, sewer and water, including the utility lines running outside the Buildings on the Lots;

(n) all sewer laterals and stormwater facilities (see exhibit D);

(o) any other item designated as a common responsibility or responsibility of the Association herein; and

25. The Maintenance Responsibility of the Owners. Each Owner shall maintain, repair and replace his Lot, Dwelling Unit, and all other landscaping and physical improvements to his Lot not part of the Common Area of Responsibility (the "Area of Personal Responsibility"). This obligation includes by way of illustration but not limitation all glass, windows, window units, doors, door units, driveways, water lateral, sewer lateral, sidewalks, entries, landings, patios, balconies, and decks that exclusively serve an owners Unit even if these facilities are in the Common Area subject only to the prior written consent of the Board who is obligated to maintain the integrity of the original architectural design, uniformity of appearance, and quality of construction. Each Owner or Resident shall keep his patio, balcony, deck, driveway, parking and storage spaces and all appurtenant Limited Common Area broom clean, tidy, and uncluttered in accordance with the Rules and Regulations adopted by the Board. With the express written permission of the Board, an Owner may at his or her sole expense install and maintain heat tape. Each Owner by acceptance of a deed or other document of conveyance to a Lot agrees to assume the risk of ice damming and any related water damage. The installation of heat tape or similar produce must be approved by the Board and shall be considered an Owner expense. The Board may adopt Rules and Regulations allocating the cost of maintaining the Limited Common Area. In addition to any other obligations expressly set forth in said Rules each Owner shall keep his Limited Common Area broom clean and free of debris.

26. Garbage Removal. Owners shall place their garbage in City containers. Owners shall arrange for their own garbage collection by the City.

27. Snow Removal. The Association shall arrange for the removal of snow and ice accumulations from all common including the private roads (50 north and 1500 west), arterial sidewalks and walkways that do not exclusively serve and Owner's Unit that lie within the Association's Area of Common Responsibility. Each Owner or Resident is solely responsible for the removal of snow and ice accumulations from his patio, balcony, deck, driveway, walkways, parking areas that immediately serve an Owner's Unit even if the facility is in the Common Area and other Limited Common Area appurtenant to his Lot.

28. Standard of Care – Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with the Community Wide Standard.

29. Standard of Care – Landscaping. All landscaping, if any, permitted by the Board in Limited Common Area shall be maintained and cared for in a manner consistent with the Community Wide Standard and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Board from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed, and trees, shrubs and bushes shall be properly pruned and trimmed. In short, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

30. Dispute Resolution. If a dispute arises between a Owner or Owners and/or an Association as to the condition of a Lot or Building, the decision of the Board shall be final and conclusive.

31. Neglect. If the Board determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(a) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board. The Owner shall have ten (10) days after receipt of notice within which to complete the maintenance, replacement or repair, or if the maintenance, replacement or repair is not capable of completion within such time period, to commence the maintenance, replacement or repair within ten (10) days.

(b) Emergency Situation. If the Board determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

(c) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(d) Costs and Expenses. Costs incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the Assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed

32. Changes to Areas of Personal or Common Responsibility. The Board may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Owners.

33. Alterations to the Common Area. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may make changes to the Common Area without the consent of either the Association or the Board. No Owner or Resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Building, Limited Common Area or Common Area or Facilities, including but not limited to the construction or installation of any additions, and the extension or enclosure of any existing structures (e.g., fencing, decks, patios, walkways or sheds, etc.) not shown on the approved plans and specifications, without the prior written consent of the Board.

34. Common Expenses. Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

(a) Declarant. During the Period of Declarant Control, the following shall apply:

(1) The Declarant, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, shall pay no assessment unless a Dwelling Unit constructed on a Lot is occupied for a residence on a permanent or part-time basis, provided that Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners;

(2) Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves;

(3) In no event, however, shall the subsidy exceed the monthly or annual assessments;

(4) This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these; and

(5) The Declarant shall not be subject to Special or Individual Assessments.

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

(c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Board shall prepare and deliver to the Owners a proposed Budget.

(1) Itemization. The proposed Budget shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s) for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. The proposed Budget shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Area, and replacement of those elements of the Common Area, that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(d) Apportionment. The common profits, losses and voting rights of The Project shall be distributed among, and the common expenses shall be charged to, the Owners equally and uniformly.

(e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved. The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new proposed Budget is disapproved, then the last approved Budget shall continue.

(f) Payment of Assessments. The Board has the sole authority and discretion to determine how and when the Assessments are paid.

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

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

(i) Re-Assessments. The Board of Directors may re-assess any unpaid Assessments among all of the Owners upon at least thirty (30) days prior written notice.

(j) Reserve Account or Accounts.

(1) The Board shall establish and maintain a Reserve Account or accounts as required by statute to pay for deferred maintenance. The Reserve Account or accounts shall be funded out of regular Assessments, Special Assessments (if necessary) and the contributions from the Working Capital Fund or Reinvestment Fees. The Board shall dedicate a portion of each monthly Assessment for the Reserve Account or accounts.

(2) The Board may establish a separate Reserve Account or Contingency Fund to cover Budget shortfalls or unforeseen expenses.

(j) Reserve Analysis or Study. The Board shall establish and update a Reserve Analysis or Study as required by statute.

(k) Reserve Analysis or Study and Plan to Fund the Reserve Account or Accounts. The Board shall present and make available to the Owners a summary of the Reserve Study, Reserve Fund, and Plan to Fund the Reserve at least annually and shall provide the full Report, Plan and accounting upon request and in accordance with the statutory requirements.

(1) The Directors are responsible to present to owners each year the amount of money that should be deposited into the reserve account each year to properly or adequately satisfy the recommendations of the plan for deferred maintenance adopted, based, at least in part on the Reserve Study.

(2) The contents of the Reserve Study shall be comprehensive, complete and accurate, and must address not only the systems, equipment and facilities but the components effectively. The Directors provide a summary of the most recent Reserve Study to all the Owners each year, even if they do not attend the annual meeting.

(3) The full Reserve Study (and any updates) must be made available to Owners upon request. The Association must now include a specific Reserve Fund line item in its annual budget.

(4) The Board of Director must establish the amount of the Reserve Fund line item; and set forth the steps for the Owners to veto the Board's Reserve Fund line item in accordance with the statutory requirements.

(5) The Declarant is exempt from the Reserve Study and Reserve Fund requirements during the Period of Declarant's Control.

(l) Statement of Assessments Due. Upon written request, the Board shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment

of a processing charge not to exceed the statutory limit for the issuance of such certificate.

(m) Payoff Requests. The Board may charge a fee up to the statutory limit to provide a payoff to an Owner or his agent.

(n) Reinvestment Fee. The Board may charge a reinvestment fee not to exceed the statutory limit.

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

35. Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The Annual Assessment shall be payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment shall be based upon the Budget prepared by the Board. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board.

36. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

(a) Board Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100ths Dollars ($500.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Board may impose the special assessment without any additional approval.

(b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the Eligible Votes of the Members of the Association. The Board in its discretion may allow any special assessment to be paid in installments.

37. Individual Assessments. Individual Assessments shall be levied by the Board against a Lot and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Owner is responsible; (c) any other charge, fee, fine, dues, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board; (d) Corrective Assessments; and (e) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

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

(a) Delinquent Accounts. Any Assessment not paid when due shall be deemed

delinquent.

(b) Late Fees and Default Interest. The Board is hereby granted the authority to charge a late fee and default interest on the outstanding balance of any delinquent account in a sum and at a rate to be determined by the Board.

(c) Lien. If any Owner fails or refuses to make any payment of any Assessment when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

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

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

(f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Area or the abandonment of his Lot.

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

(h) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. The foreclosure may proceed non-judicially (outside the courts) or judicially (through the courts). Before the Association may pursue a non-judicial foreclosure the required statutory of intent must be provided. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

The Board may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(i) Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Lot and appurtenant Limited Common Area, and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, *et seq.*, as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, *et seq.* Proper statutory notice must be provided however.

(j) Discontinuance of Common Utility Service and Suspension of Common Facility Use. If an Owner fails or refuses to pay an Assessment when due, the Board may, after giving notice and an opportunity to be heard as provided for below, terminate an Owner's right;

(1) To receive utility services paid as a Common Expense.

Before terminating utility services or right of access, the Manager or Board shall give written notice to the Owner in the manner provided in the Bylaws. The notice shall inform the Owner (i) that utility service or right of access and use of recreational facilities will be terminated if payment of the Assessment is not received within thirty (30) days; (ii) of the amount of the Assessment due, including any interest or late payment fee; and (iii) of the right to request a hearing as provided for in this Section. An Owner who is given notice may request an informal hearing to dispute the Assessment by submitting a written request to the Board within fourteen (14) days after the date on which the Owner receives the notice. The hearing shall be conducted by the Board in accordance with the standards provided in the Bylaws. If a hearing is requested, utility services or right of access and use of Recreation_Amenity may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the Assessment due, including any interest or late payment fee, the Manager or Board shall immediately take action to reinstate the terminated utility services and right of access and use of recreational facilities.

39. Working Capital Fund. A Working Capital Fund shall be established by the Declarant. Each Lot's initial share of the Working Capital Fund shall be collected and transferred to the Board at the time of closing of the sale of each such Lot by Declarant and shall be equal to two month's assessment (the "Working Capital Payment"). Notwithstanding the foregoing, the contribution to the Working Capital Fund for each unsold Lot shall be paid to the Board at the time a certificate of permanent occupancy is issued and such Lot is first occupied for residential purposes. With respect to each Lot for which the Declarant pays the contribution to the Working Capital Fund, the Declarant may, at its election, be reimbursed for such contribution by the buyer of such Lot at the time of closing. Thereafter, each time a Lot is sold and conveyed; the Board shall collect a Working Capital Payment at the time of the closing of the transaction. The purpose of the Working Capital Fund is to function as an impact or transfer fee, to ensure that the Board will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the

operation, control and regulation of the Project. Sums paid into the Working Capital Fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

40. Future Lease or Rental Payments. If the Owner of a Lot who is leasing the Lot fails to pay an Assessment for more than sixty (60) days after the Assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease or rental payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this Section. The notice shall (a) provide notice to the tenant that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the Assessment is received within the time period provided in the Declaration, Bylaws, or Association Rules and Regulations; (b) state the amount of the Assessment due, including any interest or late payment fee; (c) state that any costs of collection, not to exceed the statutory limit, and other Assessments that become due may be added to the total amount due; and (d) provide the requirements and rights described in this Section. If the Owner fails to pay the Assessment due by the date specified in the notice, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to this Section.

The Manager or Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (a) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due to the Owner; (b) that until notification by the Association that the Assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (c) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement.

If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be (a) deposited in a separate account; and (b) disbursed to the Association until the Assessment due, together with any cost of administration which may not exceed the statutory limit, if paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association. Within five (5) business days after payment in full of the Assessment, including any interest or late payment fee, the Manager or Board shall mail a copy of such notification to the Owner.

41. Liability of Board. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board shall have no personal liability with respect to any contract

or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

42. Insurance. This section applies to all insurance policies for the Association and Owners issued or renewed, regardless of when the Association was formed.

(a) Property and Liability Insurance Required.

(1) Owners must obtain insurance for personal property, contents and personal liability. Owners shall also obtain loss assessment and dwelling coverage in the amount of the Association's deductible.

(2) The Association must maintain, to the extent reasonably available, property insurance on physical structures of all attached Dwelling Units, Limited Common Area and Common Area.

(3) The Association must maintain to the extent reasonably available adequate Liability Insurance for the Common Areas and Facilities.

(4) If property or liability insurance is not available, then the Association must notify Owners within seven (7) days.

(5) The Association may but is not required to carry other types of insurance.

(6) An Owner's act or omission may not void a policy.

(b) Property Insurance. The Property Insurance, which shall include all Common Areas and Facilities, must be provided by blanket coverage (as opposed to a schedule listing each Building separately) and may not be less than 100% of the full replacement cost, which must be reviewed at each renewal.

(1) The Property Insurance shall include coverage for any and all fixtures, improvements, or betterments installed by an Owner, floor coverings, cabinets, heating and plumbing fixtures, paint, wall coverings, windows, and any item permanently attached to a dwelling.

(2) The Association is not required to insure a Dwelling Unit if the Dwelling Unit is not physically attached to another Dwelling Unit.

(3) When the Association has a master policy of Property Insurance and the Owner also has Property Insurance, the Association's insurance shall be considered **primary;** provided, however, the Owner's insurance applies and the Owner's insurance policy is considered the primary coverage up to the amount of the master policy deductible. If the Owner has no insurance, the he or she is personally responsible for the loss up to the amount of the deductible.

(4) An Owner who suffers a loss and makes a claim on The Association's Property insurance policy is responsible for payment of the Association's deductible; provided, however, if two (2) or more Owners suffer loss in a single event, they are each responsible for payment of a portion of the Association's deductible based on the percentage of the loss they each suffered. The deductible, which an Owner is required to pay, applies to the claim on both the Dwelling Unit and any appurtenant Limited Common Area; that is, only one deductible applies.

(5) If an Owner does not pay his or her share of the loss, the Association may levy an Assessment against the Owner and his or her Dwelling Unit in a sum equal to his or her share of the loss.

(6) The Association must set aside in escrow an amount equal to the amount of the master policy deductible or $10,000 (unless by statute a higher amount is required in which event the statutory requirement shall govern and control), whichever is less.

(7) The Association must give notice to all Owners of their obligation to pay the Association's deductible. The Association shall also give notice of any change in the amount of the deductible. If the Board of Directors does not provide the required notice of an increase in the amount of the deductible on the Association's Property insurance, then the Association is only liable for the amount of the undisclosed increase in the deductible if the Owner does not have adequate coverage for the full deductible.

(8) The Association is not required to submit a claim to the Association's insurance carrier if the Board of Directors determines that the amount of the claim is likely not to exceed the amount of the Association's insurance deductible.

(9) The insurer for the master policy shall adjust with the Association a loss covered under the association's policy.

(10) The Association receives insurance payments in trust for the owners and insurance proceeds received by the Association must first be disbursed for the repair or restoration of the damaged property.

(c) Liability Insurance. The Association shall obtain a public liability policy covering the Common Area and Facilities, sewer laterals, including the backup of sewer laterals, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have coverage limits common to this area for this kind of project in the opinion of an independent insurance agent but not less than a One Million ($1,000,000) Dollar single person limit as respects bodily injury and property damage, a

Two Million ($2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million ($1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection. The Association may insure for more than this but not less. Each Owner is an insured person under the Association's liability policy that insures an owner's interest against liability arising from the Common Area or membership in the Association.

(d) Damage to a Portion of the Project- Insurance Proceeds. Repairs must be done within a reasonable amount of time. If the associated expenses to repair are in excess of the insurance proceeds, such costs will be considered a Common Expense.

(e) Miscellaneous.

(1) The Association may but is not obligated to purchase additional endorsements or coverage, including by way of illustration but not limitation, directors and officers insurance, a fidelity bond, earthquake insurance.

(2) For those rare situations that may occur; such as dealing with a project that is terminated and distributions to lien holders and Owners if the Project is destroyed, the provisions of the Utah Community Association Act shall in all instances govern and control.

(3) If any provision of this Section is held to be (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Section will be construed and enforced as if the (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Section will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Section. Furthermore, in lieu of each such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Section, a provision as similar in terms to such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

43. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

(a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to The Project or any part thereof, the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated Restored Value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to

The Project or any part thereof which does not constitute Substantial Destruction.

(3) "Substantial Condemnation" shall exist whenever a complete taking of The Project or a taking of part of The Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of Restoration over the funds available is twenty-five (25%) percent or more of the estimated Restored Value of the Project.

(4) "Partial Condemnation" shall mean any other taking by eminent domain or grant or conveyance in lieu thereof which does not constitute Substantial Condemnation.

(5) "Substantial Obsolescence" shall exist whenever The Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated Restored Value of the Project.

(6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "Restored Value" shall mean the fair market value of The Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring The Project to its former condition.

(9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

(b) Determination by Board. Upon the occurrence of any damage or destruction to The Project or any part thereof, or upon a complete or partial taking of The Project under eminent domain or by grant or conveyance in lieu thereof, the Board shall make a determination as to whether the excess of Estimated Cost of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board shall, from time to time, review the condition of The Project to determine whether Substantial Obsolescence exists. In making such determinations the Board may retain and rely upon one or more qualified appraisers or other professionals.

(c) Restoration of the Project. Restoration of The Project shall be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67%) percent of the Project's Eligible Votes of the Members and is further consented to by at least fifty-one (51%)

percent of the Eligible Mortgagees.

(d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Board has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective membership interests in the Association. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Board may elect to make a Special Assessment in accordance with this Declaration to pay for the deficiency.

(g) Sale of Project. Unless Restoration is accomplished as set forth above, The Project may be sold in accordance with the Utah Revised Nonprofit Corporation Act, as the same may be amended from time to time, in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Final Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board equally to the Owners. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(h) Authority of Board to Represent Owners in Condemnation or to Restore or Sell. The Board, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Area and Facilities.

(i) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

(j) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

(k) Termination of Legal Status. Any action to terminate the legal status of The Project after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the Eligible Votes of the Members of the Association

and by at least fifty-one (51%) percent of the Eligible Mortgagees.

The termination of the legal status of The Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by at least sixty-seven (67%) percent of the Eligible Mortgagees. However, implied approval may be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

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

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

(c) Compliance with Statutes. Any such consent in lieu must also comply with the requirements of the Utah Revised Nonprofit Corporation Act, as amended from time to time.

45. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value, including by way of illustration but not limitation the security interest in a Lot and its appurtenant interest in the Association, the Common Area and Facilities. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Board or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for the lien of any Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Board or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative Rules and Regulations concerning the Project, as well as the books, records, and financial statements of the Board and the Association. The term "Available," as used in the Paragraph, shall mean available for

reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

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

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

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

(2) No contract may be for an initial term greater than one (1) year. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year.

(3) If a written notice of default is provided and the default is not cured within thirty (30) days, then the management contract may be terminated for cause on thirty (30) days written notice; provided, however, if such default is capable of being cured, the agreement may not be terminated so long as the defaulting party commences appropriate curative action within such thirty (30) day period and thereafter diligently prosecutes such cure to completion as promptly as possible.

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

(1) Condemnation Loss or Award. 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 Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

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

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

46. Amendment. Anything to the contrary notwithstanding, while the Declarant is in control of the Association and prior to the termination of the Period of Declarant's Control, the Declarant may amend the Declaration or Final Plat without any additional consent or approval required. After transition, the affirmative vote of at least sixty-seven percent (67%) of the Eligible Votes of the Members of the Association shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required for any amendment which would terminate the legal status of the Project and the consent of at least fifty-one (51%) percent of the Eligible Mortgagees shall be required to:

(1) redefine any Lot boundaries;

(2) convert Lots into Common Area or vice versa;

(3) reduce the hazard or fidelity insurance requirements;

(4) impose prohibitions on the leasing of Lots;

(5) authorize a decision by the Association of fifty (50) or more Lots to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;

(6) restore or repair the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

(7) authorize any proposed amendment to provisions that expressly benefit mortgage holders, insurers or guarantors.

Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Final Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees. If proper notice is given to a Mortgagee or other creditor, then a legal presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Final Plat or the termination of the legal status of the Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

47. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration. Until the Declarant has sold all of its Lots or seven years from the date of recording of this Declaration, whichever first occurs (the "Sale's Events Period"), neither the Owners, the Association nor the Board shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

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

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

(c) Common Area Use. Declarant shall have the right to use the Common Area of the Project.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Until 120 days after the expiration of the Sale's Events Period, Declarant shall have the right to remove from The Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

48. Limitation on Improvements by Association. Until the expiration of the Sale's Events Period, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant.

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

(a) Lots. Each Lot which an Owner has contracted to purchase and the Building within which such Lot is contained or is to be contained shall be substantially constructed and ready for use or occupancy (as the case may be); and

(b) Common Area. There shall be substantially completed and usable as part of the Common Area all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor lighting, other Common Area improvements shown on the Final Plat, and utility lines and conduits adjacent to the Lot or Building in which a Lot is located, and necessary for its use.

50. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project, title to which is vested in Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

51. Expansion of the Project.

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

(b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Map or Maps containing the same information with respect to the new Lots as was required on the Map with respect to the Phase 1 Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to The Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to The Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Davis County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots in the

Project rights to use the new Common Area added to The Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in The Project as it existed, interest so acquired by the Owner of the Lot encumbering the new Common Area added to The Project as a result of such expansion.

(d) Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to the incidents of common ownership with all the provisions and protective covenants pertaining to a planned unit development as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Davis County Recorder.

(e) Other Provisions Concerning Expansion. If The Project is expanded as hereinbefore contained, then it is further provided that:

(1) All or any part of the Additional Land may be added to The Project without any limitations whatsoever save and except that all additional Lots created must be restricted to multi-family residential housing limited to one family per Dwelling Unit.

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

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Final Plat. The Association shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

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

b. Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings, Dwelling Units and Lots will be comparable to the Phase 1 facilities on a per Lot basis and will be of a similar quality of materials and construction to Phase 1.

c. Whether any Lots created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Lots will be constructed of an equal or better quality of materials and construction than the Lots in Phase 1.

d. Type, size, or maximum number of Limited Common Area which may be created within any portion of the Additional Land added to the Project.

(5) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (a) the submission of

any portion of the Additional Land to the provisions of this Declaration; (b) the creation, construction, or addition to The Project of any additional property; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Project, or any Property.

52. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Board and may elect to transfer the management of The Project to a Board elected by the Owners. Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Board to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Board.

53. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

54. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

55. Enforcement; Attorneys Fees. Should the Association or Board be required to take action to enforce the Declaration, Bylaws or any administrative Rules and Regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue. In addition, the Board may impose the following sanctions after proper notice and a reasonable opportunity to be heard:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot;

(b) suspending an Owner's right to vote;

(c) suspending any Person's right to use any of the recreational facilities; provided, however, nothing herein contained shall authorize the Board to limit ingress or egress to or from a Lot;

(d) exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;

(e) exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);

(f) requiring an Owner at his sole expense to remove any structure or improvement in the Limited Common Area or Common Area, and upon the failure of the Owner to do so, the Board or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass and the costs of correction shall be levied as an Individual Assessment against the Lot;

(g) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

(h) levying Individual Assessments or Additional Charges to cover costs incurred by the Association to bring a Lot or Owner into compliance.

The Board of Directors may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

56. Dispute Resolution and Limitation on Litigation/Covenant Not to Sue.

56.1 Litigation. The Declarant, Association and all Persons subject to this Declaration ("Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees by acceptance of a deed or other document of conveyance to a Lot that any and all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including by way of illustration but not limitation any and all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, Articles of Incorporation or Rules (collectively "Claim"), except for those Claims authorized in Section 56.2 below, shall be resolved by negotiation, and if negotiations fail, then by mediation, and if mediation fails, then by binding arbitration in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim. Anything to the contrary notwithstanding, except for those Claims authorized in Section 56.2 below, each Bound Party hereby covenants not to sue and no mediation, arbitration or litigation of a Claim may be commenced by a Bound Party which will or may require the

Association to incur or suffer attorney's fees and costs without the express prior written consent and authorization of at least two-thirds (2/3) of the total percentage of ownership interest in the Property. The Bound Parties waive their rights to a jury trial.

56. 2 Exempt Claims. The following Claims shall be exempt from the provisions of Section 56.1 above ("Exempt Claims"):

(a) Any and all suits by the Association against any Bound Party to obtain a personal judgment for unpaid assessments, fines and related costs or to foreclose a lien securing such obligations. Non-judicial foreclosures shall also be considered Exempt Claims;

(b) Any and all suits by the Association to obtain a temporary restraining order, temporary injunction, permanent injunction or other equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary or appropriate to maintain the status quo at the Property and preserve the Association's ability to enforce the use restrictions and architectural standards;

(c) Any and all suits between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Declaration, Bylaws, Articles of Incorporation or Rules, if the amount in controversy exceeds the statutory Small Claims jurisdictional limit; and

(d) Any and all suits involving two or more Persons where all of the Persons are not Bound Parties.

56.3 Optional Remedy. Any Bound Party having an Exempt Claim may submit it to arbitration or mediation but there is no obligation to do so. The submission of an Exempt Claim involving the Association to arbitration or mediation shall require the express prior written consent and authority of the Association.

57. Government Financing. Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot is provided by a government agency, including by way of illustration but not limitation the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes, and the termination of the legal status of The Project for reasons other than substantial destruction or condemnation of the property, nor material amendment to the Declaration, or merger, may become effective, as to said Agencies, without their prior express written consent.

58. Term. This Declaration, including its amendments and supplements, shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50.01%) of the Eligible Votes of the Members of the Association determines that this Declaration shall terminate.

59. Action of Members. Any action allowed or required to be taken by the Members under this Declaration may be taken (a) at a meeting where Members are represented in person, by proxy or by ballot, (b) by written consent without a meeting, or (c) by ballot as the Bylaws may allow and (d) if not prohibited by Utah law, online voting may be allowed. The procedure may involve the creation of a ballot, notice, information and disclosure statement. It will likely include upload features. The site must be secure and that the matter properly administered. The Board must give notice that the system is established, that online voting is available, and spell out the procedure (e.g. the website name, each owner's unique user name, and so forth). In addition, each Owner must execute a written waiver saying he waives the right to receive an absentee ballot and/or proxy by hand-delivery or U.S. mail.

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

EXECUTED the 6 day of July, 2021.

DECLARANT:

FIORE INVESTMENTS, LC.
a Limited Liability Company

BY: _____
Jacob R. Ballstaedt, Manager

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

On the 6th day of July, 2021, personally appeared before me Jacob R. Ballstaedt, who by me being duly sworn, did say that he is the Manger of FIORE INVESTMENTS, LC., a Limited Liability Company, and that the within and foregoing instrument was signed in behalf of said Company by authority, and said Jacob R. Ballstaedt duly acknowledged to me that said Company executed the same.

_____
NOTARY PUBLIC

Notary Public - State of Utah
CHIMI KIM
Comm. #708025
My Commission Expires
August 30, 2023

# EXHIBIT "A"
# LEGAL DESCRIPTION OF THE PROPERTY

The Land described in the foregoing document is located in Davis County, Utah and is described more particularly as follows:

**FIORE TOWNHOMES, PHASE 1**, according to the official plat thereof, on file and of record in the office of the Davis County Recorder.

# EXHIBIT "B"
# LEGAL DESCRIPTION OF ADDITIONAL LAND

A part of the NW1/4 & NE1/4 of Section 23, Township 3 North, Range 1 West, Salt Lake Base & Meridian, Farmington, Utah, more particularly described as follows:
Beginning at a point on a northwest corner of FARMINGTON GREENS P.U.D. Subdivision Phase 2A, according to the Official Plat thereof on file in the Office of the Davis County Recorder, said point also being on the North line of Filly Drive, located S89°48'54"W along the ¼ Section line 79.86 feet and North 316.20 feet from the Center ¼ Corner of Section 23, T3N, R1W, SLB&M (said Center 1/4 Corner located S89°49'36"W 2653.98 feet from the East 1/4 Corner of said Section 23); thence North 392.53 feet to a point on the South line of that Real Property described in Deed Book 4091 Page 1622 of the Official Records of Davis County; thence S89°23'28"E along said deed 322.44 feet to a northwest corner of FARMINGTON GREENS P.U.D. Subdivision Phase 2A, according to the Official Plat thereof on file in the Office of the Davis County Recorder, said point also being on the West line of Filly Drive; thence along said Plat following 5 (five) courses and distances: S0°36'30"W 213.89 feet; thence Southwesterly along the arc of a 72.50 foot radius curve to the right 56.17 feet through a central angle of 44°23'30" (chord: S22°48'15"W 54.78 feet); thence S45°00'00"W 145.78 feet; thence Westerly along the arc of a 72.50 foot radius curve to the right 56.73 feet through a central angle of 44°50'03" (chord: S67°25'01"W 55.30 feet); thence S89°50'03"W 144.78 feet to the point of beginning.
Contains: 2.63± acres
30 Lots
2 Parcels

# EXHIBIT "C"

# BYLAWS
# OF
# FIORE TOWNHOMES HOMEOWNERS ASSOCIATION

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# BYLAWS
# OF
# FIORE TOWNHOMES HOMEOWNERS ASSOCIATION

## ARTICLE I

## GENERAL

1.1 Purpose of Bylaws. These Bylaws are adopted for the regulation and management of the affairs of Fiore Townhomes Homeowners Association, a Utah nonprofit corporation (the "Association"), organized to be the association to which reference is made in the Declaration of Covenants, Conditions, Restrictions of Fiore Townhomes, a part of the planned Fiore Properties Development, as amended or supplemented from time to time (the "Declaration"), to perform the functions as provided in the Declaration and to further the interests of Owners of Lots within the Development.

1.2 Terms Defined in Declaration. Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to such terms in the Declaration.

1.3 Controlling Laws and Instruments. These Bylaws are controlled by and shall always be consistent with the provisions of the Utah Revised Nonprofit Corporation Act (the "Act"), the Declaration, and the Articles of Incorporation of the Association filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the "Division"), as any of the foregoing may be amended from time to time.

1.4 Fair and Reasonable Notice. Notice given in accordance with the provisions of the Revised Nonprofit Corporations Act) shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, text message, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice.

## ARTICLE II

## OFFICES

2.1 Principal Office. The principal office of the Corporation shall be at 273 N. East Capitol Street, Salt Lake City, Utah 84103. The Board of Directors, in its discretion, may change from time to time the location of the principal office.

2.2 Registered Office and Agent. The Act requires that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles of Incorporation and may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law with the Division.

## ARTICLE III

## MEMBERS

3.1 Members. A "Member," as provided in the Declaration, is the person or, if more than one, all persons collectively, who constitute the Owner of a Lot within the Development.

3.2 Memberships Appurtenant to Lots. Each Membership shall be appurtenant to the fee simple title to a Lot. The person or persons who constitute the owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

3.3 Members' Voting Rights. A Member shall be entitled to one (1) vote for each Lot which he or it owns within the Development.

3.4 Voting by Joint Owners. In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy or through ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

3.5 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board of Directors of the Association shall act as arbitrators and the decision of a disinterested majority of the Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

3.6 Suspension of Voting Rights. The Board of Directors may suspend the voting rights of a Member for any period during which an assessment remains unpaid. The Board of Directors may also, after Notice and Hearing, suspend the right of the Member to use the Common Area and Facilities during and for up to sixty (60) days following any breach by such Member or Occupant of any provision of the Declaration or of any Rule or Regulation adopted by the Association unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues and up to sixty (60) days thereafter.

3.7 Transfer of Memberships on Association Books. Transfer of Membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

3.8 Assignment of Voting Rights to Tenants and Mortgagees. A Member may assign his right to vote to a tenant occupying his Lot or to a mortgagee of his Lot for the term of the lease or the mortgage and any sale, transfer or conveyance of the Lot, and the Lot upon which it is situated shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights to any tenant or mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the Secretary of the Association.

## ARTICLE IV

## MEETING OF MEMBERS

4.1 Place of Members' Meetings. Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Development, as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual Meetings of the Members shall be held at such time of day as is fixed by the Board of Directors and specified in the notice of meeting. The Annual Meetings shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting.

4.3 Special Meetings of Members. Special Meetings of the Members may be called by the President or the Board of Directors or by Members holding not less than twenty-five percent (25%) of the total votes of all Members, excluding votes of Declarant, or by Declarant if it holds at least ten percent (10%) of the total votes of all Members. No business shall be transacted at a Special Meeting of Members except as indicated in the notice thereof.

4.4 Record Date/Members List.

4.4.1. Record Date. The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection 4.4.2 below, unless the Board of Directors, in advance of sending notice, set a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

4.4.2. Members Entitled to Notice. Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (i) the close of business on the day on which the Board of Directors adopts the resolution relating to the exercise of the right; or (ii) the close of business on the sixtieth (60th) day before the date of the exercise of the right. A record date fixed under this Section may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. A determination of members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote.

4.4.3. Member List. The Association shall only be required to prepare a list of the names of the Members as provided for in Section 9.3.3.

4.5 Notice of Members' Meetings. Written notice stating the place, day and hour of any meeting shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by first class or registered mail, by or at the direction of any of the Officers of the Association, or the Officers or persons calling the meeting, to each Member entitled to vote at such meeting. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Act. The notice of an Annual, Regular or Special Meeting shall include (a) the names of

any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a director or has a financial interest, if any; (c) notice of any indemnification or advance of expenses to a director in connection with a legal "proceeding" as defined in the Act; (d) notice of any amendment to these Bylaws proposed by the Members and a copy, summary or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of the properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a person entitled to call a Special Meeting and the request is received by the Secretary or President at least ten (10) days before the Association gives notice of the meeting. The notice of a Special Meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the United States mail addressed to the Member at the street address given by the Member to the Association, or to the residence of such Member if no address has been given to the Association.

4.6 Proxies and Ballots Used at Meetings. A Member entitled to vote at a meeting may vote in person or ballot, or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the meeting prior to the time the proxy is exercised. Any proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the Secretary or other person authorized to tabulate proxy or ballot votes (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the Secretary or other Officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted. In addition to utilizing a ballot in connection with a meeting, the Association may utilize ballots without a meeting to take any action that may be taken at any annual, regular or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when (1) the time by which all ballots must be received has passed so that a quorum can be determined and (2) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall: (a) set forth each proposed action, (b) provide for an opportunity to vote for or against each proposed action, (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.7 Telecommunications. Any or all of the Members may participate in an Annual, Regular, or Special Meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by a means permitted under this Section is considered to be present in person at the meeting.

4.8 Quorum at Members' Meetings. Except as may be otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy or by ballot, of Members entitled to cast at least

twenty-five percent (25.0%) of the votes shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

4.9 Adjournment of Members' Meetings. Members present in person or by proxy at any meeting at which a quorum or reduced quorum, as the case may be, was present may adjourn the meeting from time to time, without notice other than announcement at the meeting, for a total period or periods not to exceed forty-five (45) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall be the same as the quorum requirement of the meeting so adjourned, and any business may be transacted which might have been transacted at the adjourned meeting.

4.10 Vote Required at Members' Meetings. At any meeting where a quorum is present, a majority of the votes present in person, ballot or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, except that, in the case of elections in which there are more than two (2) candidates, the persons receiving the highest number of votes shall be elected.

4.11 Cumulative Voting Not Permitted. Cumulative voting by Members in the election of Directors shall not be permitted.

4.12 Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

4.13 Expenses of Meetings. The Association shall bear the expenses of all Regular and Annual Meetings of Members and of Special Meetings of Members.

4.14 Waiver of Notice. A Member may waive any notice required by the Act or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

4.15 Action of Members Without a Meeting. Any action that may be taken at an annual or special meeting of the Members may be taken without a meeting and without prior notice if a consent, in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all of the Members entitled to vote with respect to the subject matter thereof were present and voted. Directors may not be elected by written consent except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section must comply with the Act and is not effective unless all necessary written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronically transmitted facsimile or other form of communication providing the Association with a complete copy of the written consent, including a copy of the signature to the written

consent.

4.16 Signature of Members. Except as otherwise provided in the Act, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; *i.e.*, owner, partner, president, director, member, trustee, conservator, guardian, etc.

## ARTICLE V

## BOARD OF DIRECTORS

5.1 General Powers and Duties of the Board of Directors. The Board of Directors shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Directors shall have the power to exercise or cause to be exercised for the Association all of the powers, rights and authority of the Association not reserved to Members in the Declaration, the Articles of Incorporation, these Bylaws, or the Act.

5.2 Special Powers and Duties of the Board of Directors. Without limiting the foregoing statement of general powers and duties of the Board of Directors or the powers and duties of the Board of Directors as set forth in the Declaration, the Board of Directors shall be vested with the following specific powers and duties:

5.2.1 Assessments. The duty to fix and levy from time-to-time assessments, special assessments, and all other assessments upon the Members of the Association as provided in the Declaration; and to enforce the payment of such delinquent assessments as provided in the Declaration.

5.2.2 Insurance. The duty to contract and pay premiums for fire and casualty and liability and other insurance in accordance with the provisions of the Declaration.

5.2.3 Common Area. The duty to manage and care for the Common Area, and to employ personnel necessary for the care and operation of the Common Area, and to contract and pay for necessary or desirable Improvements on property acquired by the Association in accordance with the Declaration.

5.2.4 Agents and Employees. The power to select, appoint, and remove all Officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Declaration, the Articles of Incorporation, and these Bylaws.

5.2.5 Borrowing. The power, with the approval of the Members representing at least two-thirds (2/3) of the voting power of the Association, to borrow money and to incur indebtedness for the purpose of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt, and securities therefor.

5.2.6 Enforcement. The power to enforce the provisions of the Declaration, the Rules and Regulations of the Association, these Bylaws, or other agreements of the Association.

5.2.7 Delegation of Powers. The power to delegate its powers according to law.

5.2.8 Rules and Regulations. The power to adopt such rules and regulations with respect to the interpretation and implementation of the Declaration, use of Common Area, and use of any property within the Development including Dwelling Lots and to levy fines and penalties for infractions and violations thereof; provided, however, that such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation, and these Bylaws.

5.2.9 Emergency Powers. The right to exercise such emergency powers as provided for in the Act.

5.2.10 Finances. Common funds may only be deposited into institutions which are federally insured. Common funds shall be deposited into savings or money market accounts, or to purchase certificates of deposit. Other higher-risk investments, with a potential higher-rate-of-return, such as stocks, bonds, mutual funds and U.S. treasuries and the like, may only be used with the prior express written and affirmative consent of at least 75% of the Eligible Votes of the Members, all eligible mortgagees, and if any financing or the guaranty of any financing on a Lot or Dwelling Lot is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

5.3 Qualifications of Directors. A Director must be a natural person 18 years of age or over and an Owner of a Lot within the Development or, if the Owner of any such Lot is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company, except during the Period of Declarant's Control when the Declarant may appoint persons to the Board not owning a Lot in the Project. If a Director conveys or transfers title to his Lot, or if a Director who is a designated representative of a partnership, corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Lot, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Notwithstanding anything in this Section to the contrary, none of the initial Directors, as designated in the Articles of Incorporation, shall be required to have any ownership interest in any Lot in order to qualify to serve as a Director until the first election of Directors by the Members. Any Director no longer qualified to serve under the standards provided for in this Section 5.3 may be removed by a majority vote of the Directors then in office.

5.4 Number of Directors. The number of Directors of the Association shall be three (3).

5.5 Term of Office of Directors and Elections. Except as provided in Section 4.15 and the Declarant's Right during the Period of Declarant's Control to appoint Persons to the Board, the Board of Directors shall be elected by secret ballot at a meeting of the Members to serve as follows:

5.5.1 At each annual meeting, the Members shall elect Directors for terms of two (2) years, with an odd number of Directors (at least two (2) less than the entire Board) elected in odd-numbered years and an even number of Directors elected in even-numbered years. In the initial election of Directors, the method of election shall provide that the term of an odd number of Directors (at least two (2) less than the entire Board) shall expire in the next odd numbered year, and the term of an even number of trustees shall expire in the next even numbered year.

5.5.2 Directors newly elected at the Annual Meeting shall take office on the first day of the month following the Annual Meeting. Said newly elected Directors are invited to attend Board of Directors meetings to familiarize them with the Association procedures prior to taking office. Only Members who are not in violation of the Declaration, these Bylaws, or Association Rules and Regulations shall be eligible to run for a position on the Board of Directors.

5.5.3 In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected, having the highest number of votes cast in favor of their election, are elected to the Board of Directors. When only one (1) Director is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board of Directors.

5.6 Nominating Committee. Nominations for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such Annual Meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Except for the initial Board of Directors appointed by the Declarant, such nominations shall be made from among the Members.

5.7 Removal of Directors By the Members. At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

5.8 Resignation of Directors. Any Director may resign at any time by giving written notice to the President, to the Secretary, or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver to the Utah Department of Commerce, Division of Corporations and Commercial Code a statement setting forth (a) that person's name; (b) the name of this Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or Officer; and (d) the date on which the person ceased to be a Director or Officer or a statement that the person did not hold the position for which the person was named in the corporate report or other document.

5.9 Vacancies in the Board of Directors. Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board of Directors to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board of Directors. Should any vacancy of the Board of Directors remain unfilled for a period of two (2) months, the Members may, at a Special Meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

5.10 Appointment of Committees. The Board of Directors, by resolution adopted by a majority of

the Directors in office, may designate and appoint one or more committees which shall consist of two or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board of Directors in the management of the Association, except authority with respect to those matters specified in the Act as matters which such committee may not have and exercise the authority of the Board of Directors.

5.11 General Provisions Applicable to Committees. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board of Directors shall be applicable to meetings of committees of the Board of Directors.

5.12. Executive Session. The Board, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

## ARTICLE VI

## MEETING OF DIRECTORS

6.1 Place of Directors' Meetings. Meetings of the Board of Directors shall be held at the principal office of the Association or at such other place, within or convenient to the Development, as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2 Annual Meeting of Directors. The Annual Meeting of the Board of Directors shall be held on the same date as, or within ten (10) days following, the Annual Meeting of Members and also on the date that newly elected Directors take office. The Business to be conducted at the Annual Meeting of the Board of Directors shall consist of the appointment of Officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the Annual Meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the Annual Meeting of Members at which the Board of Directors is elected or if the time and place of the Annual Meeting of the Board of Directors is announced at the Annual Meeting of Members.

6.3 Other Regular Meetings of Directors. The Board of Directors may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

6.4 Special Meetings of Directors. Special Meetings of the Board of Directors may be called by the President or any two (2) members of the Board of Directors other than the President.

6.5 Notice of Directors' Meetings. In the case of all meetings of the Board of Directors for which notice is required by these Bylaws, notice stating the place, day and hour of the meeting shall be provided not less than three (3) nor more than thirty (30) days before the date of the meeting to each Director. If mailed, such notice shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the United States mail addressed to the Director at his home or business address as either appears on the records of the Association, with postage thereon prepaid. Neither the business to be transacted at, nor

the purpose of, any Regular or Special Meeting of the Board of Directors need be specified in the notice or waiver of such meeting.

6.6 Proxies. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (i) to another Director who is present at the meeting; and (ii) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 6.6 and as permitted by Section 6.13, Directors may not vote or otherwise act by proxy.

6.7 Telecommunications. The Board of Directors may permit any Director to participate in a Regular or Special Meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other (or if allowed by statute communicate with each other in real time) during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting.

6.8 Quorum of Directors. A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person or by proxy, if applicable.

6.9 Adjournment of Directors' Meeting. Directors present at any meeting of the Board of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods of not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

6.10 Vote Required at Directors' Meeting. At any meeting of the Board of Directors, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws.

6.11 Officers at Meetings. The President shall act as chairman and the Board of Directors shall appoint a secretary to act at all meetings of the Board of Directors.

6.12 Waiver of Notice. A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, or (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

6.12.1 Dissent or Abstention. The right of dissent or abstention pursuant to Section 6.12 is not available to a Director who votes in favor of the action taken.

6.13 Action of Directors Without a Meeting. Any action required to be taken or which may be taken at a meeting of the Board of Directors may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors. Any action taken under this Section 6.13 is not effective unless all written consents are received within a sixty (60) day period and have not been revoked.

## ARTICLE VII

## OFFICERS

7.1 Officers, Employees and Agents. The officers of the Association shall be natural persons 18 years of age or over and shall consist of a President, a Secretary, a Treasurer, and such other Officers, assistant Officers, employees, and agents as may be deemed necessary by the Board of Directors. Officers other than the President need not be Directors. The same person may simultaneously hold more than one office.

7.2 Appointment and Term of Office of Officers. The Officers shall be appointed by the Board of Directors at the Annual Meeting of the Board of Directors and shall hold office, subject to the pleasure of the Board of Directors, until the next Annual Meeting of the Board of Directors or until their successors are appointed, whichever is later, unless the Officer resigns, or is removed earlier.

7.3 Resignation and Removal of Officers. An Officer may resign at any time by giving written notice of resignation to the Association. A resignation of an Officer is effective when the notice is received by the Association unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board of Directors may: (a) (i) permit the Officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b) (i) remove the Officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board of Directors may remove any Officer at any time with or without cause. An Officer who resigns, is removed, or whose appointment has expired may file a statement in the same form as provided in Section 5.8.

7.4 Vacancies in Officers. Any vacancy occurring in any position as an Officer may be filled by the Board of Directors. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

7.5 President. The President shall be a Member of the Board of Directors and shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Directors and of the Members of the Association.

7.6 Vice President. The Vice President, if any, may act in place of the President in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the President.

7.7 Secretary. The Secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall

take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors, and of committees of the Board of Directors; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the President. The Board of Directors may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his death, absence or inability to act. The duties of the Secretary may be delegated to a property management company.

7.8 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board of Directors may, from time to time, require; shall arrange for the annual report required under Section 9.6 of these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or by the President. The Board of Directors may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his death, absence or inability to act.
The duties of the Treasurer may be delegated to a property management company.

7.9 Bonds. The Association shall require and pay for fidelity bonds covering Officers or other persons handling funds of the Association as required in the Declaration. The Association shall pay the premiums for such bonds.

## ARTICLE VIII

## INDEMNIFICATION OF OFFICIALS AND AGENTS

8.1 Right of Indemnification. The Association shall indemnify any Director, Officer, employee, fiduciary and agent (including without limitation the property manager) to the fullest extent allowed under Sections 16-6a-901 through 16-6a-910 of the Act, or any replacement Sections thereof.

8.2 Authority to Insure. The Association may purchase and maintain liability insurance on behalf of any Director, Officer, employee, fiduciary and agent against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, including liabilities for which he might not be entitled to indemnification hereunder.

## ARTICLE IX

## MISCELLANEOUS

9.1 Amendment/Conflict. These Bylaws may be amended, at any Regular, Annual, or Special Meeting of the Board of Directors, by a vote of the majority of the Board of Directors, except if it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a Membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. The Members may amend the Bylaws even though the Bylaws may also be amended by the Board of Directors. Amendments to the Bylaws by Members shall be made in accordance with the Act. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control.

9.2 Compensation of Officers, Directors and Members. No Director shall have the right to

receive any compensation from the Association for serving as a Director except for reimbursement of expenses as may be approved by resolution of disinterested Members of the Board of Directors and except as may otherwise be approved by the Members. Officers, agents and employees shall receive such reasonable compensation as may be approved by the Board of Directors. Appointment of a person as an Officer, agent or employee shall not, of itself, create any right to compensation.

9.3 Books and Records.

9.3.1 The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; (b) minutes of all meetings of its Members and Board of Directors; (c) a record of all actions taken by the Members or Board of Directors without a meeting; (d) a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the Association; (e) a record of all waivers of notices of meetings of Members and of the Board of Directors or any committee of the Board of Directors; and (f) a copy of the Declaration, as the same may be amended or supplemented.

9.3.2 The Association shall maintain appropriate accounting records.

9.3.3 The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the name and address of all Members: (a) in alphabetical order, by class, and (b) showing the number of votes each Member is entitled to vote.

9.3.4 The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

9.3.5 The Association shall keep a copy of each of the following records at its principal office: (a) its Articles of Incorporation; (b) its Bylaws; (c) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members; (d) the minutes of all Members' meetings; (e) records of all actions taken by Members without a meeting; (f) all written communications to Members generally as Members for a period of three (3) years; (g) a list of the names and business or home addresses of its current Directors and Officers; (h) a copy of its most recent annual report; (i) receipts and expenditures for the past three (3) years; and (j) all financial statements prepared for periods ending during the last three (3) years.

9.4 Inspection of Records.

9.4.1 The Association shall make those records referred to in the foregoing Section available for examination by any Member at a convenient hour during the regular work week no later than fourteen (14) days after the Member makes a written request to examine the records.

9.4.1 A Director or Member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 9.3.5: (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least fourteen (14) business days before the date on which the

Member wishes to inspect and copy the records.

9.4.2 In addition to the rights set forth in Subsection 9.4.1, a Director or Member is entitled to inspect and copy any of the other records of the Association: (a) during regular business hours; (b) at a reasonable location specified by the Association; and (c) at least fourteen (14) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Subsection 9.4.3; and (ii) gives the Association written demand.

9.4.3 A Director or Member may inspect and copy the records described in Subsection 9.4.2 only if: (a) the demand is made: (i) in good faith; and (ii) for a proper purpose; (b) the Director or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

9.4.4 Notwithstanding any other provision in these Bylaws, for purposes of this Section: (a) "Member" includes: (i) a beneficial owner whose membership interest is held in a voting trust; and (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and (b) "proper purpose" means a purpose reasonably related to the demanding Member's or Director's interest as a Member or Director.

9.4.5 The right of inspection granted by this Section may not be abolished or limited by the Articles of Incorporation or these Bylaws.

9.4.6 This Section does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article, to compel the production of corporate records for examination.

9.4.7 A Director or Member may not use any information obtained through the inspection or copying of records permitted by 9.4.2 for any purposes other than those set forth in the demand made under 9.4.3.

9.5 Scope of Inspection Right. A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 9.4 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. *Except for requests for financial statements, the Association may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the Director or Member.* The charge may not exceed the estimated cost of production and reproduction of the records. The nonprofit corporation may comply with a Director's or Member's demand to inspect the record of Members under Subsection 9.3.3 by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Subsection 9.3.3; and (b) is compiled no earlier than the date of the Director's or Member's demand. Concerning financial statements, by no later than fourteen (14) days after the day on which the Association receives a written request of any Member, the Association shall mail to the Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual financial statements, if any; and (b) the Association's most recently published financial statements, if any. Without consent of the Board of Directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member.

9.6 Annual Report. The Board of Directors shall cause to be prepared and distributed to each Member and any First Mortgagee of a Member who has filed a written request therefor, not later than ninety (90) days after the close of each fiscal year of the Association, an annual report containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found.

9.7 Statement of Account. Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Lot or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall furnish, within ten (10) days after the receipt of such request, a written statement of account setting forth the amount of unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot and the Lot thereon, and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot and the Lot thereon. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have been levied.

9.8 Annual Corporation Reports. The Association shall file with the Division of Corporations and Commercial Code for the Utah Department of Commerce, within the time prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.9 Fiscal Year. The fiscal year of the Association shall be the calendar year, and shall begin on January 1 and end the succeeding December 31. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.10 Seal. The Board of Directors may adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "UTAH".

9.11 Shares of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or Officers. Notwithstanding the foregoing paragraph, the Association may issue certificates evidencing Membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.12 Loans to Directors, Officers and Members Prohibited. No loan shall be made by the Association to its Members, Directors or Officers, and any Director, Officer or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

9.13 Limited Liability. The Association, the Board of Directors, and Declarant, and any agent or employee of any of the same shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

9.14 Minutes and Presumptions Thereunder. Minutes or any similar record of the meetings of Members or of the Board of Directors, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of

the meeting was properly given shall be prima facie evidence that the notice was given.

9.15 Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

9.16 Execution of Documents. The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no Officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

9.17 Right to Inspect. Notwithstanding the other provisions of this Article, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

These Bylaws and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.

EXECUTED the 6 day of July, 2021

DECLARANT:

FIORE INVESTMENTS, LC.
a Limited Liability Company

BY: _____
Jacob R. Ballstaedt, Manager

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

On the 6th day of July, 2021, personally appeared before me Jacob R. Ballstaedt, who by me being duly sworn, did say that he is the Manager of FIORE INVESTMENTS, LC., a Limited Liability Company, and that the within and foregoing Bylaws were signed in behalf of said Company by authority, and said Jacob R. Ballstaedt duly acknowledged to me that said Company executed the same.

NOTARY PUBLIC

Notary Public - State of Utah
OHMI KIM
Comm. #708025
My Commission Expires
August 30, 2023