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Recorded at the Request of:  
Rainbow Canyon Homeowners Association

Record against the Property  
described in Exhibit A

After Recording mail to:  
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Amended Restrictive Covenants Page 1 of 186  
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**CORRECTED FOURTH AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS OF  
RAINBOW CANYON  
A RESIDENTIAL PLANNED UNIT DEVELOPMENT  
(Formerly known as Shadow Canyon)**

Prepared by:



Attn: Bruce C. Jenkins  
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**CORRECTED FOURTH AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS OF  
RAINBOW CANYON  
A RESIDENTIAL PLANNED UNIT DEVELOPMENT  
(Formerly known as Shadow Canyon)**

This Corrected Fourth Amended and Restated Declaration of Covenants, Conditions, and Restrictions governs the residential planned unit development known as Rainbow Canyon (formerly known as Shadow Canyon) and was prepared to correct the legal description contained in the Fourth Amended and Restated Declaration (defined below). The Fourth Amended and Restated Declaration was approved by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners, pursuant to Utah Code Section 57-8a-104 and Article XIII, Section 2, of the 2003 Declaration (defined below). This Corrected Fourth Amended and Restated Declaration amends and restates in its entirety and substitutes for the following:

- Third Amendment and Restated Declaration of Covenants, Conditions, and Restrictions of Shadow Canyon Phase I, a Residential Planned Unit Development, recorded with the Washington County Recorder on September 3, 2003, as Document No. 00838695, in Book 1579, at Page 0348 (“2003 Declaration”);
- Declaration of Covenants, Conditions and Restrictions of Shadow Canyon, Phase 2-A, a Residential Planned Unit Development County of Washington, State of Utah, recorded with the Washington County Recorder on March 9, 2005, as Document No. 00931267, in Book 1720, at Page 1488;
- Declaration of Annexation (Shadow Canyon Phases 2-B, 2-C and 2-D), recorded with the Washington County Recorder on February 7, 2006, as Document No. 20060001850;
- Declaration of Annexation (Shadow Canyon Phase 3-A), recorded with the Washington County Recorder on July 7, 2006, as Document No. 20060029742;
- Declaration of Annexation (Shadow Canyon Phase 3-B Subdivision), recorded with the Washington County Recorder on April 11, 2007, as Document No. 20070018297;
- Fourth Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Rainbow Canyon, a Residential Planned Unit Development (Formerly known as Shadow Canyon), recorded with the Washington County Recorder on August 16, 2023, as Document No. 20230024695 (“Fourth Amended and Restated Declaration”); and
- any other amendments, supplements, or annexing documents to the covenants, conditions, and restrictions for Rainbow Canyon (formerly known as Shadow Canyon), whether or not recorded with the Washington County Recorder.

The Community Association Act, Utah Code Section 57-8a-101 et. seq. (the “Act”), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities, and restrictions of that section. The remedies in the Act and this Declaration—provided by law or in equity—are cumulative and not mutually exclusive.

### **RECITALS**

A. WHEREAS the Declarant owned that certain real property in the city of Hurricane, Washington County, Utah, which is more particularly described in Exhibit A.

B. Declarant has conveyed the property subject to certain protective covenants, conditions, restrictions, reservations, liens, charges, and assessments.

C. The Rainbow Canyon Homeowners Association, a Utah nonprofit corporation (“Association”), has been formed to administer the terms of this Declaration. Owners of Lots within the property described in Exhibit A shall be Members of the Association.

D. Declarant conveyed certain Common Area to the Association.

E. Declarant annexed expandable land whose owners became members of Rainbow Canyon Homeowners Association and are entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens hereinafter set forth.

F. The Fourth Amended and Restated Declaration was voted on and approved by the membership; however, it contained an error in the legal description. This Corrected Fourth Amended and Restated Declaration is for the sole purpose of correcting the error in the legal description and was, therefore, not resubmitted to the membership for a vote.

NOW, THEREFORE, for the foregoing purposes, the Association hereby declares that the Property is and shall be held, transferred, sold, conveyed, and occupied subject to these covenants, conditions, and restrictions and in the recorded plats as follows:

### **DECLARATION**

The Association declares that all of the property described in Exhibit A shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, liens, and to the Plat Map. This Declaration is made for the purpose of protecting the value and desirability of said property. This Declaration and the Plat Map shall be construed as covenants of equitable servitude, which shall run with the land and shall be binding upon all parties having any right, title, or interest in the described property, or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

The Properties are located in Hurricane, Washington County, Utah, and are more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference.

## **ARTICLE I DEFINITIONS**

The following definitions control in this Declaration. The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply.

Section 1. “Board of Directors” or “Board” shall mean and refer to the governing Board of the Association.

Section 2. “Border,” “Separation,” or “Perimeter Fences” shall mean and refer to landscaping fences which co-border the Project and separate the Project from other developments and public rights-of-way, and for the purpose of separating Common Areas from Lots.

Section 3. “Common Area” shall mean all real property (including the improvements thereto, if any) owned by the Association or hereafter acquired for the common use and enjoyment of the Members and not dedicated for use by the general public. Specifically exempted from Common Area are Lots and dedicated public streets which are identified on the Plat Map, as recorded on the official records of the Washington County Recorder and as the same, may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration. Common Area shall also include all land which the Association has an easement right in, if any.

Section 4. “Conveyance” shall mean and refer to actual Conveyance of fee title to any Lot to any Owner by a warranty deed or other document of title and shall also mean the execution an installment sales contract.

Section 5. “Declarant” shall mean, L & D Development, Inc., a Utah Corporation, its successors or assigns, (1) by written agreement shall be given Declarant’s rights and (2) acquire more than one undeveloped Lot from the Declarant for the purpose of the development (references herein to the Declarant are for historical purposes and context).

Section 6. “Declaration” shall mean and refer to this Corrected Fourth Amended and Restated Declaration of Covenants, Conditions, and Restrictions applicable to the Properties, and any amendments or supplements thereto, recorded in the office of the Recorder of Washington County, State of Utah.

Section 7. “Dominant Tenement” shall mean and refer to the Owner of a Lot that benefits from an easement.

Section 8. “Servient Tenement” shall mean and refer to the Owner of the Lot subject to an easement.

Section 9. “Governing Documents” shall mean and refer to the Articles, Declaration, Plat, Bylaws, Rules, and any other written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the Property, and any amendments to these documents.

Section 10. “Home” shall mean and refer to any detached single-family residential dwelling on a Lot within the Project. Multiple family dwellings are not included in this definition and are not allowed in the Project.

Section 11. “Homeowners Association” or “Association” shall mean and refer to Rainbow Canyon Homeowners Association, its successors and assigns, a Utah nonprofit corporation.

Section 12. “Lot” shall mean and refer to any plat of land shown upon any recorded Plat Map of the Properties including land designated as “Limited Common Area” and specifically excepting land designated “Common Area” and areas dedicated to the use of the general public.

Section 13. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 14. “Mortgagee” shall mean and refer to any person named as a first mortgagee or beneficiary, owner, or holder of a first deed of trust.

Section 15. “Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract buyers, but excluding those having an interest merely as security for the performance of an obligation.

Section 16. “Plat” or “Plat Map” shall mean and refer to the Plats for “Shadow Canyon-Phase 1 A Planned Unit Development Amended Plat of Leisure Time Estates (Phase 1),” “Shadow Canyon Phase 2-A,” “Shadow Canyon Phase 2-B,” “Shadow Canyon Phase 2-C,” “Shadow Canyon Phase 2-D,” “Shadow Canyon Phase 3-A,” and “Shadow Canyon Phase 3-B Subdivision”, as recorded in the office of the County Recorder of Washington County, Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration.

Section 17. “Properties,” “Property,” and “Project” shall mean and refer to that certain real property described in Exhibit A and such additions thereto as many hereafter be subject to this Declaration.

Section 18. “RV Pad” shall mean and refer to cement or gravel surface located on the side of the Home not to extend closer to the street than the front corner of the residence.

Section 19. “Utilities” shall mean public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.



Section 20. “Limited Common Area” shall mean and refer to that portion of the land which is designated as reserved for the use of an Owner or Owners of a Home to the exclusion of the Owner or Owners of other Homes, as identified by the Plat Map.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. Owners’ Easements of Enjoyment. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Area and to that Owner’s designated Limited Common Area. This Easement is appurtenant to and passes with title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area. Fees charged by the Association shall in no way affect its status as a nonprofit corporation.

(b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws and with the approval of two-thirds (2/3) of the membership to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to suspend the voting rights of a Member and to deny said Member use of the Common Area or any recreational facility for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

(d) The right of the Association, at the Board’s discretion, to deny a Member use of the Common Area or any recreational facility, due to multiple infractions by the Member.

(e) With the approval of all the holders of first mortgage liens on Lots, and Owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release, or transfer all or part of the Common Area owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be, agreed to by the Members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless (1) all Owners consent in writing to the dedication or transfer or (2) an instrument has been signed by two-thirds (2/3) of the entire membership, agreeing to such dedication, sale, or transfer and the legislative body of the Hurricane City approves the plat change that is necessitated by the dedication, sale, or transfer.

(f) The right of the Association to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Members. The granting of an easement for public utilities or other public services consistent with the intended use of the Common Area is not a transfer within the meaning of this clause. No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (1) all Owners consent in writing to such abandonment, petition, subdivision, encumbrance, sale, or transfer or (2) an instrument has been signed by two-thirds (2/3) of the entire membership and the legislative body of the City of Hurricane approves the plat change necessitated by the abandonment, partition, subdivision, encumbrance, sale, or transfer.

(g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(h) The right of the Association to grant and reserve easements and rights-of-way through, under, over, and across the Common Area for the installation, maintenance, and inspection of lines and appurtenances for public or private utilities.

(i) The right of the Association to make, disseminate, post, or otherwise publish and enforce reasonable rules pertaining to the regulation and use of all Common Areas by Owners, guests, invitees, and tenants of Owners, including but not limited to, establishing reasonable swimming pool use restrictions which may include restricting its use to adults only.

(j) The terms of this Declaration.

(k) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar association in consideration for use of the common areas and facilities of the other association, or for cash consideration.

(l) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by nonprofit or profit organizations, or individuals, or for charitable purposes, for a fee to be determined by the Board from time to time.

(m) The right of City of Hurricane and any other governmental entity or quasi-governmental body having jurisdiction over the property to access and to have the right of ingress and egress over open spaces and Common Areas contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

Section 2. Delegation of Use. Any Member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on the property. All such use by family members, tenants, guests, or contract purchasers shall be subject to this Declaration, the Bylaws and the Rules and Regulations promulgated by the Board. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be an assessment charged to the Lot Owner as provided in Article IV.

Section 3. Title to the Common Area. The Declarant conveyed fee simple title, subject to consent from lien holders having a security interest therein, to the Common Area to the Association prior to transferring of the last Lot. The Declarant discharged all liens and encumbrances on said Common Area on or before the sale and closing of the last Lot within the Project.

In accepting the deed, the Association covenanted and continues to covenant to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times, and to operate the Common Area at its own expense in accordance with high quality standards. Said conveyance of the Common Area shall also be subject to (i) any state of facts an accurate survey may show, and (ii) easements and rights-of-way of record or in equity.

Section 4. Rules. The Board may adopt, amend, cancel, limit, create exceptions to, expand, or enforce rules and design criteria of the Association that are not inconsistent with this Declaration or the Act. Except in the case of imminent risk of harm to a Common Area, a Limited

Common Area, an Owner, a Lot or a Home, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding, or changing the procedures for enforcing rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration. A rule or design criteria adopted by the Board is only disapproved if Member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act.

Section 5. Title to the Limited Common Area. The Association under the CCRs is required to enforce and to ensure that the Limited Common Areas are maintained in good repair and condition at all times, according to the provisions of this Declaration, by the Owner(s) who's use is designated for that Limited Common Area. Said conveyance of the Limited Common Area shall also be subject to, (i) any state of facts an accurate survey may show, and (ii) Easements and rights-of-way of record or in equity.

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

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. There shall be one (1) vote for each Lot. All other voting rights are set forth in the Bylaws, as amended from time to time.

### **ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, (b) special assessments, (c) insurance assessments, if any, (d) additional assessments, (e) individual assessments, (f) any other amount or assessment levied or charged by the Association or Board pursuant to this Declaration, and (g) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. The assessments shall be a charge on the land and shall be a continuing lien on the Lot against which such assessment is made. Each such assessment shall also be the personal obligation of the person who is Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to a Lot Owner's successor in title unless expressly assumed by them. Unless otherwise provided for this Declaration or by the Board, assessments are due the first (1st) day of each monthly period and are late at the close of business on the tenth (10th) day of the same monthly period at which time a Twenty-Five Dollar (\$25.00) late penalty is added to the assessment amount.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of the property. The use made by the Association of funds obtained from assessments may include

payment of the cost of the following: taxes and insurance on the Common Areas; insurance for Limited Common Areas; management and supervision of the Common Areas and Limited Common Areas; repair and maintenance of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

Section 3. Basis and Maximum of Annual Assessments. The base annual assessment for the year 2023 shall be Six Hundred and Sixty Dollars (\$660.00) annually, or Fifty-Five Dollars (\$55.00) a month.

(a) The maximum annual assessment may be increased by the Board each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

(b) The maximum annual assessment may be increased more than fifteen percent (15%) only by a vote of two-thirds (2/3) of Members who are voting in person, by ballot, or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.

(c) The Board shall fix the annual assessment at an amount not in excess of the maximum.

(d) Each lot shall be assessed according to the schedule set forth above.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association with approval of two-third (2/3) of Members may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto and for such other purposes reasonably necessary to fulfill the intent of this Declaration.

Section 5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for cable television service and for the purpose of repairing and restoring the damage or disruption resulting to Common Areas from the activities of utilities in maintaining, repairing, or replacing utility lines and facilities thereon.

Section 6. Individual Assessments. Each Owner of a Lot shall also be assessed from time to time for (i) all fines, penalties and damages to which its Owner is subject as a result of a violation of the terms of this Declaration and Rules and Regulations prescribed by the Board for the use of the Common Area, (ii) for damages caused to the Common Area or Limited Common Area by the negligence or willful misconduct of such Owner, and (iii) for any other liability, indebtedness, or other obligation of the Owner to the Association arising under the provisions of this Declaration. Notice of all individual assessments shall be given by the Board to the Owner of each Lot assessed within fifteen (15) days of the adoption of the individual assessment. Individual assessments shall be due and payable within thirty (30) days following written notice thereof by the Board.

Expenses incurred by the Association for the benefit of a Limited Common Area shall be assessed against the Lot to which such Limited Common Area is allocated.

Section 7. Notice and Quorum for any Action Authorized Under Sections 3, 4, and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members, present in person, by ballot, or by proxy, to cast two-thirds (2/3) of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Rate of Assessment. Annual, special, and capital assessments shall be fixed at uniform rates for all Lots and may be collected on a monthly basis.

Section 9. Regular Assessments: Due Dates. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates for payment of said assessment shall be established by the Board.

Section 10. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments, including late penalty charges, not paid within thirty (30) days after the due date, thereof shall be delinquent and shall incur a Twenty-Five Dollar (\$25.00) late fee and bear interest from the due date at the rate of eighteen percent (18%) per annum until paid. The Association shall have the remedies provided in the subsections below if payment is not made when due.

(a) Remedies. For delinquent assessments the Association shall be entitled to (1) bring an action at law against the Owner personally obligated to pay such delinquent assessment without waiving the lien or assessment, (2) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of selling deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (3) withhold, interrupt, or terminate any or all services performed by the Association in behalf of the delinquent member.

(b) Additional Remedies. In addition to the remedies stated above, the Board may assess a late fee for each delinquent installment which shall not exceed twenty percent (20%) of the installment.

(c) Costs and Attorney Fees. The costs and expenses of any judicial action, arbitration, sale, or foreclosure, preparation of notice of lien, and any other costs and expenses directly or indirectly related to the delinquent payment, including reasonable attorney fees, shall be an assessment charged to the Lot Owner.

(d) Right to Bring Action. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or trust deed lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section 10 shall be in favor of the

Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, sell and convey the same.

(e) Appointment of Trustee. The Association and each Lot Owner hereby conveys and warrants, pursuant to §§ 212 and 302 of the Act, and Utah Code § 57-1-20, to attorney Bruce C. Jenkins, or any other attorney that the Association engages to act on its behalf to substitute for Bruce C. Jenkins, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of this Declaration.

Section 11. Non-Use and Abandonment. No Owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Area or Limited Common Area or abandonment of his Lot.

Section 12. Subordination of the Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all Lots including the mortgaged Lot. Any first mortgagee, who obtains title to a Lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the Lot's unpaid dues or charges which have accrued before the acquisition of title to the Lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Area. However, no land or improvements devoted to Home use shall be exempt from said assessments.

Section 14. Lien in Favor of Association. The Association shall have the right to collect assessments through a lawsuit, judicial foreclosure, non-judicial foreclosure, or other means as provided in Sections 301 through 311 of the Act. Such remedies shall be cumulative and not exclusive.

Section 15. Delinquent Owners.

(a) Delinquent Owner. As used in this section, "Delinquent Owner" means a Lot Owner who fails to pay an assessment when due. The Board may terminate a Delinquent Owner's right:

- (1) to receive a utility service for which the Owner pays as a common expense;
- or
- (2) of access to and use of recreational facilities.

(b) (1) Before terminating a utility service or right of access to and use of recreational facilities under Subsection (a) the Manager or Board shall give the Delinquent Owner notice. Such notice shall state:

- (i) that the Association will terminate the Delinquent Owner's utility service or right of access to and use of recreational facilities, or both, if the Association does not receive payment of the assessment within fourteen (14) calendar days;
- (ii) the amount of the assessment due, including any interest or late payment fee; and
- (iii) the Owner's right to request a hearing under Subsection (c).

(2) A notice under Subsection (b)(a) may include the estimated cost to reinstate a utility service if service is terminated.

(c) (1) The Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the assessment.

(2) A request under Subsection (c)(1) shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the notice under Subsection (b)(1).

(d) The Board shall conduct an informal hearing requested under Subsection (c)(1) in accordance with the hearing procedures of the Association.

(e) If the Delinquent Owner requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board:

- (1) conducts the hearing; and
- (2) enters a final decision.

(f) If the Association terminates a utility service or a right of access to and use of recreational facilities, the Association shall take immediate action to reinstate the service or right following the Owner's payment of the assessment, including any interest and late payment fee.

(g) The Association may:

(1) levy an assessment against the Delinquent Owner for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and

(2) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated if the estimated cost is included in a notice under Subsection 2(b).

Section 16. Reinvestment Fee Assessment. A reinvestment fee shall be due at the closing of a transfer of a Lot in the amount of Two Hundred and Fifty Dollars (\$250.00) and the reinvestment fee shall not exceed that amount. The Association may assign the charges directly to the Association's manager.

## ARTICLE V SEPARATION FENCES

Section 1. Separation Fences. Landscaping fences which co-border the Project and separate the Project from other developments and public rights-of-way, and for the purpose of separating Common Areas from Lots shall be deemed separation fences and shall be maintained as part of the Common Area. Separation fences may also include yard fences constructed by Lot Owners. All such separation fences shall be deemed to be owned and to be maintained by the Lot Owner.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article V, general rules of law regarding separation fences and liability for property damage due to negligence or acts of omissions shall apply thereto.

Section 3. Repair and Maintenance. The Lot Owner shall be responsible for the cost of repair and maintenance of separation fences. No changes or alterations to separation fences shall be made by Lot Owners without approval of the ACC. The Association shall repair or maintain separation fences and Border Fences and may repair and maintain separation fences constructed by a Lot Owner at the Lot Owner's expense and all costs reasonably incurred shall become a lien upon such Owner's Lot and shall be added to the assessment as provided in Article IV.

Section 4. Destruction by Fire or Other Casualty. If a separation fence is destroyed or damaged by fire or other casualty, any Owner or the Association who has used the fence may restore it, and if the other Owners or the Association thereafter makes use of the fence, they shall contribute to the cost of restoration thereof in proportion to such use, except as to the right of any such Owner or the Association to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Reserved.

Section 6. Right to Contribution Runs with Land. The right of any Owner or the Association to contribution from any other Owner and/or the Association under this Article V shall be appurtenant to the land and shall pass to such successors in title or assignees of the Association.

Section 7. Arbitration. In the event of any dispute arising concerning a separation fence each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE VI ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

Section 1. Architectural Control Committee. The Board may appoint a three (3) member committee (hereinafter sometimes referred to as "ACC") the function of which shall be to ensure that all exteriors of Homes and landscaping within the property harmonize with existing surroundings and structures. The committee need not be composed of Owners. If an ACC is not



appointed, the Board itself shall perform the duties required of the ACC. If an ACC is not appointed, references herein to "ACC" shall also mean and refer to the Board.

(a) Submission to Committee. No Home, accessory, addition to a Home, other improvement of a Lot, any landscaping, or any other construction to the Limited Common Areas shall be constructed, maintained, or accomplished, and no alteration, repainting, or refurbishing of the exterior of any Home shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the ACC. The Board is authorized to determine and require the payment of a reasonable submission fee, if the finds that to do so would be in the best interests of the Project and the Association.

(b) Meetings of Committee. The ACC shall meet from time to time as may be necessary to perform its duties hereunder. Any action taken by the ACC shall require the written approval of a majority of its members.

(c) Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to ensure that all improvements, construction, landscaping, and alterations on Lots within the property conform to and harmonize with existing surroundings and structures. The ACC shall have the right to refuse to approve any such plans or specifications and shall have the right in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of said building or other structure so planned and the outlook from adjacent or neighboring property. The Board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of Rules and Regulations adopted by the Board and the ACC, as the case may be, shall act in accordance with such guidelines and procedures.

(d) Approval Procedure. Any plans and specifications submitted to the ACC shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the ACC fails to take any action within such period, it shall be deemed to have approved the material submitted.

(e) Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the ACC shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Area in the vicinity of the activity.

(f) Disclaimer of Liability. Neither the ACC, nor any member thereof acting in good faith, shall be liable to the Association or any Owner for any damage, loss, or prejudice suffered or claimed on account of:

(1) The approval or rejection of, or the failure to approve or reject, any plans, drawings, or specifications;

(2) The development or manner of development of any of the property;  
or

(3) Any engineering or other defect in approved plans and specifications.

(g) Non-Waiver. The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

(h) Plan Review Fee. The Association may charge a plan fee that is equivalent to the cost of reviewing the plans. As used in this section, "plans" mean any plans for the construction

or improvement of a Lot which are required to be approved by the Association before the construction or improvement may occur.

Section 2. Building Restrictions.

(a) Building Type and Size. All Lots shall be used only for single family residential purposes, and no professional or commercial use shall be made of the same, including rentals less than six (6) months (rentals less than 6 months shall be considered short term rentals and are prohibited), or any portion thereof, nor shall any resident's use of a Lot endanger the health or disturb the reasonable enjoyment of any other Owner or resident. The building, or structure permitted to be erected, placed or permitted to be located within the project shall be as follows:

(1) On 37' X 80' Lots (or smaller) a building or structure of not less than 800 Sq. Ft. shall be erected. Upon application, the ACC may approve a recreational vehicle pad adjacent to the structure. In no case may this pad be used for permanent living and such pad is designated to be for storage of the Owner's or guest's RV. The ACC may require an Owner to remove an unsightly RV or if it is determined that it is not licensed, or is not capable of being used and transported in the way it was designated.

(2) On 55' X 100' Lots a building or structure, of not less than 900 Sq. Ft. is permitted. Recreational vehicle pads for parking may be permitted.

(3) On 62' X 100' Lots a building or structure of not less than 1000 Sq. Ft. is permitted. Recreational vehicle pads for parking may be permitted.

(4) On 68' X 100' Lots a building or structure of not less than 1000 Sq. Ft. is permitted. Recreational vehicle pads for parking may be permitted.

Each building or structure shall have an attached or structurally integrated garage sufficient to park at least two (2) vehicles. All buildings and structures are to be constructed in accordance with the zoning and building ordinances of the City of Hurricane. Upon application, the ACC may approve a building or structure to be constructed, provided the building or structure complies with the set back and other requirements of this Declaration, the ACC finds that the design is in overall harmony with the project, and that the approval of the application is in the best interest of the project.

(b) Building Location. All buildings shall be located on all Lots so as not to be in violation of Hurricane City ordinances with respect to minimum setbacks and the following additional requirements:

(1) Fifteen feet (15') Front Setback.

(2) Ten feet (10') Rear Setback.

(3) Five feet (5') Side Setback.

The placement of any building or structure on a Lot must be approved by ACC.

(c) Driveways and Walkways. Driveways and walkways shall be constructed out of materials commonly used for such purposes as approved by the ACC. There shall be sufficient driveway parking of not less than two (2) vehicles per Lot. All recreational vehicles stored on a Lot must be on an approved RV pad and be approved by the ACC. Recreational vehicles should not be older than ten (10) years and should be maintained in a well-kept and operable condition. RVs older than ten (10) years may be approved by the ACC.

(d) Front Yard Lights. A post light shall be permitted within the front set back area of each Lot. The post light is to be provided and maintained by the Lot Owner subject to placement and design approval by the ACC.

(e) Easements. Easements for installation and maintenance of utilities, drainage facilities, and ingress and egress are reserved as shown upon the Plat. Within these easements no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements or which may impede ingress and egress. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(f) Yard Fences. Yard fences shall be of block wall or wrought iron construction and shall substantially conform in style and construction to the fences of the Project. They shall be red or such other color which is in harmony with the Project and shall be approved by the ACC as to style, materials, color height, and placement on the Lot. Yard fences shall not exceed six feet (6') in height. Privacy fences may be approved by the ACC. Any pre-existing vinyl or other style fencing may remain until such time as the nonconforming fence is in need of replacement whereupon it shall be replaced with conforming fencing.

General rules of law and written agreements shall apply to yard walls and fences in relation to maintenance, repair, and liability for negligent acts and omissions.

(g) Temporary and Other Structures. No structure of a temporary nature; trailer, bus, house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any of said Lots. It being the intention hereof that all Homes and other buildings to be erected on said Lots, or within the Project shall be of new manufacture or construction and of good quality workmanship and materials.

(h) Landscaping. Landscaping on each Lot shall require low water maintenance and subject to irrigation by an automatic drip system. The planting of trees, shrubs, and grass is allowed subject to compliance with the restrictions and conditions contained herein and also with reasonable Rules and Regulations which may be established by the ACC and desert or arid motif is encouraged. All landscaping shall be compatible with other Homes in the Project. Landscape elements on corner Lots shall be located so as not to create a hazard for the movement of vehicles or pedestrians along the streets. All landscaping must be approved by the ACC and shall be properly cared for by the Owner to remain healthy and alive. Should an Owner fail to comply with the provisions of this paragraph, the Board shall have the right to enter upon such Lot to have landscaping completed on the Lot at the Owner's expense. The cost of such installation shall be added to and become part of the assessment to which such Lot is subject.

(i) Architectural Controls. No construction shall commence on any Lot until the construction plans and specifications and plans showing the location of the structure have been approved by the ACC as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to Lot placement, topography, and finish grade evaluation.

(j) Construction Materials. In order to promote a harmonious community development and protect the character of the neighborhood, the ACC may determine construction material standards and guidelines applicable to the property including but not limited to the following:

(1) Exterior Materials. Exterior construction materials will be limited to stucco or other materials approved for use by the ACC. Approval shall be based on the appearance and style of the structure, reserving to the ACC the right to suggest modifications to enhance the appearance of the structure.

(2) Roofing Material. Roofing material shall be terracotta tile or other materials of a quality nature approved for use by the ACC.

(k) Architectural Restrictions. All structures placed upon or constructed upon a Lot, including, but not limited to, additions, patios, carports, garages, porches, and utility sheds, must be constructed of the same or compatible materials to as to incorporate a unified design theme compatible with the project. Only one (1) shed per Lot will be permitted, provided it meets setback requirements 1 and 3 in Article VI, Section 2 and has a five foot (5') rear setback.

(l) Maintenance of Lot During Construction. Contractors or sub-contractors and Owners/builders are required to clean up the site daily to maintain a clean work site during construction.

(m) Lateral and Subjacent Support and Drainage. An Owner's activities which effect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent landowners. No structure, planting, or other material shall be placed or permitted to remain, or other activities undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through drainage channels.

(n) Rain Gutters Required. Each structure constructed or placed upon a Lot shall include a rain gutter system that provides drainage to the curb.

Section 3. Damages. Any damage inflicted on existing improvements such as curbs, streets, concrete sidewalks, by the Owner or their guests, assignees, agents, or independent contractors of any particular Lot must be repaired as soon as possible after such damage is discovered, and expense of such repair shall be borne by the Owner. Damages not repaired by the Owner shall be an assessment to the Lots as provided in Article IV.

## **ARTICLE VII OPERATION AND MAINTENANCE**

Section 1. Maintenance of Common Areas. The Common Areas shall be maintained by the Association so as not to detract from the appearance of the property and so as not to affect adversely the value or use of any Lot.

Section 2. Maintenance of Right-of-Way. The Association shall maintain the landscaping in the public right-of-way located between the sidewalk and curb, if there is any such area, in a good and orderly manner. The public right-of-way is not Common Area of the Project.

Section 3. Maintenance By Owner. Each Owner shall be solely responsible for maintenance of his Lot and his designated Limited Common Area, including landscaping ,exterior of his Home, and cleaning the street gutters in front of his Home. In the event any Owner shall fail to perform this maintenance in a manner consistent with the terms of this Declaration, the Board shall have the right to enter upon such Lot or Limited Common Area to have the maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 4. Utilities. The Association shall not pay for the monthly cable TV service, sewer, and garbage pick-up for each Lot. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots by the City of Hurricane or other party furnishing such service.

Section 5. Reserved.

Section 6. Access at Reasonable Hours. The Board, or its authorized representative, after giving not less than twenty-four (24) hours advance notice posted to the Lot, may access a Lot, from time to time during reasonable hours, as necessary for maintenance, repair, or replacement of any of the Common Areas. If repair to a Lot, Home, or Common Area – that if not made in a timely manner – will likely result in immediate and substantial damage to a Common Area or another Lot or Home, then the Board may enter the Lot to make the emergency repair upon such notice as is reasonable under the circumstances.

Section 7. Management Agreements. The Board may employ a manager or contract with independent contractor or managing agents to perform all or any part of the duties and responsibilities of the Association which are properly the subject of delegation. The manager shall be responsible for managing the property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the Association itself. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by either party without cause and without payment of a termination fee upon thirty (30) days written notice thereof. Any such contract and any other contract with a third person, wherein the third person is to furnish goods or services for any Common Area or the Association shall be limited to a duration of one (1) year; provided, however, that the contracts may be renewable for successive one (1) year periods with the approval of the majority of the Board. Exceptions may be permitted with Board approval.

## **ARTICLE VIII EASEMENTS**

Section 1. Minor Encroachments. Each Lot, Limited Common Area, and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed. A valid easement for said encroachment and for the maintenance of the same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. In addition to easements set forth on the Plat, there is hereby granted and conveyed to the City of Hurricane and utility companies, and other governmental or quasi-governmental entities, their successors and assigns, an easement upon, across, over, and under the setback (as defined by Hurricane City ordinances) area of each Lot, Limited Common Area, and of the Common Area property for ingress, egress, installing, replacing, repairing, and maintaining all utilities at such location or locations as deemed appropriate by the provider of the utility. By virtue of this easement, it shall be expressly permissible for the providing utility company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television, and/or telephone wires,

circuits, and conduits on, across, and under the Common Area or Limited Common Area. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, or repair of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon Common Areas in the performance of their duties. Should any company furnish a service conveyed by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 3. Easements for Ingress and Egress. An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area, Limited Common Area, and any Lot to perform the duties of maintenance and repair of the Home, yard, and landscape area, or Common Area provided for herein.

Section 4. Side Yard Easement. Certain of the Lots shall be conveyed with easements over adjacent property or subject to easements for the benefit of adjacent property, or both. Said easements, shall be set forth by description on the deed of conveyance to the Lot Owner referencing this section and incorporating the uses and purposes of which are set out below. The following rules prescribe the terms, conditions and uses of such easement, both by the Owner of the easement (the Dominant Tenement) and the Owner of the Lot subject to the easement (the Servient Tenement).

(a) The Dominant Tenement shall have the right to use the easements for landscaping, patio, and use as a general recreational and garden area which may also include sidewalks and incidental purposes relating to use of the easement for ingress and egress to the Home served by the easement;

(b) The Dominant Tenement shall not use the easement for any other use including permanent installation of any sort, such as swimming pool structures, equipment, plumbing installation, other than landscape sprinklers, nor sports equipment and facilities.

(c) The Servient Tenement shall have the right at all reasonable times to enter the easement area, including crossing over the Dominant Tenement for such entry, in order to perform work related to the use of the Servient Tenement including maintenance of any fence or wall along the easement boundary line, which shall be the obligation of the Owner of the Servient Tenement to maintain.

(d) The Servient Tenement shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of the Servient Tenement and the Dominant Tenement shall maintain the easement area in such manner as will not interfere with such drainage.

(e) The Dominant Tenement shall not attach any object to a wall or building belonging to the Servient Tenement.

(f) The Dominant Tenement, except as otherwise provided in this Article VIII shall have the exclusive use of the surface of the easement area subject to the rights of any other easement holder, if any, and subject to minor encroachments, if any, existing at the time of the creation of the easement, including overhangs, eaves, etc. over the easement area which are part of the structure located on the Servient Tenement, provided that such items do not encroach over

the easement area above a height of five (5) feet from the finished grade elevation of the easement area.

## **ARTICLE IX INSURANCE**

Section 1. INSURANCE ON LOTS AND HOMES. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE, OR SIMILAR CASUALTY COVERAGE FOR ANY LOT OR HOME, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT OR IN THE HOME.

Section 2. Assessments. Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed by Article IV.

Section 3. Required Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) Multi-Peril Coverage. A multi-peril type policy covering the Common Areas and facilities. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost). Such policy shall include an “agreed amount endorsement” or its equivalent, a “demolition endorsement” or its equivalent, an “increased cost of construction endorsement” or its equivalent, and a “contingent liability from operation of building laws endorsement” or its equivalent.

(b) Broad-Form Public Liability Coverage. A comprehensive policy insuring the Owners, the Association, its Directors, trustees, officers, agents, and employees against all damage or injury caused by their negligence to the public, invitees, tenants, or Owners on the Common Area. Limits of the liability under such coverage shall not be less than One Million Dollars (\$1,000,000.00) for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain “a severability of interest” clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

(c) Fidelity Coverage. A fidelity policy or policies to protect against dishonest acts on the part of Directors, officers, managers, or employees of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially

modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to all first mortgagees of Lots.

Section 4. Additional Provisions. The following additional provisions shall apply with respect to insurance:

(a) Approval of Policies. All policies shall be written by a reputable company approved by the Board.

(b) Contribution. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(c) Flood Insurance. In the event that some part of the Project is now or may in the future be classified by Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas shall be maintained in an amount customarily required in projects of this type to ensure against flood damage.

(d) Premiums Maintained in the Name of the Association as Trustee. Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the Owners.

(e) Review of Insurance Policy. The Board shall periodically, and whenever demand is made by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions to any mortgagee of any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owners.

(f) Rebuilding After Damage or Destruction. In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association as trustee for the Owners, the Board shall, upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Properties to as good a condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board. The Board shall advertise for bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board shall levy a special assessment against all Owners in such proportions as the Board deems fair and equitable in light of the damage sustained.

Section 5. Insurance on Limited Common Area. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE, OR SIMILAR CASUALTY COVERAGE FOR ANY LIMITED COMMON AREA, OR FOR THE CONTENTS OF ANYTHING ON OR IN THE LIMITED COMMON AREA. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LIMITED COMMON AREA.

Section 6. Association Right of Indemnification. LIMITED COMMON AREAS ARE SOLELY THE RESPONSIBILITY OF THAT OWNER DESIGNATED THE LIMITED COMMON AREA. DESIGNATED OWNER COVENANTS TO INDEMNIFY ASSOCIATION



FOR ANY AND ALL LOSSES INCURRED BY ASSOCIATION IN RELATION TO THAT LIMITED COMMON AREA.

Section 7. Insurable Interest. Owners designated Limited Common Areas shall have an insurable interest in that Limited Common Area. In the event that an Owner's interest in a Limited Common Area is uninsurable because of the nature of his interest, the Association covenants to insure the Limited Common Area according to Owner's written instruction. Any expense incurred as a result of this provision shall be assessable against the Owner under Article IV.

**ARTICLE X  
RESERVED**

**ARTICLE XI  
USE RESTRICTIONS**

Section 1. Residential Use. No Owner shall occupy or use his Lot or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's lessees or guests. No commercial activities of any kind whatsoever shall be conducted in any residence or on any portion of the Lot, including short term rentals.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the Owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

Section 3. Reserved.

Section 4. Household Pets Permitted. No animals, livestock, or poultry of any kind may be raised, bred, or kept on any Lot, Limited Common Area, or in the Common Area, except that no more than two (2) animals (i.e., dogs, cats), or other household pets may be kept upon the Owners Lot or designated Limited Common Area, or on a leash while off the Owner's Lot or Limited Common Area. No dogs, cats, or other household pets will be allowed to remain outside the Home between dusk and dawn, unless accompanied by the Owner at all times. Keeping of household pets shall also be subject to the Rules and Regulations adopted by the Board from time to time.

Section 5. Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board.

Section 6. Oil and Mining Operations. No drilling quarrying or mining operations of any kind (other than water wells) shall be permitted upon or in any Lot or Limited Common Area, or upon the Common Area.

Section 7. Alteration of Common Area. Nothing shall be altered, constructed, or removed from the Common Area except with the written consent of the Board.

Section 8. Leases. Any lease agreement between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules enacted and published by the Board, and that any failure by lessee to comply with the terms of such documents and rules shall be a default under the lease. All leases must be for a term of a minimum of six (6) months. Furthermore, all leases shall be in writing and a copy of each signed lease as well as a copy of each signed addendum to the rental agreement, Exhibit C, shall be left in the office of the Association by the Owner.

Section 9. Recreational Vehicles. Other than on those Lots or Limited Common Areas where a recreational vehicle pad has been permitted by application to the ACC, in no event shall any recreational vehicle, camper, trailer, tent trailer, or motor home be used for a permanent residence (occasional overnight accommodations by the Lot Owner's guests is permitted subject to Rules and Regulations as determined by the Board) in and on the Common Areas or Limited Common Areas of the project or on any Lot. Other than as provided above, recreational vehicles (which include campers, trailers, tent trailers, motor homes, ATVs, and boats), must be parked in designated recreational vehicle pad.

Section 10. Nuisances. No noxious or offensive activities shall be carried on or upon any Lot or Limited Common Area, nor shall anything be done thereon which may become an annoyance or nuisance to the Project.

Section 11. Violation Constitutes a Nuisance. Any act or omission, whereby any restriction, condition, or covenant as set forth in this Declaration, if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by the Association or affected property Owners and such remedy shall be deemed to be cumulative and not exclusive.

Section 12. Rooftop Appliances. No television, radio, satellite dishes, or other external antennas or rooftop appliance of any type or style shall be erected, placed, or maintained upon any of the property, or in front of any building constructed thereon without the prior approval of the ACC and said ACC shall have the right to remove or cause removal of the antennas erected, placed, or maintained without said prior approval.

Section 13. Signs. No billboard or sign of any character shall be erected, posted, painted, or displayed upon or about any Lot or Limited Common Area, except as provided below:

(a) Religious and Holiday Signs.

(i) The Association may not abridge the rights of a Lot Owner to display a religious or holiday sign, symbol, or decoration: (A) inside a Home on a Lot; or (B) outside a Home on: (1) a Lot; (2) the exterior of the Home, unless the Association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the exterior; or (3) the front yard of the Home, unless the Association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the yard.

(ii) The Association may, by rule, prohibit a religious or holiday sign, symbol, or decoration on the exterior of the Home and in the front yard of the Home where the Association has an ownership interest in, or a maintenance, repair, or replacement obligation for the exterior or front yard.

(iii) Notwithstanding Subsection (a)(i) above, the Association may adopt, by rule, a reasonable time, place, and manner restriction with respect to a display that is: (A) outside a dwelling on: (1) a Lot; (2) the exterior of the dwelling; or (3) the front yard of the dwelling; and (B) visible from outside the Lot.

(b) Political Signs.

(i) The Association may not prohibit a Lot Owner from displaying a political sign: (A) inside a Home on a Lot; or (B) outside a Home on: (1) a Lot; (2) the exterior of the dwelling, regardless of whether the Association has an ownership interest in the exterior; or (3) the front yard of the Home, regardless of whether the Association has an ownership interest in the yard.

(ii) The Association may not regulate the content of a political sign.

(iii) Notwithstanding Subsection (b)(i) above, the Association may, by rule, reasonably regulate the time, place, and manner of posting a political sign.

(iv) The Association's design criteria may not establish design criteria for a political sign.

(c) For-Sale Signs.

(i) The Association may not prohibit a Lot Owner from displaying a for-sale sign: (A) inside a Home on a Lot; or (B) outside a Home on: (1) a Lot; (2) the exterior of the Home, regardless of whether the Association has an ownership interest in the exterior; or (3) the front yard of the Home, regardless of whether the Association has an ownership interest in the yard.

(ii) Notwithstanding Subsection (c)(i) the Association may, by rule, reasonably regulate the time, place, and manner of posting a for-sale sign.

Section 14. Garbage and Refuse Disposal. No Lot or Limited Common Area shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. Such trash, rubbish, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 15. Water Supply. No individual water supply system shall be used or permitted on any Lot or group of Lots, or Limited Common Areas or groups of Limited Common Areas, unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department and the ACC.

Section 16. Safe Condition. Without limiting any other provision of this Declaration, each Owner shall maintain and keep such Owner's Lot and his Limited Common Area, at all times in a safe, sound, and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or Limited Common Areas.

Section 17. Outside Lighting. Any light used to illuminate garage, patios, parking areas, driveways, walkways, or for any other purpose shall be so arranged to reflect light away from adjacent residences and away from the vision of passing motorists.

Section 18. Inoperable Motor Vehicles. No type of motor vehicle which is inoperable for any reason shall be permitted to be parked upon any street, Lot, part or portion of the property, Limited Common Area, except in an approved, enclosed garage.

Section 19. Weeds. Each Lot Owner is responsible for controlling and removing weeds and noxious plants growing on his Lot and designated Limited Common Area. Any weeds not controlled or removed by the Owner may be removed or controlled by the Association. Costs of removal or control shall be added to and become part of the assessments to which such Lot is subject.

Section 20. No on Street Parking. No on street parking is permitted on 2500 south, 780 west, 770 west, or 725 west. Vehicles parked in violation of this Section 20 may be towed at the owner's expense, provided the requirements of Utah Code 72-9-603 are complied with. No long-term parking, forty-eight (48) consecutive hours, is permitted in the clubhouse parking lot without permission from the Board.

Section 21. Display of the Flag. The Association may not prohibit an Owner from displaying the United States flag inside a Home or on the Owner's Lot or Limited Common Area appurtenant to the Owner's Lot if the display complies with United States Code, Title 4, Chapter 1. The Association may, by rule of the Board, restrict the display of a United States flag on the Common Area.

Section 22. Accessory Dwelling Unit. For an accessory dwelling unit ("ADU") approved by the local governmental authority pursuant to Utah Code Sections 10-9a-530 and 17-27a-526, the Owner shall provide to the Association, upon request and as a condition to maintain an ADU existing footprint of the Owner's Dwelling Unit, the following information:

- (a) Copies of ADU permits from the local governmental authority;
- (b) Proof of additional parking required by the local governmental authority;
- (c) Copies of business licenses for operating an ADU;
- (d) Copies of liens, if any, held on an ADU by the local governmental authority; and
- (e) Verification of the minimum Lot size required for an ADU, if any, by ordinance of the local governmental authority.

Section 23. Water-Efficient Landscaping Rules. The Board shall adopt rules supporting water-efficient landscaping, including allowance for low water use on lawns during drought conditions, and may not prohibit or restrict the conversion of a grass park strip to water-efficient landscaping.

Section 24. Electronic Vehicle Charging. The Association may not prohibit a Lot Owner from installing or using a charging system in: (a) a parking space: (i) on the Lot Owner's Lot; and (ii) used for the parking or storage of a vehicle or equipment; or (b) a Limited Common Area parking space designated for the Lot Owner's exclusive use. However, the Association may:

(a) require a Lot Owner to submit an application for approval of the installation of a charging system to the Board; (b) require the Lot Owner to agree in writing to: (i) hire a general electrical contractor or residential electrical contractor to install the charging system; or (ii) if a charging system is installed in a Common Area, provide reimbursement to the Association for the actual cost of the increase in the Association's insurance premium attributable to the installation or use of the charging system; (c) require a charging system to comply with: (i) the Association's reasonable design criteria governing the dimensions, placement, or external appearance of the charging system; or (ii) applicable building codes; (d) impose a reasonable charge to cover costs associated with the review and permitting of a charging station; (e) impose a reasonable restriction on the installation and use of a charging station that does not significantly: (i) increase the cost of the charging station; or (ii) decrease the efficiency or performance of the charging station; or (f) require a Lot Owner to pay the costs associated with installation, metering, and use of the charging station, including the cost of: (i) electricity associated with the charging station; and (ii) damage to a Common Area, a Limited Common Area, or an area subject to the exclusive use of another Lot Owner that results from the installation, use, maintenance, repair, removal, or replacement of the charging station.

A Lot Owner who installs a charging system shall disclose to a prospective buyer of the Lot: (a) the existence of the charging station and (b) the Lot Owner's related responsibilities under this Section.

Unless the Lot Owner and the Association otherwise agree: (a) a charging station installed under this Section is the personal property of the Lot Owner of the Lot with which the charging station is associated; and (b) a Lot Owner who installs a charging station shall, before transferring ownership of the Owner's Lot, unless the prospective buyer of the Lot accepts ownership and all rights and responsibilities that apply to the charging station under this Section: (i) remove the charging station; and (ii) restore the premises to the condition before installation of the charging station.

As used in this Section, the terms "charging system," "general electrical contractor," and "residential electrical contractor" are as defined in § 57-8a-801 of the Act.

Section 25. Solar Energy Systems. The provisions of §§ 57-8a-701 through -703 of the Act allowing solar energy systems under certain conditions, do not apply to (a) any express prohibition or an express restriction on a Lot Owner's installation of a solar energy system set forth in a Declaration of this Association recorded before January 1, 2017, or created by official Association action taken before January 1, 2017, and (b) during the "period of administrative control" as defined in § 57-8a-102(19) of the Act. To the extent this Association did not have such restrictions in place prior to January 1, 2017, then any application to the Association for a solar energy system must comply with the requirements and limitations set forth in § 57-8a-701 through -703 of the Act. As used in this Section, the term "solar energy system" is as defined in § 57-8a-102(22) of the Act.

Section 26. Activities in Dwellings and Backyards.

(a) The Association may not interfere with a reasonable activity of an Owner within the confines of a Home or Lot, including backyard landscaping or amenities, to the extent that the activity is in compliance with local laws and ordinances, including nuisance laws and ordinances.

(b) However, any activity of an Owner within the confines of a Home or Lot, including backyard landscaping or amenities, is prohibited where the activity: (i) is not normally associated

with a project restricted to residential use; or (ii) (A) creates monetary costs for the Association or other Lot Owners; (B) creates a danger to the health or safety of occupants of other Lots; (C) generates excessive noise or traffic; (D) creates unsightly conditions visible from outside the Home; (E) creates an unreasonable source of annoyance to persons outside the Lot; or (F) if there are attached Homes, creates the potential for smoke to enter another Lot Owner's Home, the s, or Limited Common Areas.

(c) Unless prohibited by law, the Association may also limit the activities described in subparagraph (b) above, that affect the use of or behavior inside the Home.

## **ARTICLE XII GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, or the Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any covenant, condition or restriction included herein is inconsistent or in conflict with restrictions set forth in the subdivision building, zoning, or other ordinances of the City of Hurricane, the ordinances shall govern so long as the restrictions contained in the ordinances are more restrictive than the terms of this Declaration. However, where the terms of this Declaration are more restrictive than those contained in the ordinances of the City of Hurricane, Owners shall be subject to the enforcement of the terms of this Declaration.

Section 2. Severability, Construction, and Validity of Restrictions. All of said conditions, covenants, and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Association and Lot Owners, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause, and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause, or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns.

Section 4. Gender and Grammar. The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

Section 6. Action of the Association. Except as limited in this Declaration or the Bylaws, the Board acts in all instances on behalf of the Association.

Section 7. Rules Against Perpetuities. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, Bylaws, Plat, Rules, or other Governing Documents of the Association. If for any reason this Declaration does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

Section 8. Fines. The Association, through its Board, shall have the power to levy fines for violations of the Association's Governing Documents and fines may only be levied for violations of the Governing Documents. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the Governing Documents. The Board shall adopt a rule for the procedure to enforce the Governing Documents and levy fines, including a schedule of fines.

Section 9. Tenant Liability. Pursuant to Utah Code Section 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the Governing Documents by the tenant.

Section 10. Notice. When notice is required under this Declaration, notice shall be given as provided in the Bylaws.

Section 11. Eminent Domain. If part of the Common Area is taken by eminent domain: (a) the entity taking part of the Common Area shall pay to the Association the portion of the compensation awarded for the taking that is attributable to the Common Area; and (b) the Association shall equally divide any portion of the award attributable to the taking of a Limited Common Area among the Owners of the Lots to which the Limited Common Area was allocated at the time of the taking.

An Association shall also submit for recording to each county recorder the court judgment or order in an eminent domain action that results in the taking of some or all of the Common Area.

Section 12. Non-Liability for Tort. The Association shall not be liable, in any civil action brought by or on behalf of an Owner, for bodily injury occurring to an Owner, or an Owner's guests, invitees, licensees, or trespassers, on the Association's Common Area or Limited Common Area. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Area or Limited Common Area by its willful, wanton, or grossly negligent act of commission or omission.

Section 13. Non-Liability for Common Area. From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Owners shall be and

remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the Common Area shall be within, under, and subject to the Association – and not Owners. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

Section 14. Notice of Violation/Recording. If an Owner violates this Declaration, the Design Guidelines, or the Rules and Regulations of the Association after (i) written notice of the violation, (ii) a reasonable opportunity to be heard, and (iii) a reasonable opportunity to cure the violation, the Association may, in addition to and not in lieu of other remedies, record against the Owner's Lot a "Notice of Covenant/Rule Violation" in the records of the Washington County Recorder. The Notice of Covenant/Rule Violation shall include the following: (i) name of the Owner, (ii) address of the Association, or its manager, (iii) the covenant or rule violated, and (iv) any other information deemed relevant by the Board. The Notice of Covenant/Rule Violation runs with the land and shall be released when the Board determines that the violation has been cured.

Section 15. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Residential Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Residential Declaration.

Section 16. Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 17. Reserve Analysis/Reserve Fund. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an Owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the Governing Documents, or, if the Governing Documents do not provide for an



amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent.

Reserve fund money means money to cover: (a) the cost of repairing, replacing, or restoring Common Areas and facilities that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, if the cost cannot reasonably be funded from the general budget or other funds of the Association; or (b) a shortfall in the general budget, if: (i) the shortfall occurs while a state of emergency, declared in accordance with Utah Code § 53-2a-206, is in effect; (ii) the geographic area for which the state of emergency is declared extends to the entire state; and (iii) at the time the money is spent, more than ten percent (10%) of the Owners that are not Board Members are delinquent in the payment of assessments as a result of events giving rise to the state of emergency.

The Board may not use reserve fund money for any purpose other than the purpose for which the reserve fund was established, including daily maintenance expenses, unless a majority of Owners vote to approve the use of reserve fund money for that purpose.

The Association shall maintain a reserve fund separate from other Association funds.

Section 18. Budget. At least annually the Board shall prepare and adopt a budget for the Association and the Board shall present the budget at a meeting of the Members. A budget presented by the Board is only disapproved if Member action to disapprove the budget is taken in accordance with the limitations under Section 215 of the Act.

### **ARTICLE XIII AMENDMENT**

Section 1. Lot Owners Right to Amend. This Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the membership votes actually represented in person, by proxy, or by ballot that are entitled to be cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be sixty percent (60%) of all the votes of the Membership. Amendments shall be effective upon recording in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the Members will vote on said amendment.

### **ARTICLE XIV RESERVED**

### **ARTICLE XV LIMITED COMMON AREA**

Section 1. Limited Common Area. Each Lot Owner will be designated a Limited Common Area for his use and to the exclusion of others except as provided herein. Use and enjoyment of such Limited Common Area are limited by the terms of this Declaration.

Section 2. Landscaping. Prior to occupancy, the front half area of each Limited Common Area shall be landscaped. Landscaping on each Limited Common Area shall require low water maintenance and subject to irrigation by an automatic drip system. Within three (3) months after the completion of the construction of any Home upon the Lot, the Owner must have completed the landscaping of his Limited Common Area. The planning of trees, shrubs, and grass is allowed subject to compliance with the restrictions and conditions contained herein and also with reasonable Rules and Regulations which may be established by the ACC and desert or arid motif is encouraged. All landscaping shall be compatible with other Homes in the Project. Landscape elements on street corners shall be located so as not to create a hazard for the movement of vehicles or pedestrians along the streets. All landscaping must be approved by the ACC and shall be properly cared for by the Member designated the Limited Common Area to remain healthy and alive. Should a Member fail to comply with the provisions of this paragraph, the Board shall have the right enter upon such Limited Common Area to have landscaping completed at the Member's expense. The cost of such installation shall be added to and become part of the assessment to which such Lot is subject.

IN WITNESS HEREOF, the President of the Association hereby certifies that on this 25<sup>th</sup> day of September, 2023, that this Corrected Fourth Amended and Restated Declaration is to correct the legal description contained in the Fourth Amended and Restated Declaration and that the Fourth Amended and Restated Declaration was approved by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners, which instrument is attached hereto as Exhibit B.

**RAINBOW CANYON HOMEOWNERS ASSOCIATION,**  
a Utah nonprofit Corporation

Linda Gingras  
By: Linda Gingras  
Its: President

STATE OF UTAH )  
 )  
 ) :ss.  
 )  
COUNTY OF WASHINGTON )

On this 25<sup>th</sup> day of September, 2023, before me personally appeared Linda Gingras, whose identity is personally known or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that she is the President of the Rainbow Canyon Homeowners Association, a Utah nonprofit corporation, and that the foregoing document was signed by her on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and she acknowledged before me that she executed the document on behalf of the Association and for its stated purpose.



Kristen Kim Risenhoover  
Notary Public

Exhibit A  
(Legal Description)

This Corrected Fourth Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Rainbow Canyon affects the following real property, all located in Washington County, State of Utah:

All of Lots 1 through 12, Lots 23 through 34, Lots 44 through 51, Lots 61 through 69, Lots 79 through 94, and Lots 106 through 121, together with all Common Area, Shadow Canyon 1 FKA Leisure Time Est 1 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-1-1 through H-SCAN-1-12  
PARCEL: H-SCAN-1-23 through H-SCAN-1-34  
PARCEL: H-SCAN-1-44 through H-SCAN-1-51  
PARCEL: H-SCAN-1-61 through H-SCAN-1-69  
PARCEL: H-SCAN-1-79 through H-SCAN-1-94  
PARCEL: H-SCAN-1-106 through H-SCAN-1-121

All of Lots 13 through 20 and Lots 35 through 42, together with all Common Area, Shadow Canyon 2A (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-2-A-13 through H-SCAN-2-A-20  
PARCEL: H-SCAN-2-A-35 through H-SCAN-2-A-42

All of Lots 52 through 59 and Lots 70 through 77, together with all Common Area, Shadow Canyon 2B (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-2-B-52 through H-SCAN-2-B-59  
PARCEL: H-SCAN-2-B-70 through H-SCAN-2-B-77

All of Lots 95 through 103 and Lots 122 through 130, together with all Common Area, Shadow Canyon 2C (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-2-C-95 through H-SCAN-2-C-103  
PARCEL: H-SCAN-2-C-122 through H-SCAN-2-C-130

All of Lot 21, Lot 43, Lot 60, Lot 78, Lot 104, and Lots 131 through 146, together with all Common Area, Shadow Canyon 2D (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-2-D-21

PARCEL: H-SCAN-2-D-43

PARCEL: H-SCAN-2-D-60

PARCEL: H-SCAN-2-D-78

PARCEL: H-SCAN-2-D-104

PARCEL: H-SCAN-2-D-131 through H-SCAN-2-D-146

All of Lots 1 through 10 and Lots 21 through 30, together with all Common Area, Shadow Canyon 3A (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-3-A-1 through H-SCAN-3-A-10

PARCEL: H-SCAN-3-A-21 through H-SCAN-3-A-30

All of Lots 11 through 20, Lots 31 through 39, and Lots 84 through 86, together with all Common Area, Shadow Canyon 3B (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SCAN-3-B-11 through H-SCAN-3-B-20

PARCEL: H-SCAN-3-B-31 through H-SCAN-3-B-39

PARCEL: H-SCAN-3-B-84 through H-SCAN-3-B-86

Exhibit B  
(Signed Instrument)

Exhibit C  
(Addendum to Rental Agreement)

This Addendum supplements that certain rental agreement (“Lease”) for the real property located at \_\_\_\_\_ (street address), \_\_\_\_\_, Utah, (the “Property”) entered into by and between \_\_\_\_\_ as Owner \_\_\_\_\_ as Tenant, dated the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the following:

**CC&Rs:** Tenant acknowledges that the Property is governed by a certain Corrected Fourth Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Rainbow Canyon, a Residential Planned Unit Development (Formerly known as Shadow Canyon), as the same have been amended from time to time (the “CC&Rs”). A true and correct copy of the CC&Rs, including amendments thereto, is attached hereto as Exhibit 1.

**Governing Documents:** The CC&Rs, Articles of Incorporation, Bylaws, architectural design standards, and rules and regulations are hereafter referred to as the Governing Documents. Tenant and Owner acknowledge that they are bound by the Governing Documents, as the same are amended from time to time.

**Breach of Lease:** Tenant agrees to abide by all of the Governing Documents and acknowledges that failure to do so will constitute a breach of the Lease and will subject the Tenant to eviction from the Property by the Owner.

**Costs of Enforcement:** The expenses incurred by the Association in enforcing this Addendum and the Governing Documents, including attorneys’ fees and costs of suit, shall be repaid to the Association by the Owner. Failure of the Owner to make such repayment within fifteen (15) days after receipt of written demand thereof, shall entitle the Board the Association to levy and add to the assessment against such Owner and the Property, all expenses incurred by the Association and to foreclose the Assessment Lien according to Utah Law; or file suit to collect the amounts due and owing, or both.

**Enforcement Against Owner:** Nothing herein shall relieve the Owner of the Owner’s obligation to abide by the Governing Documents and the Association shall have all remedies afforded to it to enforce the terms of the Governing Documents against the Owner.

**Complete Information:** Both the Owner and Tenant shall supply all information requested in this Addendum and shall sign in the space provided below. A signed copy of the Lease and this Addendum (without modification) must be delivered to the Board of Association.

\_\_\_\_\_  
Signature by Tenant  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature by the Owner  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Date: \_\_\_\_\_

Date received by Association: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Term of Lease: \_\_\_\_\_