

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

**THE COTTAGES  
AT HOBBLE CREEK**

**A Mountain Home Development  
in  
Utah County**

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This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE COTTAGES AT HOBBLE CREEK ("Declaration") is adopted by the Cottages Community Association, Inc., ("Association") and is effective as of the date it is recorded in the office of the Utah County Recorder.

## RECITALS

- A. The *Declaration of Covenants, Conditions, and Restrictions of The Cottages at Hobble Creek* was recorded in the Utah County Recorder's Office on November 29, 1999, as Entry No. 124110 (the "Enabling Declaration").
- B. This *Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Cottages at Hobble Creek* is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project, (2) conform to changes to the Utah Community Association Act and other Utah law, (3) provide for a general plan for managing the Project, and (4) in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project.
- C. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project, shall comply with all requirements and descriptions detailed in the plat map for Cottages at Hobble Creek, and shall completely replace and supersede in all respects the 1999 Enabling Declaration entry # 124110 Book 5284 Page 138 and all amendments properly recorded, prior to the date of recording this Declaration.
- D. This Declaration affects the real property situated in Utah County, Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof.
- E. The Project contains the following private roads: Meadow Drive, Hillside Drive, Cottage Drive, Oakwood Circle and Meadow Bridge Drive.
- F. Pursuant the amendment requirements contained in Section 13.3 of the Enabling Declaration, the undersigned hereby certifies that this Amendment was approved by Owners holding at least sixty-seven percent (67%) of the total votes of the Association and, pursuant to Section 13.9 of the Enabling Declaration, written consent of Utah County was obtained.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the covenants set forth below, the Association hereby adopts this Declaration. This Declaration, together with the "Maintenance and Open Space Preservation Agreement", Plat, Bylaws, and Rules adopted by the Association, shall define and govern the rights of the Owners and the Association related to the Project.

## ARTICLE I. DEFINITIONS

1.1. **Act** shall mean the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. **Accessory Dwelling Unit (ADU)** as defined by state code as a "habitable living unit" created within an owner-occupied, detached dwelling for the purpose of rental for 30 days

or longer. A "habitable living unit" is generally a separate, additional living unit (such as a basement apartment or an apartment over a garage) that includes a kitchen and sleeping and bathroom facilities.

1.3. **Architectural Design Review Committee** or **ADRC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control review powers as further described in Article X.

1.4. **Articles** shall mean the Articles of Incorporation for the Association, as amended and restated from time to time.

1.5. **Assessments** shall mean any charge imposed or levied by the Association against Owners including but not limited to Annual Assessments corresponding with the Common Expenses as well as Special Assessments, Individual Assessments, late fees, and fines, all as provided in this Declaration.

1.6. **Association** shall mean and refer to The Cottages Community Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association. The Association may renew or reinstate its corporate status without Owner approval.

1.7. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.

1.8. **Board Member** shall mean a duly qualified and elected or appointed individual member of the Board of Directors of the Association.

1.9. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time and pursuant to Utah Code.

1.10. **Common Areas/Elements** shall mean and refer to property that the Association owns, maintains, repairs, or administers. That part of the Property which is not included within the Lots, including all roadways and open space within the Project and all improvements other than utility lines now or hereafter constructed or located thereon.

1.11. **Common Expenses** shall mean all sums lawfully assessed against Owners including expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; expenses agreed upon as common expenses by the Association or its Board of Directors; expenses authorized by the Governing Documents or the Act as common expenses; and any other expenses necessary for the common benefit of the Owners.

1.12. **Declaration** shall mean and refer to this *Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Cottages at Hobble Creek*, as may be amended from time to time.

1.13. **Design Guidelines** shall mean the requirements governing the location, color, materials, and architectural design of Residences, structures, landscaping and improvements within the Project as adopted and amended from time to time by the Board.

1.14. **Emergency** shall mean "a serious, unexpected and potentially dangerous situation posing immediate threat to life or property".

1.15. **Governing Documents** shall mean and refer to the Maintenance and Open Space

Preservation Agreement, the Plat, this Amended and Restated Declaration, the Articles of Incorporation and Bylaws of the Cottages Community Association, and any Rules or Policies adopted by the Board.

1.16. **Lot** shall mean and refer to each of the individual lots and units within the Project, as shown on the Plat, with the exception of the Common Areas.

1.17. **Maintenance and Open Space Preservation Agreement** shall be as defined in section 2.6 below.

1.18. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.

1.19. **Member** shall mean and refer to a Lot Owner.

1.20. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.21. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.22. **Nuisance** defined in Utah Code § 76-10-801 is any item, thing, manner, condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome. Any person who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, is guilty of a class B misdemeanor.

1.23. **Occupant** shall mean and refer to any Person, other than an Owner, living or staying in a Residence. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, or staying in a Residence.

1.24. **Owner** or **Lot Owner** shall mean and refer to the record owner, or to the executor or trustee of the lot/property if held in a trust, whether one or more Persons of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.25. **Parcel/Property** as hereinbefore defined shall mean and refer to the entire tract of real property legally described in Exhibit A.

1.26. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.27. **Plat** shall mean and refer to the plat map for The Cottages at Hobble Creek Mountain Home Development filed and recorded in the official records of the Utah County Recorder's Office Entry 124108 Map # 8326 recorded at 11:54 am November 29, 1999.

1.28. **Project** as herein before defined shall at any point in time mean, refer to the Cottages at Hobble Creek Mountain Home Development project and shall include the Parcel known as Exhibit A in the legal description of the 1999 Declaration Entry # 124110, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.29. **Reinvestment Fee** shall be as defined in section 5.19 below.

1.30. **Residence** shall mean and refer to a detached structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot which are used in connection with such Residence. The Residence shall include, without limitation, the attached garage, any mechanical equipment located outside said Residence but designed to serve only that Residence, and all utility lines or installations serving only the Residence.

1.31. **Restrictions** shall mean the covenants, conditions, assessments, utility easements, liens, and restrictions set forth in this Declaration.

1.32. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board.

## ARTICLE II. PROJECT DESCRIPTION

2.1. **Submission**. The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of certain real property situated in Utah County, State of Utah and more particularly described on Exhibit "A", which is attached hereto and incorporated herein by this reference.

2.2. **Name**. The Project, as submitted to the provisions of this Declaration, shall be known as the Cottages at Hobble Creek, a Mountain Home Development. The Project is not a cooperative.

2.3. **Description of Improvements**. The improvements contained in the Project will be located upon the Parcel. The major improvements contained in the Project include single family residences and appurtenant structures on the Lots, gates, fields, and fences. Roads and other improvements are detailed on the Plat. The private roads in the Project are as follows: Meadow Drive, Cottage Drive, Hillside Drive, Oakwood Circle and Meadow Bridge Drive. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. **Common Areas**. The common areas of the project shall be as identified on the Plat and as defined in Article 1 Section 1.10 above.

2.5. **Easement**. The Association was granted an easement (see Grant of Easement recorded in the office of the Utah County Recorder on November 29, 1999, as Entry No. 124107) over a small portion of the Cedar Knoll Lot 1 property owned by Five Star Financial to create a required second access for Cottages to connect to Canyon Road. This easement, while non-exclusive, only pertains to that portion of Cedar Knoll Lot 1 encumbered thereby, and in no way grants a general access or use easement to non-members of the Association to use the roads, open space, or amenities owned by the Association.

2.6. **Maintenance and Open Space Preservation Agreement**. The Association is a party to the Maintenance and Open Space Preservation Agreement (the "Agreement") which was recorded in the Office of the Utah County Recorder on November 29, 1999, as Entry No. 124109, and any amendments thereto. The Association shall have the right to enforce the Agreement against the other parties to the Agreement and shall perform its responsibilities and duties contained in the Agreement or any amendments thereto. By this reference, the terms of the Agreement are incorporated herein and made a part hereof. In the event of any conflict between

the terms and provisions of this Declaration and the Preservation Agreement, the terms and provisions of the Preservation Agreement shall control.

2.7. **Registered Agent**. The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

### **ARTICLE III. MEMBERSHIP AND VOTING RIGHTS**

3.1. **Membership**. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights**. Except as otherwise disallowed in this Declaration or the Bylaws, Owners, trustees of associated trusts or executors of estates shall be entitled to one (1) vote per Lot owned. Proxy votes may not be counted for any purpose other than to determine the existence of a requisite quorum within the voting community.

3.3. **Multiple Ownership Interests**. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote in question shall not be counted for any purpose other than to determine whether a quorum exists.

3.4. **Record of Ownership**. The title company representing each Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with the President of the Association who shall maintain a record of ownership of the Lots.

3.5. **Permissions**: The Board (or their assigned designate) shall make available records of all permissions granted by the Board to an Owner, and all new rules, modifications or changes to existing rules implemented by the Board. Copies shall be provided to Owners in electronic format through email.

3.6. **Association Records**: Per Senate Bill SB152 (2022) The Association Board, or their assigned designate is required to keep and make available to owners a copy of the governing documents, most recent approved minutes, most recent budget and financial statement, most recent reserve analysis, and certificate of insurance for each insurance policy the association holds.

### **ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS**

4.1. **Easement of Enjoyment**. Each Member shall have a right and easement of use

and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress and egress over and across the Common Areas, however no Owner shall have a right of ingress or egress over the Lot of another Owner in order to access any of the Common Areas. Such rights and easements over the Common Areas shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot.

4.2. **Title to Common Areas**. The Association holds title to the various Common Areas within the Project as follows: 1) Quit Claim Deed, Entry 138381, dated 2001 December 31, deeded all open spaces to the Cottages Community Association, Inc.; 2) Recorded Plat, Entry 124108 recorded 1999 November 29 contains an Owner's Dedication of the private streets for the perpetual use of the Cottages Community Association, Inc. and a dedication of the Common Areas for the use and enjoyment of all lot owners in "The Cottages at Hobble Creek, Plat "A". These dedications establish that the Common Areas are NOT for use by the general public.

4.3. **Limitation on Easement**. A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

4.3.1 The right of Utah County and any other governmental or quasi-governmental body having jurisdiction over the Project to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Project for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service.

4.3.2 The right of the Association to suspend voting rights for non-payment of assessments (provided the Owner has an opportunity to request a hearing before suspension of voting rights, such hearing request to be made in the timeframe outlined by the Board) and to suspend the right to use the Common Areas by an Owner for any period during which any Assessments against his/her Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

4.3.3 The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of all of the Lot Owners.

4.3.4 Subject to the Association's rights to abate nuisances as set forth in Section 9.3 of this Declaration.

4.4. **Delegation of Use**. Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside in the Project. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in above Section.

4.5. **Association Easement**. The Association, its Board, employees, agents, and contractors shall have exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

4.6. **Easement for Utility Services**. Utilities easements exist within the common areas of the Project (primarily along existing roads) for purposes of installation, maintenance, repair,



and replacement of utilities. Utilities within these easements may include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable, though no lines currently exist for sewer or gas within the Project. No utility easements extend into any private lot within the Project. Lot owners are responsible for all costs associated with connecting to existing utilities, including remediation of any damage caused to roads if the connection requires cutting into asphalt. The Association is solely responsible for maintenance of utilities located within the Common Areas, with Lot Owners responsible for maintenance of their own utility lines installed within the lot lines of their own Lots.

4.7. **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure. An access easement across common area to any Lot or property for owner access or maintenance shall include the requirement for the Lot owner to maintain and fully ensure the easement and hold harmless the Association for any issue resulting from, or on the easement.

4.8. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and restrictions.

4.9. **Maintenance and Open Space Preservation Agreement.** Entry 124109 dated 1999 November 29 including its defined terms, are hereby incorporated into this Section as if fully set forth herein and are made a part of this Declaration.

## **ARTICLE V. BUDGET AND ASSESSMENTS**

5.1. **Annual Budget.** The Board (or their assigned designate) shall prepare, or cause the preparation of, and adopt an annual budget for the Association and shall provide to each Member, on or before December 1 of each year, an operating budget for the Association for the following calendar year. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The budget shall serve as the supporting document to determine the annual assessment for the upcoming calendar year. A budget meeting will be held in the first week of December if requested by twenty percent (20%) of the members of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. If the annual budget is greater than one hundred ten percent (110%) of the prior year's annual budget, the annual budget must be approved by Owners holding a least sixty seven percent (67%) of the total voting interests of the Association. If a budget item (or special assessment, e.g., for legal fees or emergency repair) exceeds ten thousand dollars (\$10,000) per year or per legal issue, this shall require a 67% approval by vote by Lot/Property Owners. Any unused funds from special assessment (i.e. from legal or other emergency repair) shall be returned to the owners once that assessment item has been closed out. The budget shall be made available to the Owners within thirty (30) days after adoption. Voting shall be in accordance with Voting Rights described in section 3.2). If the proposed budget does not exceed the maximum allowances detailed above, the Board shall adopt the budget. Any unused budgeted funds remaining at the end of a given budget year shall be returned to the reserve budget for use in the subsequent budget year.

5.2. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment no later than thirty (30) days following the annual budget meeting. Each Annual Assessment may be payable in monthly or quarterly installments, in the discretion of the Board.

5.4.1 **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessments, the Board may, impose a special assessment and a vote of approval from the Members in accordance with the procedure set forth in 5.5 below shall be required.

5.5. **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over five hundred dollars (\$500) per Lot in a calendar year must be approved and assented to by at least sixty-seven (67%) of the Owners. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

5.6. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: 1) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; 2) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; 3) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Lot and its Owner into compliance with the Governing Documents; 4) nonpayment of a Reinvestment Fee; 5) costs of providing services to the Lot upon request of the Owner; and 6) attorney fees, court or collection costs, fines, and other charges relating thereto incurred enforcing this Declaration. Individual Assessments levied in response to items 5.6.1-6 shall additionally be subject to interest in the event those assessments are in excess of three thousand (\$3,000), or in the event they extend beyond 2 years at a rate of 18% of the unpaid balance per year, amortized monthly. In addition, Individual Assessments may be levied against a Lot and its

Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his/her Occupants' negligence.

5.7. **Allocation of Assessments.** Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents.

5.8. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.9. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.10. **Certificate Regarding Payment / Payoff Information.** Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee of up to ten dollars (\$10) or an amount greater if so provided in the Act. The Association may charge a reasonable fee of up to fifty dollars (\$50) or an amount greater if so provided in the Act to provide payoff information needed in connection with the financing, refinancing, or closing of a sale of any Lot.

5.11. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorney fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the

amounts paid by the grantee, therefore.

5.12. **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.13. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.14. **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and late fees shall **constitute part of the Assessment lien provided above until paid.**

5.15. **Collection Action at Law.** The Association may exercise any or all of the remedies set forth in Utah Code Ann. § 57-8a-3 et. seq. to collect delinquent Assessments, which include, but are not limited by the following:

5.15.1 The Association may suspend such Owner's or Owner's representative (as in the case of a trust) voting rights for delinquent assessments, provided the Owner is given the opportunity for a hearing before the Board of Directors prior to the suspension of the Owner's voting rights, such hearing request to be made in the timeframe outlined by the Board.

5.15.2 The Association may file a lien against each Lot for any Assessment levied against the Lot and any fines or other charges due (and/or delinquent) imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association or its delegate, by and through unanimous decision of its Board (Note: if the owner of the Lot with the delinquent assessment is a member of the Board, that board member shall not be allowed to vote on this issue), may file a notice of lien in the deed records of Utah County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Upon full payment of said lien charges, Lien release shall be delivered to the property owner/representative and filed with the lien official. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and

encumbrances except a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien, or lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

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

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

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

5.15.6 The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

5.16. **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Sections 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

5.17. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance and repair of Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law.

5.18. **Reinvestment Fee.** The Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. If established by the Board, and appropriate notice requirements are complied with in accordance with § 57-1-46(6), the following terms and conditions shall govern Reinvestment Fees:

5.18.1 Upon the occurrence of any sale, transfer, or conveyance of any Lot or home as reflected in the office of the County recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee no less than five hundred dollars (\$500), provided that in no event shall the Reinvestment Fee exceed 0.25% of the sale price or the maximum rate permitted by law. The Board has the authority to

increase the amount of the Reinvestment Fee as needed.

5.18.2 Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

5.18.2.1 Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district, or other political subdivision of the State of Utah.

5.18.2.2 Any Transfer to the Association or its successors.

5.18.2.3 Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10% of the value of the Lot transferred.

5.18.2.4 Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Lot by the estate of an Owner.

5.18.2.5 Any Transfer made solely for the purpose of confirming, correcting, modifying, supplementing a Transfer previously recorded, or removing clouds on titles.

5.18.2.6 Any lease of a Lot or portion thereof for a period of less than thirty (30) years.

5.18.2.7 Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

5.18.2.8 Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

5.18.2.9 An involuntary transfer.

5.18.2.10 A bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity.

5.18.2.11 A transfer from the owner's individual name into a family trust.

5.18.3 The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

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

## **ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION**

6.1. **Organization of Association**. The Association shall serve as the governing body

for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. In the event of any potential conflict of interest for a member of the Board, or other officer of the Association to conduct a business for profit or in kind, a Board-approved contract with the Association shall be in place and shall be made available to the members. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no **Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.**

6.2. **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3. **General Powers and Obligations.** The Association shall have, exercise, and perform the following powers, duties, and obligations:

6.3.1 The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation.

6.3.2 The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

6.3.3 The powers, duties, and obligations of a homeowners' association pursuant to the Utah Community Association Act, or any successor thereto.

6.3.4 The powers, duties, and obligations not reserved specifically to Lot Owners; and

6.3.5 Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

6.3.6 The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

6.4.1 **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

**6.4.2 Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration, the Act, or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance. Any contractor, sub-contractor or any individual that is under contract to provide services for the association shall carry full insurance including General Liability, and Workman's Compensation. The contractor, subcontractor or person shall provide the Association with additional insured certificates. Additional insured certificates shall be for the term of all work to be done plus one year, and shall list the Association, and all Common Areas and lots or properties that the work will be performed on in any way.

**6.4.3 Rulemaking.** The Association, through its Board, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(19), the Association chooses to modify the requirements of Utah Code section 57-8a-218, making the following provisions inapplicable to the Association: subparagraph (1) (except subsection (1)(b)(ii)), and subparagraphs (2) (10) (11) (12) and (13).

**6.4.4 Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

**6.4.5 Enforcement.** The Association shall perform such acts authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

**6.4.6 Title to Common Areas.** The Association shall hold title to all Common Areas, including all open spaces and private roadways, conveyed to it by its developer, whether by quit claim deed or by transfer pursuant to recordation of the Plat, and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments. In accordance with deeds, plat and owner's dedication, The Common Areas within the Project are for the sole use and enjoyment of the lot owners of the Cottages and are NOT for use by the General Public.

**6.4.7 Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term, and shall be terminable by the Association upon no more than sixty (60) days' advanced notice. The Board has no authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.



6.4.8 **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. Other than litigation required for the collection of past due Assessments, the Association shall not commence any litigation without prior approval of 67% of the Owners if the litigation is expected to exceed the cost of ten thousand dollars (\$10,000) either in attorney fee expenses or in costs (including any expert reports).

6.5. **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. If a Board Member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board Member or officer is found by a court of law to have acted willfully or intentionally in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board the Directors. The Board of Directors will act on behalf of the Association in all matters specifically described in this Declaration, all other votes are specifically reserved for the Owners. Board Members shall be elected pursuant to the provision set forth in the Bylaws, which set forth requirements for serving on the Board. The Board may appoint one or more "Committees", and such Committees (which may consist of one or more members as determined by the Board) can be used to assist the Board in various ways as determined by the Board related to budgeting, operation, financial management, and administration of the Project. Such Committees will report regularly to the Board on their activities.

6.6.1 **Submission of Lot Owners Requests/Concerns to the Board.** Lot owner's shall comply with the following process when submitting requests/concerns for Board consideration: 1) the lot owner shall send an e-mail to the Board Secretary with a request to be placed onto a Board Agenda; 2) the e-mail must include a succinct explanation of the issue the lot owner would like addressed and also a succinct statement of what the lot owner would like the Board to do; 3) the lot owner shall include relevant background information including citation to Association governing documents necessary for the Board to make an informed decision; and 4) after reviewing the information, the Board may request additional information from the lot owner. The Board majority reserves the right to control the agenda of any meeting and may reject the request to place the item on the agenda, particularly if the request includes inaccurate information, or contains slanderous or accusatory remarks towards lot owner's or Board members.

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

## ARTICLE VII. MAINTENANCE

7.1. **Association Maintenance.** The Association shall maintain, repair, and replace all Common Areas together with all improvements thereon and all easements appurtenant to the Common Area including, but not limited to landscaping and weed abatement on Common Area open space land. The Association shall preserve and maintain the private roads in the Project and shall preserve and maintain the access road to the Project from Canyon Road pursuant to

the private road easement granted by Five Star Financial. The Association will maintain and have jurisdiction over all drainage ditches and washes, gates, culverts, and trees and shrubs along the roadways.

The Common Areas and all facilities and structures thereon shall be maintained by the Association in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Lot or landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

Driveways, ingress and egress ways to lots shall be maintained and insured by the property or Lot owner utilizing such easement or drive.

7.2. **Services.** The Association shall provide or contract for such services as the Board of Directors reasonably deem to be of benefit to the Project. Such services may include, without reservation snow removal, and landscaping.

7.3. **Lot Maintenance.** Each Owner shall have the obligation to provide exterior and interior maintenance of their Lot and Residence, including but not limited to painting, repair, replacement, and care of all Residence components, driveways, and utility lines that solely service the Lot or Residence. Owners shall be responsible for the maintenance, repair, and replacement of the water lines between the water meter and their Residence. Owners shall be responsible to maintain, repair, and replace any fences located within or on the boundaries of their Lot. When such fences serve, benefit, or otherwise mark a boundary of two or more Lots, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne equally by all Lot Owners bounded thereby. Owners shall also be responsible to maintain the landscaping of their Lots. Snow removal on Lots is not required, however, Owners must keep their Lots in a safe condition for other persons. All Lot maintenance, as described in this section, shall conform to the standards set forth in the Governing Documents.

7.4. **Common Area Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas as specified herein is caused through the acts of an Owner, or through the acts of the family, guests, building or landscape contractors working on behalf of an Owner, tenants, or invitees of an Owner, the Board, by majority decision may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth in Article V) to which such Lot is subject.

## **ARTICLE VIII. INSURANCE**

8.1. **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and stand alone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the Common Area and all buildings, fixtures, and equipment thereon that are the obligation of the Association to maintain. The Association may maintain broader coverage if afforded by the insurance contract.

8.2.1 The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in Common Areas or otherwise permanently part of or affixed to Common Areas.

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

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

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

8.2.5 The Association shall keep an amount equal to the Association’s property insurance policy deductible or ten thousand dollars (\$10,000), whichever is less, in an operations savings account. This requirement shall not apply to any earthquake or flood insurance deductible.

8.2.6 If a loss occurs that is covered by a property insurance policy in the name of an association and another property insurance policy in the name of a Lot Owner, then the Association’s policy provides primary coverage.

8.2.7 If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association’s property insurance policy deductible: (a) the Owner’s policy is considered the policy for primary coverage to the amount of the Association’s policy deductible; (b) an Owner who does not have a policy to cover the Association’s property insurance policy deductible is responsible for the loss to the amount of the Association’s policy deductible; and (c) the Association need not tender the claim to the Association’s insurer.

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

8.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest

Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

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

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

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

8.7. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

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

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

8.10. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the

Association and the Owners and their respective agents and employees.

8.11. **Annual Insurance Report**. The Board may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar projects. The Board shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to Mortgagees and Owners upon request.

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

## **ARTICLE IX. USE RESTRICTIONS**

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

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

9.3. **Offensive or Unlawful Activities**. No noxious or offensive activities shall be carried on upon any Lot, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents, including, but not limited to, generating traffic through the Project. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance, or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles**. The Storage or parking of recreational vehicles, (including, but not limited to, trailers, motorcycles, snowmobiles, ATVs, UTVs, Side-by Side vehicles or

boats) on any Lot is prohibited unless such storage or parking is not visible from the road or during a reasonable time before and after a trip to load and unload the recreational vehicle. No recreational vehicle shall be parked or stored on the Common Areas without prior written permission from the Board. An Owner's use of recreational vehicles in the Project (including the use by family, guests, tenants, or invitees of the Owner) is at the Owner's own risk and the Owner (and/or family member, guest, tenant, or invitee of the Owner) shall indemnify and hold harmless the Association for any personal injury or damage to the Project in any way that is caused by an Owner's use of recreational vehicles.

9.5. **Pets.** No animals of any kind shall be raised, bred, sheltered, boarded, trained, maintained, housed, harbored or kept in the Project as a hobby or for the purpose of selling, trading, bartering, giving away, keeping for the purpose of adoption or any other purpose with or without charge, provided, however, that up to a maximum of two (2) dogs and two (2) cats, as well as other household domestic pets, may be kept on a Lot, so long as they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be controlled and kept in conformance with all applicable City and County regulations. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to requirements for registration, odors, waste clean-up, and noise or barking limitations. All dogs must be on a leash except when on the Owner's Lot. All pets must abide by all pet Rules adopted by the Board. Pets may not create a nuisance and the Board shall have the sole discretion to determine what constitutes a nuisance. Owners shall be liable for any and all damage caused by their pets to other Lots, individuals, or the Common Areas.

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

9.7. **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section, a "nuisance" includes any behavior which annoys, disturbs or interferes with the health of other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes, but is not limited to, the following:

9.7.1 The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas.

9.7.2 The storage of any item, property or thing that will cause any Lot or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses.

9.7.3 The accumulation of rubbish, unsightly debris, garbage, equipment, unregistered or abandoned vehicles, or other things or materials that constitute an eyesore as reasonably determined by the Board.

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

9.7.5 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.

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

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

9.7.8 An Owner or lawn service dumping/blowing grass clippings or leaf debris on Common Areas. Owners are responsible for the bagging and removal of all such debris. The Owner is responsible for communicating this to their lawn service. In addition to any fines that may be assessed, the Owner shall be responsible for all costs of clean-up and removal of the material dumped.

9.8. **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law. Unless otherwise designated in the Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed in the front yard of a Lot, or as directed by the Board. All other signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior approval of the Board. For Sale or For Rent signs may not exceed a surface area of four (4) square feet per side and are required to be maintained.

9.9. **Trash Collection and Burning Policies.** There shall be no open burning of trash on any Lot under any circumstance except at times and places indicated by the Board and consistent with applicable laws. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time needed for trash collection.

9.10. **Parking.** Owners, Occupants, and tenants must park in their private driveways and garages. No long-term parking is allowed on any roads. Long term parking is defined as more than 2 consecutive days. Vehicles that may not be parked within the community unless such parking is not visible from the road or neighboring Lots include commercial vehicles (any vehicle with signage), abandoned vehicles, ATVs, RVs, junk vehicles, trailers, mobile/motor homes, campers, boats, and similar recreational vehicles in order to protect property values and preserve the aesthetic beauty of the community. Low profile trailers and equipment may be parked on an Owner's Lot if screened from view of the roads.

9.11. **Unsightly Items and Storage.** No observable outdoor storage of any kind shall be permitted which may be seen from the Association's roads or another Lot. The open storage of building materials shall only be permitted during the course of actual construction. Junk, unlicensed cars, or other unsightly items shall not be maintained or stored on any Lot.

9.12. **Leases.** The leasing of Primary Residences is permitted. Any agreement for the leasing, rental, or occupancy of a Residence (hereinafter in this Section referred to as a "lease") shall be in writing, a copy of which shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants. No Owner shall be permitted to lease his/her Residence for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than six (6) months. Daily, weekly, or other short-term rentals, including Airbnb or other similar leasing practices, are prohibited. Lease terms shall be in accordance with

Utah County Land Use Ordinance: permitted is the use of a one-family dwelling to be utilized by a family as defined in the Ordinance under Section 2.08 as follows:

1. *One person living alone.*
2. *Two (2) or more persons all of whom are related to one designated occupant of the dwelling by blood, marriage, adoption, or legal custody and not more than two (2) unrelated individuals, living together in a single dwelling unit and maintaining a common household.*
3. *Not more than four (4) unrelated persons living together in a single dwelling unit and maintaining a common household. Related by blood, marriage or adoption within the definition of "family" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild, to include the half as well as the whole blood.*

9.13. **Leasing of Basement/In-law Units.** For an "internal accessory dwelling unit" defined as an accessory dwelling unit created within the footprint of a primary dwelling for the purpose of rental of 30 days or longer. An "accessory dwelling unit" is a "habitable living unit" created within an owner-occupied, detached dwelling for the purpose of rental for 30 days or longer. A "habitable living unit" is generally a separate, additional living unit (such as a basement apartment or an apartment over a garage) that includes a kitchen and sleeping and bathroom facilities.

The association shall allow the rental (for 30 days or longer) of a habitable living unit that is within an owner-occupied, detached (free-standing) non-condo home. This includes for example, a basement apartment that has its own kitchen and sleeping and bathroom facilities, as long as the owner lives in the home and the home is not a townhome, duplex or other attached home and is not a condo. The effective date of the law is October 1, 2021. The new provisions are found in Utah State Code § 57-8a-209(10) and 57-8a-218.

All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so. There shall be adequate parking available for all vehicles at the property, so as to maintain compliance with parking section 9.10 above.

9.14. **Power Generation Equipment.** Solar energy collector panels and attendant hardware, or energy generation equipment shall not be constructed or installed on any Lot or Residence in the Project so as to be visible from any street in the Project.

9.15. **Entrance Gates into the Project.** Access to the Project shall be by means of two electronic gates at the two street entrances into the Project. An electronic gate opener will activate a mechanical gate to allow Owners, family members, guests, tenants, invitees, and service providers into the Project. The Board shall have the authority to adopt Rules related to the entrance gates and access to the Project or to modify access to the Project as may be reasonable in the Board's sole discretion.



9.16. **Temporary or Other Structures.** No trailer, mobile home, basement house, tent, or other structures of a temporary nature shall be used at any time as a residence on a Lot. No old or secondhand structures shall be moved onto any Lot, it being the intention that all Residences erected on Lots shall be new construction of good quality, workmanship, and material.

9.17. **No Hazardous Activities.** No activities shall be conducted in the Project and no improvements constructed on the Project which are or might be unsafe or hazardous to any person or property. Without limiting the generality or the foregoing, no firearms shall be discharged in the Project and no open fires or incinerators shall be lighted or permitted on the Project except in a contained barbecue unit or fire pit while attended or within a safe interior fireplace. Hunting within the Project is strictly prohibited.

9.18. **Repair of Improvements.** No improvement upon the Project shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association, as applicable.

9.19. **Antennas.** Except as approved by the Board, no television, ham radio, citizens band or radio antenna, satellite reception dish larger than forty inches (40") in diameter, or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Residence or elsewhere if exposed to view from any other Lot. Any satellite dish must be located on the rear of the Residence where it is not visible from the street. In no case will any receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of surrounding Lots or the home entertainment facilities or equipment of other Owners.

9.20. **Flags.** One (1) reasonably sized American flag may be displayed on the exterior of a Residence consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. No inground or shoe base flagpole systems are allowed; a bracket mounted to a Residence must be used. Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1.

9.21. **Holiday Decorations.** Subject to Rules that may be adopted by the Association, holiday decorations may be displayed on the Lots and Residences. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol, idea, identification, or for any other purpose that holiday decorations are typically understood and which are placed in, on, or outside of a Residence or Lot with the apparent purpose, in whole or in part, of making it visible to people outside of the Residence or Lot.

9.22. **Preservation of Common Areas.** No person shall alter, construct, or remove anything on or from the Common Areas, except with the prior written consent of the Association, which would require a sixty seven percent (67%) vote of the owners as described in section 3.2.

9.23. **Improvements and Alterations.** There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement within the Property nor removal of any home or other improvement within the Property (other than repairs or rebuilding) without prior approval of the Board.

9.24. **Irrigation Systems.** All landscape irrigation systems installed on a Lot shall be underground and shall contain automatic time-control devices.

9.25. **Maintenance of Septic Systems.** Each owner of a Lot shall be responsible for maintaining a septic tank installed on such Lot by making a visual and probing inspection of the tank after each 500,000 gallons of use to determine whether the tank needs to be pumped. All Owners shall be responsible to meet the requirements of the Springville City Watershed Protection Ordinance, but in any event shall cause their septic tanks to be pumped at least every three years. All Owners are encouraged to use biodegradable detergents, soaps and other materials which are released into the septic tank. No toxic or hazardous wastes shall be dumped, disposed, or otherwise released anywhere in the Project. Without limiting the foregoing, no gasoline, diesel fuel, motor oil, or petroleum products shall be dumped or disposed of within the Project, including septic systems.

9.26. **Propane Tanks.** No Owner shall allow any bulk storage propane tank associated with the permanent utility system of the dwelling to be kept above ground. Bulk storage propane tanks associated with any permanent utility system on a Lot shall be buried at the time of installation of the utility system it services.

9.27. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantially adverse effect on the other Owners or Occupants of the Project; and (3) that the proposed variance is consistent with the high quality of life intended for residents of the Project. All variances shall require unanimous vote of the Board and shall be unenforceable until the approved variance is reduced to writing and signed in the affirmative by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

9.28. **Open Fire Burn Policy.** No fires are permitted in Common Areas/Elements. Open fires are only allowed on lots and only permitted in fire pits installed in accordance with the Utah Approved Outdoor Fire Pit Standard Guidelines as follows:

1. *Fire pits shall be located no closer than 30 feet from structures and combustible materials, and all fire pits shall have a minimum of fifteen feet of clearance.*
2. *All combustible materials and vegetation must be cleared down to mineral or soil for at least three times the diameter of the fire pit.*
3. *The apron around the fire pit can be constructed of brick, rock, gravel or concrete, however caution should be used when using concrete, because it may explode and cause flying debris.*
4. *The interior wall of the fire pit can be metal, rock or brick, with sand expansion joints to facilitate heat transfer.*
5. *The depth of the fire pit should be a minimum of 18 " inches deep. All roots and other combustible materials will need to be removed from underground and at least 1 foot wider and deeper than the fire ring.*
6. *Gravel or aggregate should be placed in the bottom of the fire pit at least 2" to 6 " inches deep.*

All open fires on lots with approved fire pits must be closely monitored by a responsible adult with adequate resources immediately available to put the fire out quickly. Fires must be constantly attended until fully extinguished. No fires are permitted which pose a threat to the property of others or the Common Areas/Elements. No fires shall be allowed during fire restrictions imposed by the State or the County. No open fires for the purpose of burning debris are allowed under any

circumstances within the Association including lots and Common Areas/Elements. All open fires shall comply with all applicable county/state laws, ordinances and regulations, as well as any rules or regulations adopted by the Board. In the event of any damage or injury resulting from a fire started on a Lot or within the Common Areas/Elements, the Owner/Individual starting such fire shall be liable for all damage resulting therefrom, and shall indemnify the Association and/or lot owner for any damage caused by the fire.

## ARTICLE X. ARCHITECTURAL DESIGN

10.1. **Architectural Design Review Committee.** The Board may appoint a three (3) member Architectural Design Review Committee (“ADRC”). The ADRC shall function in an advisory capacity to the Board. The ADRC shall make recommendations to the Board and the Board shall have the authority to reject, in whole or in part, any recommendations of the ADRC in its absolute discretion. Members of the ADRC must be Owners or spouses of Owners and must reside in the Project. The ADRC’s responsibilities include but are not limited to: 1) Review all planned alterations, additions, or modifications of any kind to Lots, exterior of Residences, or the Common Areas in the Project; and 2) Work with the Board to ensure Lot Owners maintain their Lot appearance and conditions in accordance with the terms of the Governing Documents;. If an ADRC is not appointed, the Board shall perform the duties required of the ADRC.

10.2. **Architectural Design.** To maintain a degree of protection to the investment which Owners have made, homes of superior design are requisite, and designs shall be limited to those approved by the Board, as may be recommended by the ADRC. In the event of any reconstruction of an improvement of Residence due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the Board. No landscaping, grading, excavation, building, fence, wall, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications have been approved in writing by the Board. All subsequent additions to or changes or alterations in any landscaping, building, fence, wall, or other structure, including changes to the exterior of Residences and exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the Board. Once approved, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the Board. Subsequent to receiving approval of the Board and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from the County. Consent or approval shall not be unreasonably withheld.

No construction, reconstruction or modification of a Residence or landscaping may commence without a permit issued by Utah County Planning Department and approval by the Board of the working drawings including, but not limited to, the following:

10.2.1 A site plan to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations.

10.2.2 Detailed floor plans showing dimensions and measurements.

10.2.3 Detailed elevations, indicating all materials and colors and showing existing and finished grades.

10.2.4 Detailed sections, cross and longitudinal.

10.2.5 Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

10.2.6 Specifications shall give complete descriptions and color samples of materials to be used on the exterior of a Residence. The Board will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines and any other guidelines adopted by the Association.

### 10.3. **Building Restrictions.**

10.3.1 Secondary Structures. No secondary living structure shall be erected, altered, placed, or permitted to remain on any lot in addition to the single-family dwelling; notwithstanding a private garage and customary accessory buildings incidental to the use of the lot for residential purposes shall be permitted if such buildings have been approved by the Board.

10.3.2 Minimum Dwelling Size. No residential structure shall be permitted on any Lot in which the habitable enclosed main floor area is less than two thousand five hundred (2,500) square feet. No structure shall be built upon any lot with a height-exceeding-conditions which make it not in harmony with surrounding terrain and adjacent structure unless approved by the Board.

10.3.3 Setbacks. No building shall be located less than 35 feet from the road right-of-way, and not less than 25 feet from any side lot line. No residence shall be located so as to reduce the depth of the rear yard of the lot on which it is located to less than 40 feet. Lesser setback limitations may be granted subject to prior approval of the Board.

10.3.4 Building Time. It is understood that the Lot Owner is not required to build any structure. The building time for the exterior portion of any structure, once started, shall not exceed 18 months from start to finish. All debris, excavation dirt, etc., associated with the building process shall be removed within these specified building times. Excavation dirt shall either be removed entirely or shall be spread out and landscaped with pavers, gravel and stone or reseeded within the specified time so as to return the lot to a pleasing appearance.

10.3.5 Fences/ No Obstruction See Architectural Design Review Committee Guidelines.

10.3.6 Construction or Landscaping Activities: Contractor vehicles shall not be parked on community roadways so as to block or impede traffic. Lot Owner is responsible for providing off-street parking for all contractor vehicles and equipment and to ensure that deliveries do not block roadways. Lot Owner of construction activity is responsible for remediating any damage to common roads or areas, or damage to neighbors' property caused by negligence on behalf of their contractors or their subs (example: nails and debris allowed into roadway causing tire flats, rocks allowed into roadway damaging snow removal equipment, etc.). Any damages incurred are subject to assessments being levied by the board against the Lot Owner responsible as described above per Section 7.5.

10.3.7 Ecological Considerations. The planting of fir, spruce and pine trees by Lot Owner is specifically encouraged. Also encouraged is the planting of native plant

varieties which occur naturally in the canyon. The Association may spray herbicides on noxious weeds in conformance with Utah Administrative Code R-69-9 and sage brush in some areas to enhance the beauty of the canyon areas and to reduce fire hazards. The Association may also from time to time cut weeds and grasses and clear brush and dead trees in certain areas to reduce fire hazards. The individuals doing the cutting or spraying may have reasonable ingress and egress rights on all Lots for this purpose. Residents are to be notified prior to spraying to avoid health problems. The Association may plant trees and shrubs along roadways and in the Common Areas to enhance the natural beauty, provide windbreaks and improve erosion control. Grasses can also be planted in specific areas to improve erosion control. The Board may determine what trees are prohibited from being planted on any Lot.

10.4. **Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the Project.

10.4.1 The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

10.4.2 Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

10.5. **Variances.** The Board may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all the members of the Board. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.6. **Liability for Damages.** The Board or the ADRC shall not be held liable for damages because of any action, inaction, approval, or disapproval by it made pursuant to this Article.

10.7. **Fees.** The Board shall require a five hundred dollar (\$500) preliminary review fee due at the time of the initial ARDC design review. A two thousand, five hundred (\$2,500) final design review and submittal fee is due at the final review of the ARDC.

## **ARTICLE XI. ENFORCEMENT**

11.1. **Enforcement of Governing Documents.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). A notice of violation of governing documents or bylaws, or assessment for

violation shall be determined by the Board of Directors and shall require a unanimous vote of the board to issue. If a member of the Board is the Owner that is in violation, said Board member cannot vote on this issue. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees.

## **ARTICLE XII. RIGHTS OF FIRST MORTGAGEE**

12.1. **Title in Mortgagee**. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

12.2. **Notice of Default by Lot Owner**. In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, may give written notice of such fact to the Mortgagee covering such Owner's Lot.

12.3. **No Priority**. No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

## **ARTICLE XIII. AMENDMENTS**

13.1 **Amendments**. All amendments to this Declaration or Plat shall be proposed by either a majority of Board Members or by Owners holding at least twenty five percent (25%) of the total voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the total voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section (refer to section 3.3 **Multiple Ownership Interests**). If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required.

## **ARTICLE XIV. MISCELLANEOUS**

14.1 **Notices**. Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an

Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes. Owners may opt out of notice via email at any time.

14.2 **Board Membership/Replacement of Board Vacancy:** Board members or association officers shall be property owners, joint tenancy owners or trust/executors/trustee officers within the community. Issues relating to Board member replacement is covered in the bylaws.

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

14.3.1 All necessary consents must be obtained prior to the expiration of forty-five (45) days after the first consent is given by any Member.

14.3.2 Any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

14.3.3 Any non-response for a member vote shall be counted as a "NO" vote for the transaction or associated issue being voted upon.

14.4 **Interpretation and Severability.** 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 constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

14.5 **Covenants to Run with Land.** This Declaration and all 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 and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.6 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, Common Area facilities and

buildings, or deviations from provisions of the Governing Documents. Any modification or accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

14.7 **No Waiver**. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

14.8 **Security**. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner(s) agree by purchasing a Lot in this Association that the Association and Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

14.9 **Effective Date**. The Declaration and any amendment hereof shall take effect upon its filing in the office of the Utah County Recorder.

***[Certification on Next Page]***



**CERTIFICATION**

IN WITNESS WHEREOF, the Board of Directors has executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions of the Cottages at Hobble Creek as of the day and year written below. The Board of Directors also certifies that written consent of Utah County was obtained on \_\_\_\_\_, 2024.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 2024.

**The Cottages Community Association, Inc.**  
A Utah Nonprofit Corporation

By: \_\_\_\_\_

Its: President

State of Utah            )  
                                  ) ss.  
County of \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ 2024, personally appeared before me \_\_\_\_\_ who being by me duly sworn, did say that he/she is the President of The Cottages Community Association, Inc.; that said instrument was signed by him/her on behalf of said Association after receiving approval of Owners with more than sixty-seven percent (67%) of the total voting interests of the Association; and that the foregoing information is true and accurate to the best of his/her knowledge.

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

## EXHIBIT A LEGAL DESCRIPTION

Lots 1 through 35 and the Common Areas and Private Roads of **Cottages at Hobble Creek Mountain Home Development Plat A**, according to the official plat on file in the office of the Utah County Recorder as Entry Number 124108:1999.

Parcel Numbers:   **36:834:0001** through **36:834:0033**,  
  **36:834:0035** through **36:834:0036**, and  
  **36:834:0500**

Lot 1 of **Cottages at Hobble Creek Mountain Home Development Plat B (including an Amendment of Lot 34 Cottages at Hobble Creek Plat A)**, according to the official plat on file in the office of the Utah County Recorder as Entry Number 11226:2018. Parcel Number: **65:536:0001**.

Commencing at a point located North 02° 47' 53" East along the Section line 1828.94 feet from the Southwest corner of Section 3, Township 7 South, Range 4 East, Salt Lake Base and Meridian; thence North 02° 47' 53" East 880.36 feet; thence North 02° 16' 00" West 396.83 feet; thence South 29° 47' 00" East 3114.41 feet; thence South 63° 00' 00" West 334.63 feet; thence South 20° 22' 48" East 529.67 feet; thence South 06° 45' 24" East 309.67 feet; thence South 19° 57' 37" East 107.58 feet; thence South 06° 45' 55" East 191.43 feet; thence South 34° 58' 07" East 226.07 feet; thence South 39° 46' 05" East 288.74 feet; thence South 51° 43' 03" East 132.17 feet; thence South 28° 41' 10" East 59.75 feet; thence South 53° 03' 16" East 236.27 feet; thence South 78° 55' 45" East 24.56 feet; thence South 87° 43' 35" East 75.89 feet; thence South 58° 34' 14" East 214.49 feet; thence South 04° 15' 24" West 110.67 feet; thence along the arc of a 341.00 foot radius curve to the right 27.43 feet (chord bears North 60° 55' 50" East 27.42 feet); thence North 63° 14' 06" East 109.50 feet; thence along the arc of a 241.00 foot radius curve to the right 29.98 feet (chord bears North 66° 47' 55" East 29.96 feet); thence South 24° 54' 28" East 56.31 feet; thence along the arc of a 185.00 foot radius curve to the left 28.19 feet (chord bears South 67° 35' 59" West 28.16 feet); thence South 63° 14' 06" West 109.50 feet; thence along the arc of a 285.00 foot radius curve to the left 92.80 feet (chord bears South 53° 54' 24" West 92.39 feet); thence South 14° 40' 04" West 497.30 feet; thence North 89° 36' 27" West 295.42 feet; thence South 63° 39' 24" West 84.36 feet; thence South 54° 31' 14" West 127.72 feet; thence South 79° 30' 21" West 88.09 feet; thence South 66° 42' 47" West 198.61 feet; thence South 63° 34' 06" West 203.12 feet; thence South 56° 55' 26" West 272.12 feet; thence North 29° 20' 44" West 320.68 feet; thence North 23° 58' 58" East 156.65 feet; thence South 55° 22' 05" West 37.94 feet; thence along the arc of a 122.00 foot radius curve to the left 120.60 feet (chord bears South 27° 07' 22" West 115.75 feet); thence South 01° 11' 42" East 75.24 feet; thence along the arc of a 527.98 foot radius curve to the right 66.93 feet (chord bears South 02° 26' 12" West 66.89 feet); thence South 06° 04' 06" West 105.88 feet; thence along the arc of a 472.08 foot radius curve to the left 61.29 feet (chord bears South 02° 20' 55" West 61.25 feet); thence South 01° 22' 15" East 123.83 feet; thence along the arc of a 528.00 foot radius curve to the right 151.23 feet (chord bears South 06° 50' 02" West 150.71 feet); thence South 15° 02' 20" West 123.80 feet; thence along the arc of a 178.00 foot radius curve to the right 118.66 feet (chord bears South 34° 08' 10" West 116.47 feet); thence South 53° 14' 00" West 160.25 feet; thence along the arc of a 122.00 foot radius curve to the left 137.13 feet (chord bears South 21° 06' 20" West 130.02 feet); thence South 11° 02' 51" East 125.88 feet; thence along the arc of a 124.00 foot radius curve to the left 42.10 feet (chord bears South 20° 46' 25" East 41.90 feet); thence South 30° 30' 00" East

along the arc of a 222.00 foot radius curve to the left 52.76 feet (chord bears North 48° 33' 36" East 52.63 feet); thence along the arc of a 35.00 foot radius curve to the left 30.73 feet (chord bears North 16° 36' 06" East 29.75 feet); thence along the arc of a 50.00 foot radius curve to the right 50.59 feet (chord bears North 20° 26' 09" East 48.46 feet); thence along the arc of a 35.00 foot radius curve to the left 17.24 feet (chord bears North 35° 18' 21" East 17.07 feet); thence North 21° 11' 28" East 49.79 feet; thence along the arc of a 1040.95 foot radius curve to the right 147.57 feet (chord bears North 25° 15' 08" East 147.45 feet); thence along the arc of a 35.00 foot radius curve to the left 36.25 feet (chord bears North 00° 21' 36" West 34.65 feet); thence along the arc of a 50.00 foot radius curve to the right 123.90 feet (chord bears North 40° 57' 14" East 94.54 feet); thence along the arc of a 35.00 foot radius curve to the left 48.77 feet (chord bears North 72° 01' 25" East 44.92 feet); thence North 32° 06' 21" East 190.51 feet; thence along the arc of a 260.00 foot radius curve to the left 309.97 feet (chord bears North 02° 02' 40" West 291.93 feet); thence North 36° 11' 48" West 299.23 feet; thence along the arc of a 1515.01 foot radius curve to the right 309.85 feet (chord bears North 30° 20' 21" West 309.31 feet); thence South 73° 56' 00" West 7.74 feet; thence North 16° 04' 00" West 378.27 feet; thence North 03° 30' 45" West 126.36 feet; thence North 26° 56' 20" West 288.33 feet; thence North 10° 42' 18" West 314.43 feet; thence North 28° 06' 28" West 658.75 feet; thence North 19° 41' 37" West 288.61 feet; thence North 63° 33' 25" West 217.13 feet; thence North 44° 36' 47" East 34.85 feet; thence North 44° 54' 34" West 100.02 feet; thence North 09° 23' 45" West 138.16 feet; thence North 50° 19' 01" East 215.67 feet; thence North 41° 20' 20" West 450.43 feet to the point of beginning.