

BYLAWS

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COPPER CREEK HOMEOWNER'S ASSOCIATION

A Nonprofit Corporation of the State of Idaho

Pursuant to the provisions of the Idaho Nonprofit Corporation Act, the Board of Directors of COPPER CREEK HOMEOWNER'S ASSOCIATION (the "Association") hereby adopts the following Bylaws of the Association. These Bylaws serve to govern the powers, duties and actions of the Association, and all terms, definitions and provisions are subject to and governed by the Declaration of Covenants, Conditions and Restrictions of the Association (the "Declaration"). This Declaration supersedes documents numbered 20801317 and 21015422 recorded in Bannock County.

ARTICLE I

NAME AND OFFICE

- 1.1 Name. The name of the Association is COPPER CREEK HOMEOWNER'S ASSOCIATION.
- 1.2 Offices. The initial office of the Association will be at 13614 South Carolina Hill Court,, Draper, Utah 84020.
- 1.3 Use of Terms. Except as otherwise provided herein, all capitalized terms which are defined in the Declaration will have the same respective meanings when used in these Bylaws.

ARTICLE II

MEMBERS AND MEETINGS

2.1 Annual Meetings. The annual meeting of the Members of the Association will be held in each year at such time and place as may be determined by the Board of Directors, and if no determination is made, at the initial office set forth above, with the first such meeting to be held in the year following the year in which the Association was incorporated. For all purposes herein the term "Member" refers to each Owner of a Lot in the Copper Creek P.U.D. (the "Subdivision"), located at coordinates 42.903191, -112.426242 on Surprise Valley Road, Pocatello, Bannock County, Idaho. The Board of Directors may designate some other time, date and place for the annual meeting by giving proper notice in advance of the meeting. The purpose of the annual meeting is the election of Directors, and to consider such other business that comes before the meeting. If the Directors are not elected at the annual meeting, the existing Directors will continue to serve until their successors are named in a special meeting called for that purpose or until the next annual meeting. The Directors may change the date, time and place of the annual meeting as they see fit by formal resolution.

2.2 Special Meeting. Special Meetings of the Members may be called by any member of the Board of Directors or by the President, or by the Members of the Association representing not less than one-third (1/3) of the total votes of the Association. Any notice of Special Meeting shall state the time, place and date of the meeting, and the matters to be considered at that meeting. When a Special Meeting is called by the Members of the Association, the notice shall be in writing and delivered to the President. The President will then provide written notice to all of the members.

2.3 Notice of Meeting. The Board of Directors shall cause written or printed notice of the date, time, place and purposes of all meetings of the Members to be sent to each of the Members not more than 60 but not less than 10 days prior to the meeting. In the case of the annual meeting, no purpose need be stated in the notice. Mailed notice is deemed delivered when it is deposited in the United States Mail, postage prepaid, addressed to the Member at the last known address. Each Member shall register such Member's address with the Association, and it shall be the obligation of the Member to provide notice of any change of address to the Association. If no address is registered, the Association may mail that Member's notice to the Lot owned by the Member. Only one notice will be mailed on each Lot. If there are multiple owners, they must designate one of them to receive the notice of the meeting on their behalf.

## 2.4 Members of Record.

(a) For purposes of determining a quorum, determining the persons entitled to vote, and all other matters before a meeting of the Members, the Association may designate a record date, not more than 60 days or less than 10 days prior to the meeting date to determine the Members entitled to notice and to vote at the meeting. If no record date has been fixed, the record date is deemed to be the date on which notice of the meeting was mailed to the Members. The persons appearing as Members as of the record date are deemed entitled to notice and to vote at the meeting. Persons who become Members subsequent to the record date, or whose ownership is not registered with the Association until subsequent to the record date shall not be entitled to notice, will not be counted in comprising a quorum and shall not be entitled to vote at the meeting. This will not preclude a person who acquires such Member's Membership subsequent to the record date from voting the interest of such Member's predecessor under a written proxy.

(b) The Association will have two classes of voting membership:

**Class A.** Class A members are all of the lot owners other than Kilgore Properties, LLC, a Utah limited liability company (the "**Declarant**"), and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any one Lot.

**Class B.** The only Class B Member is the Declarant, which is entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(c) Upon purchasing a Lot in the Subdivision, each Owner shall promptly furnish the Association with a copy of the deed or other instrument under which he or she acquired title to the Lot.

2.5 Quorum. At any meeting of the Members, the presence of Members, in person or by proxy, holding the right to cast more than 50% of the total votes of the Association will constitute a quorum for the transaction of business. If a quorum is not present at a meeting, the Members present, in person or by proxy, though less than a quorum, may adjourn the meeting to a later date set by those Members present. Notice of the rescheduled meeting will be sent to the Members providing at least ten days' notice of the new meeting. At any rescheduled meeting, a quorum will be deemed to exist comprised of those Members present in person or by proxy at the reconvened meeting.

2.6 Proxies. At each meeting of the Members, each Member entitled to cast a vote will be entitled to vote in person or by written proxy. All proxies must be in writing and signed by the Member as shown on the records of the Association. When a Lot is jointly held, the proxy must be signed by all of the joint owners of the Lot. Proxies must be presented to the Secretary of the Meeting at the beginning of the meeting for purposes of determining a quorum. The secretary will make an entry of proxies in the minutes of the meeting.

2.7 Voting Rights. With respect to each matter presented to the Members, including the election of Directors, each Member will be entitled to cast one vote for each Lot that the Member owns. However, in any event, no Member may cast any vote if such Member is in any arrears on their assessment account. Lots with multiple Owners will be entitled to only one vote for that Lot, and if the multiple owners of that Lot are not able to agree on how to cast the vote, no vote will be counted. In such event, notwithstanding that such vote will not be counted, the Lot may still be counted for purposes of determining whether a quorum exists for the conduct of business of the Association. If only one of the multiple Owners of a Lot is present at any meeting, the other owners are deemed to have consented to that Owner voting the interests of the Lot. If a Lot is held subject to a trust deed or mortgage, the trustor or mortgagor will be entitled to vote, and the lender will have no right to vote; provided however that when a lender has taken possession of any Lot, the lender will be deemed to have succeeded to the interest of the trustor or mortgagor and will then be entitled to cast that vote.

2.8 Majority Vote. Except as otherwise provided in the Declaration, any matter placed before the Members for a vote shall pass if upon the affirmative vote of the majority the Owners/Members representing a majority of the Lots in the Subdivision. Election of Directors will be by secret ballot. Other matters may be voted by secret ballot or by show of hands or such other means as the officer conducting the meeting shall determines, in the officer's discretion.

2.9 Waiver of Irregularities. Any inaccuracies, irregularities, or errors in any call for a meeting or notice of meeting, inaccuracies or irregularities in the determination of a quorum or acceptance of proxies are deemed waived unless there is an objection stated at the meeting prior to the vote being taken.

2.10 Action without Meeting. Any action that may be taken at any meeting of the Members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Members having not less than the minimum voting power that would be necessary to authorize or take the action at meeting at which all Members entitled to vote on the action were present and voted. Unless the written consents of all Members entitled to vote have been obtained, notice of any such Member approval without a meeting shall be given as required by IDAHO CODE ANN. § 30-30-504, or a successor provision.

### ARTICLE III

#### BOARD OF DIRECTORS

3.1 General Powers. The Board of Directors will have authority to manage and control the property and affairs of the Association. The Board of Directors may exercise all powers conferred upon them by law, by the Articles of Incorporation, or by these Bylaws, provided however that those powers which are specifically reserved to the Members by law or by the Articles of Incorporation shall be exercised only by the Members. The Board may delegate its powers to committees, officers, managers, or others such of its powers as are appropriately delegated.

3.2 Number and Tenure. The Board of Directors will be comprised of at least one (1) individual. The initial Director shall be Jason Kilgore. He will serve until the next annual meeting in which Directors are elected, and shall continue to serve until their successors have been elected and assumed office. Thereafter, Directors will be elected onto the Board at the annual meeting each year. Nominations for Directors will be open at each such annual meeting. Directors will have no term limits.

3.3 Board Meetings. The Board of Directors will have at least one meeting per year, which will be immediately following the Annual Meeting of Members for the purpose of electing officers. The Directors may meet as often as they see fit, and as required by law or the Articles for purposes of approving annual reports, tax returns, and similar matters. Special Meetings may be called by the President, or any Board Member, by giving notice to the other Board members. Notice of Board meetings will be given in writing or by telephone or email not more than 10 days and not less than 3 days prior to the date of the meeting.

3.4 Quorum. A quorum at a Board meeting will consist of a simple majority of the Board. Board members may be counted as present if they are participating in the meeting by telephone. No proxies will be given among Board members.

3.5 Assessments. Assessments of the Members, as called for in the Declaration, shall be levied by the Association. The Directors shall prepare an annual budget for presentation to the Members. The Assessments will be deemed levied when approved by a majority of the Lots represented at the annual meeting or a special meeting called for that purpose. If a majority of the Lots are unable to approve an assessment, then the assessments shall continue at the same rate as the prior year, with an automatic increase by an amount equal to five percent (5%) of the prior annual assessment until a new assessment can be approved by the Members. If no new assessment is approved, then the annual assessment will continue with the five percent (5%) increase as set forth herein.

3.6 Deadlock. In the event of a deadlock by the members of Board, the President shall immediately call for a special meeting of the Members and, at the direction of the President, shall submit the matter to the Members for determination. A majority of the vote of the Members shall decide the action to be taken in such event.

3.7 Compensation. The Board of Directors shall serve without compensation, provided that their reasonable out of pocket expenses for Association business, including the costs of attending Board meetings, if any, may be reimbursed by the Association.

3.8 Resignation or Removal. Any Director may resign at any time. If a Director is a Lot Owner, the Director is deemed to have resigned when he or she sells (or otherwise is divested of) his or her Lot and therefore ceases to be Member of the Association. Any Director may be removed prior to the end of his or her term of office by an affirmative vote of [67%] of the Members of the Association at a regular or special meeting called for that purpose.

3.9 Vacancies. Vacancies on the Board of Directors will be filled by appointment of a successor by the remainder of the Board, provided that any such appointee will be confirmed or rejected at the next regular meeting of the Members. Any such Director is to fill the balance of the vacant term which he or she has filled, and will stand for election at the expiration of that term.

3.10 Action without Meeting.

(a) Any action required or permitted to be taken at a Board meeting may be taken without a meeting if each and every member of the Board in writing either:

(i) votes for the action; or

(ii) abstains from voting and waives the right to demand that action not be taken without a meeting.

(b) Action is taken under this Section 3.10 only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Directors then in office were present and voted.

(c) The provisions of this Section 3.10 are subject to IDAHO CODE ANN. § 30-29-821, or a successor provision.

## ARTICLE IV

### OFFICERS

4.1 Number. The officers of the Association shall consist of at least a President, Vice-President, and a Secretary/Treasurer, all of which may be filled by the same person. The Board may establish such other officers as it deems appropriate.

4.2 Appointment and Tenure. The officers will be appointed by the Board of Directors. All officers serve at the pleasure of the Board and may be removed by a majority vote of the Board in a meeting called for that purpose. Officers need not be Members of the Association.

4.3 Duties of the President. The President shall preside at meetings of the Board of Directors and at meetings of Members. The President shall sign, on behalf of the Association, all legal documents approved by the Board, including deeds and mortgages and other contracts. The President shall supervise and be primarily responsible for the day to day operation of the Association's affairs, including the firing and termination of employees and subordinates. The President shall perform such other duties as assigned by the Board.

4.4. Duties of the Vice-President. The Vice-President shall exercise all duties of the President, in the absence of the President from office.

4.5 Duties of the Secretary/Treasurer. The Secretary/Treasurer is responsible to keep accurate records of the Members of the Association and the transfer of their interests to others, to keep minutes at the meetings of the Association Members and the Directors, and cause notice of any meetings to be issued as called for in these Bylaws, to file annual reports, to prepare financial reports, maintain adequate financial records for the Association, and to perform all other assignments of the Board.

4.6 Compensation. The officers may be compensated for their services in the discretion of the Board. Reasonable out-of-pocket expenses incurred in the course of performing duties for the Association will be reimbursed according to policies approved by the Board. The Board may fix such other compensation as it finds appropriate given the responsibility of the officers.

4.7 Delegation. The duties of the day to day operation of the Association, and all duties of maintenance required of the Association may be delegated by the President, when approved by the Board of Directors, to such companies or persons as may be determined in the discretion of the President, and as approved by the Board of Directors.

## ARTICLE V

### INDEMNIFICATION

5.1 Indemnification Against Third-Party Actions. To the extent and as permitted in IDAHO CODE ANN. §§ 30-30-626, and 858, or successor provisions, the Association may defend and indemnify an individual made a party to a "Proceeding" (as defined in IDAHO CODE ANN. § 30-30-626, or a successor provision) because the individual was or is a director or officer of the Association, against liability incurred in the Proceeding if:

- (a) the individual's conduct was in good faith;
- (b) the individual reasonably believed that the individual's conduct was in, or not opposed to, the Association's best interests; and
- (c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

5.2 Expenses. The mandatory indemnification provisions of IDAHO CODE ANN. § 30-29-852, or a successor provision, shall apply to directors and officers.

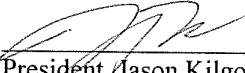
5.3 Advance of Expenses. The Association may pay for or reimburse the reasonable expenses incurred by a Director or officer who is a party to a Proceeding in advance of final disposition of the Proceeding, to the extent and as authorized in IDAHO CODE ANN. §§ 30-29-854 and 858, or successor provisions.

## ARTICLE VI

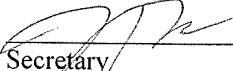
### AMENDMENT

6.1 Amendment. These Bylaws may be amended by the Board of Directors from time to time as they may determine. The Members may also, during any annual meeting, or special meeting called for that purpose, amend the Bylaws. Any amendment must be consistent with the Declaration and the Articles of Incorporation and must comply with Idaho law and may not restrict the use of Lots to the extent that such use was expressly allowed under the Declaration.

Adopted this 12th day of December 2018.

  
\_\_\_\_\_  
President, Jason Kilgore

Attest:

  
\_\_\_\_\_  
Secretary

**AFTER RECORDING, RETURN TO:**

Graden P. Jackson  
STRONG & HANNI  
9350 South 150 East, Suite 820  
Sandy, UT 84070

**Affects the Following Property:**

Lots 1-40 Block 2 Copper Creek Subdivision

Space Above for Recorder's Use

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
COPPER CREEK P.U.D.**

Kilgore Properties, LLC  
Declarant

**TABLE OF CONTENTS**

**ARTICLE 1 DEFINITIONS..... 1**

    1.1 Applicant..... 1

    1.2 Application..... 1

    1.3 Approval ..... 2

    1.4 Architectural Guidelines..... 2

    1.5 Architectural Review Committee..... 2

    1.6 Articles..... 2

    1.7 Assessments..... 2

    1.8 Association..... 2

    1.9 Board..... 2

    1.10 Building..... 2

    1.11 Bylaws..... 2

    1.12 City..... 2

    1.13 Common Areas..... 2

    1.14 Common Expenses..... 2

    1.15 County..... 2

    1.16 Declarant..... 2

    1.17 Declaration..... 3

    1.18 Development..... 3

    1.19 Governing Documents..... 3

    1.20 Guest..... 3

    1.21 Limited Common Areas..... 3

    1.22 Lot..... 3

    1.23 Member..... 3

    1.24 Mortgage..... 3

    1.25 Owner..... 3

    1.26 Party Wall..... 3

    1.27 Person..... 3

    1.28 Plat..... 3

    1.29 Property..... 3

    1.30 Reserve Fund..... 3

    1.31 Rules and Regulations..... 4

    1.32 State..... 4

    1.33 Tenant..... 4

    1.34 Unit..... 4

**ARTICLE 2 MEMBERSHIP IN THE ASSOCIATION..... 4**

    2.1 Organization..... 4

    2.2 Membership..... 4

    2.3 Voting Rights..... 4

**ARTICLE 3 MANAGEMENT OF THE ASSOCIATION..... 4**

    3.1 Board of Trustees..... 4

    3.2 Liability..... 5

**ARTICLE 4 POWERS AND OBLIGATIONS OF THE ASSOCIATION..... 5**

    4.1 General Powers and Obligations..... 5

    4.2 Specific Powers and Duties..... 5

4.3 Implied Rights and Obligations ..... 6

**ARTICLE 5 PROPERTY RIGHTS IN LOTS**..... 6

5.1 Use and Occupancy..... 6

5.2 Easements Reserved..... 6

5.3 Form for Conveyancing..... 6

**ARTICLE 6 PROPERTY RIGHTS IN COMMON AREAS** ..... 7

6.1 Easement of Enjoyment for Common Area..... 7

6.2 Easement of Enjoyment for Common Area..... 7

6.3 Title to Common Areas and Limited Commons Areas..... 7

6.4 Limitations on Easement of Enjoyment..... 7

6.5 Alienation of the Common Areas and Limited Common Areas..... 8

**ARTICLE 7 ASSESSMENTS**..... 8

7.1 Purpose of Assessments..... 8

7.2 Types of Assessments..... 8

7.3 Apportionment of Assessments..... 8

7.4 Annual Budget..... 8

7.5 Annual Assessments..... 9

7.6 Special Assessments..... 9

7.7 Individual Assessments..... 9

7.8 Reserve Fund..... 9

7.9 Creation of Lien and Personal Obligation of Assessments..... 9

**ARTICLE 8 MAINTENANCE, INSURANCE, AND RESTORATION OBLIGATIONS OF THE ASSOCIATION** . 10

8.1 Maintenance..... 10

8.2 Insurance..... 10

8.3 Restoration..... 12

**ARTICLE 9 MAINTENANCE, INSURANCE, AND RESTORATION OBLIGATIONS OF OWNERS** ..... 12

9.1 Maintenance..... 12

9.2 Insurance..... 14

9.3 Restoration..... 14

9.4 Arbitration..... 15

**ARTICLE 10 CONDEMNATION** ..... 15

10.1 Allocation of Condemnation Award..... 15

10.2 Repair and Restoration..... 15

10.3 Retention of Rights..... 15

**ARTICLE 11 ARCHITECTURAL REVIEW** ..... 15

11.1 General..... 15

11.2 Composition of Architectural Review Committee..... 16

11.3 Architectural Guidelines..... 16

11.4 Application..... 16

11.5 Approval Procedure..... 16

11.6 Appeal..... 17

11.7 Fees..... 17

11.8 Enforcement..... 17

11.9 Majority Action..... 17

11.10	<u>Liability</u> .....	17
11.11	<u>Nonwaiver</u> .....	17
11.12	<u>Effective Period of Consent</u> .....	18
11.13	<u>Estoppel Certificate</u> .....	18
<b><u>ARTICLE 12 RESTRICTIONS</u>.....</b>		<b>18</b>
12.1	<u>Further Subdivision, Lot Line Adjustments, Property Restrictions, Rezoning, Consolidation of Lots</u> .....	18
12.2	<u>Common Areas and Limited Common Areas</u> .....	18
12.3	<u>Permitted Use</u> .....	19
12.4	<u>Permitted Structures</u> .....	19
12.5	<u>Size</u> .....	20
12.6	<u>Setbacks</u> .....	20
12.7	<u>Height</u> .....	20
12.8	<u>Landscaping; Irrigation</u> .....	20
12.9	<u>Fences, Walls and Hedges</u> .....	20
12.10	<u>Nuisances</u> .....	20
12.11	<u>Hazards</u> .....	21
12.12	<u>Animals</u> .....	21
12.13	<u>Motor Vehicles</u> .....	21
12.14	<u>Signs</u> .....	21
12.15	<u>Sewer; Drainage; Fuel; Service Facilities</u> .....	22
12.16	<u>Antennas</u> .....	22
12.17	<u>Completion of Construction</u> .....	22
12.18	<u>Deviations</u> .....	22
<b><u>ARTICLE 13 ENFORCEMENT</u>.....</b>		<b>22</b>
13.1	<u>General</u> .....	22
13.2	<u>Fines</u> .....	23
13.3	<u>Enforcement of Assessment Lien</u> .....	23
13.4	<u>Interest, Expenses and Attorneys' Fees</u> .....	23
13.5	<u>Nonexclusiveness and Accumulation of Remedies</u> .....	24
<b><u>ARTICLE 14 MORTGAGES</u>.....</b>		<b>24</b>
14.1	<u>Subordination of Lien to Mortgages</u> .....	24
14.2	<u>Notification of First Mortgagee</u> .....	24
14.3	<u>Reimbursement of First Mortgagees</u> .....	24
<b><u>ARTICLE 15 AMENDMENT AND REPEAL</u>.....</b>		<b>25</b>
15.1	<u>Declaration</u> .....	25
15.2	<u>Articles</u> .....	25
<b><u>ARTICLE 16 MISCELLANEOUS PROVISIONS</u>.....</b>		<b>25</b>
16.1	<u>Joint Owners</u> .....	25
16.2	<u>Tenants/Guests</u> .....	25
16.3	<u>Construction; Severability; Number; Captions; Exhibits</u> .....	25
16.4	<u>Approvals, Notices, and Other Writings</u> .....	25

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
COPPER CREEK P.U.D.**

This Declaration of Covenants, Conditions, and Restrictions for Copper Creek P.U.D. (“**Declaration**”) is made this 12th day of December 2018, by **Kilgore Properties, LLC**, a Utah limited liability company (“**Declarant**”).

**RECITALS**

A. WHEREAS, the Declarant desires to provide for the preservation of the values and amenities for the Copper Creek residential community, and common areas, and to this end, desires to subject the real property described in Exhibit A together with such additions as may hereafter be made thereto to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and appurtenant to the property and for the benefit of each owner thereof; and

B. WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

C. WHEREAS, Declarant, has caused to be incorporated under the laws of the State of Idaho, as a non-profit corporation, Copper Creek Homeowner’s Association, Inc., for the purpose of exercising the forgoing functions.

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares that the Property will be held, sold, and conveyed subject to the following covenants, conditions, restrictions and easements, which will run with the Property and will be binding upon all parties having or acquiring any right, title, or interest in or to the Property or any part thereof, and will inure to the benefit of each Owner thereof.

**Article 1  
DEFINITIONS**

As used in this Declaration, the terms set forth below will have the following meanings:

1.1 **Applicant.** Any Owner seeking to construct improvements on its Lot who submits an Application to the Architectural Review Committee.

1.2 **Application.** Defined in Section 11.4.

1.3 **Approval** (or other forms of the word, whether capitalized or not) means, unless otherwise specified in this Declaration: (a) with regard to Declarant, the Association, the Board, or the Architectural Review Committee: advance written approval; (b) with regard to the Members: approval by the requisite percentage of votes entitled to be cast by the Members participating in a duly called meeting in person, by proxy or by written ballot.

1.4 **Architectural Guidelines.** The architectural, design, and construction guidelines and review procedures adopted pursuant to Article 11, as they may be amended.

1.5 **Architectural Review Committee.** The committee appointed pursuant to Article 11.

1.6 **Articles.** The articles of incorporation of the Association, as may be amended from time to time.

1.7 **Assessments.** All assessments and other charges, fines, and fees imposed by the Association on an Owner in accordance with the Governing Documents.

- 1.8 **Association.** Copper Creek Homeowner's Association, a Utah nonprofit corporation (and its successors and assigns).
- 1.9 **Board.** The board of trustees of the Association.
- 1.10 **Building.** A multi-family residential structure containing two Units under one roof, even though each Unit is located on a separate Lot.
- 1.11 **Bylaws.** The bylaws of the Association, as may be amended from time to time.
- 1.12 **City.** Pocatello, Idaho.
- 1.13 **Common Areas.** Those areas (and any improvements on such areas) within the Development intended for the common use and enjoyment of the Owners and their Tenants and Guests, as designated on the Plat or established by this Declaration. Without limiting the generality of the previous sentence, Common Areas include the areas labeled on the Plat as "Common." The Declarant may transfer ownership of common area that is intended to become a public right of way to the City after construction of the Development is completed.
- 1.14 **Common Expenses.** The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents, including, without limitation, the cost of carrying out the powers and obligations of the Association set forth in Article 4.
- 1.15 **County.** Bannock County, Idaho.
- 1.16 **Declarant.** Kilgore Properties, LLC, a Utah limited liability company, and its successors and assigns if such successor or assignee acquires Declarant's interest in the Property, or less than all of Declarant's interest in the Property if a recorded instrument executed by Declarant assigns to the assignee all of Declarant's rights under this Declaration.
- 1.17 **Declaration.** The Declaration of Covenants, Conditions, and Restrictions for the Copper Creek P.U.D.
- 1.18 **Development.** Copper Creek Subdivision, located approximately at coordinates 42.903191, -112.426242 on Surprise Valley Road, Pocatello, Bannock County, Idaho.
- 1.19 **Governing Documents.** This Declaration, the Articles, the Bylaws, the Architectural Guidelines, and the Rules and Regulations.
- 1.20 **Guest.** Any person who is a visitor or invitee and who (a) is accompanied by an Owner or a Tenant, or (b) has been granted permission by an Owner to occupy its Unit for a period of time.
- 1.21 **Limited Common Areas.** Any Common Areas designated for exclusive use and enjoyment by the Owner of a particular Unit, as depicted on the Plat as "Limited Common".
- 1.22 **Lot.** A portion of the Property which is a legally described tract or parcel of land within the Development or which is designated as a Lot on any recorded subdivision plat relating to the Property.
- 1.23 **Member.** Any Person holding a membership in the Association pursuant to Section 2.2.
- 1.24 **Mortgage.** A mortgage or a trust deed; "**Mortgagee**" means a mortgagee or a beneficiary of a trust deed.
- 1.25 **Owner.** Any Person, including Declarant, having a fee ownership interest in a Lot. "Owner" does not include a Tenant or a Person holding less than a fee interest in a Lot. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership will not discharge an Owner from obligations incurred before termination.

- 1.26 **Party Wall.** A wall dividing two Units in a Building, as further defined in Section 9.1.
- 1.27 **Person.** A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.
- 1.28 **Plat.** Copper Creek P.U.D., recorded September 15, 2010, as Entry No. 21015423 in the official records of the County Recorder.
- 1.29 **Property.** The real property legally described on Exhibit A.
- 1.30 **Reserve Fund.** A fund established for the replacement of Common Area and Limited Common Area improvements, as described in Section 7.8.
- 1.31 **Rules and Regulations.** Those rules and regulations adopted by the Board governing the conduct of persons on, and the operation and use of, the Common Areas and Limited Common Areas.
- 1.32 **State.** The state of Idaho.
- 1.33 **Tenant.** Any Person who is leasing or renting a Unit.
- 1.34 **Unit.** A portion of a Building located on an individual Lot and designed and intended for single-family residential use, identified in the Plat as Units 1 through 40.

## Article 2

### MEMBERSHIP IN THE ASSOCIATION

2.1 **Organization.** The Association will be an Idaho nonprofit corporation and will have the property, powers, and obligations set forth in this Declaration for the benefit of the Property and all Owners. The Articles will provide for the Association's perpetual existence, but if the Association is at any time dissolved, whether inadvertently or deliberately, it will automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers, and obligations of the incorporated association existing immediately before its dissolution will automatically vest in the successor unincorporated association, and such vesting will thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association will be governed by the Articles and Bylaws as if they had been made to constitute the governing documents of the unincorporated association.

2.2 **Membership.** Every Owner of one or more Lots within the Development, including Declarant, will be a Member of the Association. Such membership will begin automatically when a Person becomes an Owner and will continue until the Person is no longer an Owner, at which point the membership will expire automatically.

2.3 **Voting Rights.** Subject to and expressly as otherwise provided in the Articles and/or Bylaws, each Member will be entitled to one vote for each Lot owned, except that no more than one vote may be cast with respect to any one Lot. When a Lot is owned by multiple Owners, all such Persons will be Members and the vote for such Lot will be exercised as the Owners among themselves determine. However, if the Owners of a Lot cannot agree on how to exercise their vote with respect to a pending matter, any such Owner may deliver notice of such disagreement to the Association before the vote is finalized, and the vote will then be disregarded with respect to such matter.

## Article 3

### MANAGEMENT OF THE ASSOCIATION

3.1 **Board of Trustees.** The affairs of the Association will be conducted by the Board and by such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. The Board will be composed of five Trustees, who will be elected by the Members and whose terms and qualifications will be set in accordance with the Bylaws.

3.2 **Liability.** A Trustee or officer of the Association will not be liable to the Association or any Member for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. If any Trustee or officer of the Association is made a party to any proceeding because the individual is or was a Trustee or officer of the Association, the Association will indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

#### **Article 4**

##### **POWERS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 **General Powers and Obligations.** The Association will have, exercise, and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration.
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State.
- (c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners.

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

- (a) **Maintenance.** The Association will maintain the Common Areas and Limited Common Areas (and, if it so elects, the Lots, the Buildings, and the Units) in accordance with Article 8.
- (b) **Insurance.** The Association will obtain and maintain insurance in accordance with Section 8.2.
- (c) **Rulemaking.** The Association may make, establish, promulgate, amend, and repeal Rules and Regulations governing the Development.
- (d) **Assessments.** The Association will adopt budgets and impose and collect Assessments as provided in Article 7.
- (e) **Enforcement.** The Association will enforce the provisions of the Governing Documents pursuant to Article 13.
- (f) **Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Development, including garbage removal and security services. The Association may also create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including reasonable fees for the use of any recreational facilities located on the Common Areas, without being required to render such services to Members who do not agree to pay such charges.
- (g) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any Person as manager; hire employees to manage, conduct, and perform the business, obligations, and duties of the Association; employ professional counsel and obtain advice from landscape architects, recreational experts, architects, planners, lawyers, accountants or other advisers; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance, and operation of the Development.
- (h) **Borrow Money, Hold Title, and Make Conveyances.** The Association may borrow money for the purpose of maintaining or improving the Common Areas, and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold, and convey, with or without consideration, real and personal property and interests therein, including easements across all or any portion of the Common Areas, and will

accept any real or personal property, leasehold, or other property interests within the Development conveyed to the Association by Declarant.

(i) **Transfer, Dedication, and Encumbrance of Common Areas.** Subject to Section 6.4, the Association may sell, transfer, or encumber all or any portion of the Common Areas to a Person, whether public or private, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes.

4.3 **Implied Rights and Obligations.** The Association may exercise any other power reasonably implied by, or necessary to carry out, an express power given to the Association under this Declaration.

## Article 5 PROPERTY RIGHTS IN LOTS

5.1 **Use and Occupancy.** Each Lot Owner will be entitled to the exclusive use and benefit of its Lot, but the Lot will be bound by, and the Owner will comply with, the Governing Documents.

5.2 **Easements Reserved.** In addition to any utility and drainage easements shown on the Plat, Declarant hereby reserves, for the benefit of the Association, a right of way allowing the Association to enter upon any Lot at any reasonable time and upon reasonable notice to the Lot Owner for the purpose of: (a) performing maintenance on the Lots and the improvements thereon, as authorized by the Governing Documents, (b) determining whether the use or improvements of the Lot comply with the Governing Documents, or (c) enforcing the Governing Documents in accordance with Article 13. No such entry will be deemed to constitute a trespass or otherwise create any right of action in the Lot Owner.

5.3 **Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot will describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, Copper Creek P.U.D., identified on the Plat recorded as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, at Page \_\_\_\_\_, and in the Declaration of Covenants, Conditions, and Restrictions for Copper Creek P.U.D. recorded as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of Bannock County, Idaho, together with a right and easement of use and enjoyment in and to the Common Areas and Limited Common Areas, as described in the Declaration and on the Plat.

## Article 6 PROPERTY RIGHTS IN COMMON AREAS

6.1 **Easement of Enjoyment for Common Area.** Subject to Section 6.4, each Owner will have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement will be appurtenant to and will pass with the title to each Lot. Any Owner may delegate the foregoing right and easement to its Tenants or Guests.

6.2 **Easement of Enjoyment for Common Area.** Subject to Section 6.4, each Owner will have an exclusive right and easement of use and enjoyment in and to the Limited Common Areas for the Lot owned by such Owner. Such right and easement will be appurtenant to and will pass with the title to each Lot. Any Owner may delegate the foregoing right and easement to its Tenants or Guests.

6.3 **Title to Common Areas and Limited Commons Areas.** Title to the Common Areas and Limited Common Areas is held by the Association.

6.4 **Limitations on Easement of Enjoyment.** The right and easement of use and enjoyment in and to the Common Areas will be subject to the easements shown on the Plat, and to the following easements and limitations:

(a) The right of the Association to suspend the right of an Owner to use the Common Areas in accordance with Article 13.

(b) The right of the Association to adopt, amend, or repeal Rules and Regulations governing the conduct of persons on, and the operation and use of, the Common Areas as it deems necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Common Areas in accordance with the Governing Documents. A copy of the Rules and Regulations, as amended from time to time, will be promptly delivered to each Owner by the Board and will be binding upon the Owners as of the date of delivery.

(c) An easement for ingress and egress to and from the Lots, Common Areas, Limited Common Areas, and public streets, in favor of Declarant, the Association, and the Owners.

(d) An easement in favor of Declarant for the purpose of carrying out activities related to the sale and development of the Property.

(e) An easement in favor of Declarant and the Association for ingress and egress to and from the Common Areas and Limited Common Areas for the installation, maintenance, and repair of wires, lines, and conduits connected with the transmission of electricity, gas, water, communications, and other utilities.

(f) An easement in favor of Declarant and the Association for ingress and egress to and from the Common Areas and Limited Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the construction and maintenance of new and existing improvements on the Common Areas Limited Common Areas or any other real property owned by Declarant, as long as Declarant and the Association do not unreasonably interfere with any Owner's use and enjoyment of its Lot.

(g) An easement over the Common Areas and Limited Common Areas in favor of police, fire, and other public officials in the performance of their official duties.

(h) The right of Declarant to establish easements, reservations, exceptions, and exclusions consistent with the ownership of the Property and the best interests of the Owners and the Association.

**6.5 Alienation of the Common Areas and Limited Common Areas.** The Association may not abandon, partition, subdivide, encumber, sell, or transfer the Common Areas or Limited Common Areas without the approval of at least 90% of the Members. This Section 6.5 will not apply to the easements described in Section 6.4.

## **Article 7 ASSESSMENTS**

**7.1 Purpose of Assessments.** The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Development and for the improvement, operation, and maintenance of the Common Areas, Limited Common Areas, and the Lots.

**7.2 Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, and Individual Assessments, all as more particularly described below.

**7.3 Apportionment of Assessments.** Each Lot will be assessed its pro rata share of the Annual Assessments and Special Assessments, except that each Lot owned by Declarant will be assessed 30% of its pro rata share until the Lot is occupied for residential use, at which point the Lot will be assessed 100% of its pro rata share, whether owned by Declarant or otherwise. The pro rata share will be calculated by dividing the total dollar amount of each such Assessment by the total number of Lots. The manner of billing and collecting Assessments will be as provided in this Declaration and in the Bylaws.

**7.4 Annual Budget.** The Board will prepare an annual budget for the Association each fiscal year, taking into account the Common Expenses, contributions to be made to the Reserve Fund, any surplus from previous fiscal years, and any income expected from sources other than Assessments. The annual budget prepared by the Board will not require approval by the Members unless the Common Expenses under the proposed budget exceed the Common Expenses under the previous fiscal year's budget by more than 3%. If the proposed annual budget is rejected by the Members, the previous fiscal year's budget will be deemed renewed for the next fiscal year and will remain in effect until (a) the Board adopts a

budget that does not require Member approval or (b) the Members approve a subsequent annual budget proposed by the Board.

**7.5 Annual Assessments.** Based on the annual budget, the Board will determine the amount of the Annual Assessment, which will be apportioned among the Lots as provided in Section 7.3. At the closing of the sale of each Lot, the Owner purchasing the Lot will pay an amount equal to the prorated portion of the Annual Assessment and any Special Assessment due for the fiscal year in which the closing occurs. An Owner who sells its Lot will not be entitled to a refund from the Association of any Assessments paid in advance. However, the purchasing Owner will be entitled to a credit for any Assessments paid in advance by a previous Owner, and the selling Owner may seek a corresponding credit from the purchasing Owner.

**7.6 Special Assessments.** In addition to the Annual Assessments authorized in Section 7.5, the Board may levy during any fiscal year a Special Assessment applicable to that year only, for the purpose of deferring all or any part of the cost of unbudgeted expenses, expenses in excess of those budgeted, or other unanticipated, extraordinary, or emergency expenses. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to 15% of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by at least 67% of the Members, and by Declarant, so long as Declarant owns any property in the Development. Special Assessments will be apportioned as provided in Section 7.3 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

**7.7 Individual Assessments.** The cost of any service benefiting less than all of the Lots may, in the discretion of the Board, be assessed exclusively against the Lots benefited as an Individual Assessment. Individual Assessments will also include fines imposed for violation of the Governing Documents and charges against a Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the Governing Documents. Unless otherwise provided by the Board, an Individual Assessment will be due 30 days after the Board has notified the Owner subject to the Individual Assessment.

**7.8 Reserve Fund.** The Association may establish a Reserve Fund for replacement of Common Area and Limited Common Area improvements. When budgeting for the Reserve Fund, the Board will take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repairs or replacement cost. The Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments or Special Assessments. The Association may prudently invest the Reserve Fund.

**7.9 Creation of Lien and Personal Obligation of Assessments.** Declarant covenants, and each Lot Owner is deemed to covenant, for each Lot owned by it within the Development, to pay to the Association all Assessments as may be fixed, established, and collected from time to time pursuant to this Declaration. Such Assessments, together with any interest, expenses, or attorneys' fees imposed pursuant to Section 13.4, will be a continuing lien upon the Lot against which each such Assessment or charge is made. Assessments will be the personal obligation of the Person who was the Owner of the Lot at the time the Assessment was assessed.

## Article 8

### MAINTENANCE, INSURANCE, AND RESTORATION OBLIGATIONS OF THE ASSOCIATION.

#### 8.1 Maintenance.

(a) **Common Areas and Limited Common Areas.** The Association will maintain the Common Areas and the Limited Common Areas in a clean and attractive condition and in a good and workmanlike manner so as to carry out the purposes for which the Common Areas are intended. Without limiting the generality of the foregoing, such maintenance shall include basic landscaping maintenance (grass mowing and trimming, and sprinklers) and maintenance of walkways, including snow removal, on the Lots.

(b) **Option to Undertake Maintenance of Lots and Units.** The Association may elect, upon at least 60 days' notice to the Owners, to assume responsibility for maintaining all, or any portion or component of all of the Lots and the exterior and structural maintenance of the Units. Such maintenance may include any or all of the following: (i)

replacement, maintenance, repair, painting, and caulking of the roofs, roof vents, chimneys, decks, patios, exterior walls, gutters, downspouts, light fixtures, balconies, railings, exterior stairs, exterior trim, exterior sprinkler systems, landscaping, lawns, exterior surfaces of doors and window frames of each Unit and those portions, if any, of each Unit which contribute to the support of the Building; or (ii) other maintenance obligations deemed necessary and appropriate by the Board.

## 8.2 Insurance.

(a) **Liability Insurance.** The Association will obtain and maintain commercial general liability insurance with a combined single limit of at least \$1,000,000 per occurrence, insuring the Owners, the Association, and their respective agents against general liability and claims arising in connection with the ownership, existence, use, or management of the Property. Such insurance will cover claims of one or more insured parties against other insured parties.

(b) **Property Insurance for Common Area Improvements.** The Association may obtain property insurance insuring the Association against casualty damage to the Common Area and/or Limited Common Area improvements in an amount or amounts deemed necessary by the Board.

(c) **Option to Insure Units.** The Association may elect to obtain and maintain a master or blanket policy of property insurance coverage for no less than the full insurable replacement cost of all of the Units and/or other structural improvements on the Lots, subject to reasonable deductibles and exclusive of the insurance that is the responsibility of the Owners under Section 9.2(a). The policy will contain each of the following features, to the extent that such features are, in the reasonable discretion of the Board, available at reasonable cost: (i) an agreed-amount endorsement or its equivalent; (ii) an extended-coverage endorsement; (iii) vandalism and malicious mischief coverage; (iv) a special-form endorsement; and (v) a determinable-cash-adjustment clause or a similar clause to permit cash settlement covering full value of the Units in case of partial destruction and a decision not to rebuild. Such insurance coverage will be written in the name of, and the proceeds thereof will be payable to, the Association as trustee for the Owners. If any claim is made against an Association policy which is for the benefit of a specific Unit, the affected Unit Owner will be responsible to pay any deductible involved with the claim. If the claim is for the benefit of multiple Units in a Building, the deductible will be paid by the affected Unit Owners in proportion to the amount each Unit Owner's loss bears to the total loss. The Association will not be responsible for obtaining insurance that is the responsibility of the Owners under Section 9.2(a).

(d) **Additional Provisions to be Contained in Insurance Policies.** Any insurance policies obtained and maintained by the Association pursuant to Section 8.2(c) will provide that:

(i) The insurer waives its right of subrogation under the policy against any Owner or member of the Owner's household;

(ii) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(iii) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(e) **Trustee.** Any loss covered by the property insurance policy described in Section 8.2(c) must be adjusted with the Association, and the insurance proceeds for that loss will be payable to the Association or any insurance trustee designated for that purpose, and not to any Owners or Mortgagees. The insurance trustee or the Association will hold any insurance proceeds in trust for the affected Unit Owners and their Mortgagees as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damage has been repaired or restored.

(f) **Board's Authority, Liability.** The Board will have the power and right to deviate from the insurance requirements contained in this Article in any manner that the Board, in its discretion, considers to be in the best

interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article, the Board will make all reasonable efforts to notify the Owners of the reduction in coverage and the reasons therefor at least 30 days before the effective date of the reduction.

(ii) The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

(iii) Each Owner, by acceptance of a deed to a Lot irrevocably appoints the Association as that Owner's attorney in fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing, and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

(g) **Periodic Insurance Review.** The Board periodically (and not less than once every three years) will review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. The review will include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Board is satisfied that the current dollar limit of the property policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

(h) **Other Insurance.** The Association may obtain such other insurance coverage as the Board deems necessary, including employers liability insurance (if and to the extent required by law), directors and officers liability coverage, and fidelity insurance covering Persons responsible for handling Association funds.

8.3 **Restoration.** In the event of damage or destruction by casualty to any improvements covered by property insurance written in the name of the Association, the Association will repair or replace the damaged improvements to the extent of the insurance proceeds available. In such event, the Board will represent the Owners in any proceedings, negotiations, settlements, or agreements, and the Association is appointed attorney-in-fact of each Owner for this purpose.

## Article 9

### MAINTENANCE, INSURANCE, AND RESTORATION OBLIGATIONS OF OWNERS.

9.1 **Maintenance.** The provisions of this Article are subject to the Association's right to assume certain maintenance and insurance obligations pursuant to Article 8. The Owners will be relieved of their obligations under this Article to the extent the Association assumes responsibility for those obligations pursuant to Article 8.

#### (a) Individual Owner's Maintenance Obligations.

(i) Each Owner will be responsible for: (A) all of the maintenance, repairs, cleaning, and replacements within its own Unit and of the windows and doors appurtenant thereto (whether interior or exterior), and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures, plumbing fixtures or installations, and any pipes, ducts, flues, shafts, electrical wiring, and conduits; and (B) all of the decorating within its own Unit as may be required from time to time, including, but not limited to, painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorating. The interior surfaces of all doors and windows forming part of a perimeter wall of a Unit will be cleaned or washed at the expense of each respective Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible from the exterior of the Unit will be subject to the approval of the Architectural Review Committee.

(ii) Each Owner will maintain its Lot, and the exterior and structural portions of its Unit in a clean, sanitary, attractive, and marketable condition, and in good repair at all times. Such maintenance will include repair and replacement of the structural portions of the Unit, utility lines, roofs, gutters, leaders, downspouts, exterior building surfaces, glass surfaces, walks, and other exterior improvements. Each Owner shall ensure that all trees, shrubs, and flowers on Owner's Lot will be neatly trimmed and properly cultivated, and that all other non-basic landscaping not

provided by the Association pursuant to Section 8.1 for the Lot is completed. Lots will be kept free of trash, weeds, and other unsightly material at all times.

(b) **Party Wall Definition; General Rules of Law to Apply.** The Party Wall between two Units in a Building will be located on the dividing line between the two Lots. The Party Wall will consist of the studs, blocking, insulation, cement and airspace located between the wallboard of one Unit and the wallboard of the adjoining Unit. It will not consist of the wallboard, paneling, sheetrock, tiles, wallpaper and paint located on the interior sides of the Party Wall, all of which will be considered part of the Unit and the maintenance of which will be the responsibility of the Unit Owner. General rules of law regarding party walls will apply to the Party Wall to the extent that such rules are consistent with the provisions of this Declaration.

(c) **Maintenance and Repair.** Each Unit Owner in a Building will give reasonable notice to the other Unit Owners in the Building of any painting, roofing, repair, reconstruction, or other maintenance to the Party Wall or exterior or structure of the Building ("**Maintenance Work**") that such Owner reasonably believes is required. Subject to the provisions of Section 9.1(d), the Owners will agree on all such Maintenance Work before any Maintenance Work commences. If the Owners are unable to agree with respect to the Maintenance Work, then such matter will be resolved pursuant to Section 9.4. Except as otherwise provided herein, the costs of all Maintenance Work will be borne equally by the affected Unit Owners.

(d) **Right to Maintain, Repair, or Reconstruct Without Consent.** If, in the reasonable opinion of an Owner, any Maintenance Work is needed, if the other Unit Owners in the Building refuse to agree to such Maintenance Work, and if it would be imprudent to delay performance of such Maintenance Work, such Maintenance Work may be completed by the Owner who reasonably believes it is necessary. In such event, the cost of the Maintenance Work will be divided equally among the Owners.

(e) **Right to Contribution Runs with Land.** The right of an Owner to receive contribution from the other Unit Owners in the Building, together with the obligation of an Owner to contribute to the other Unit Owners in the Building under this Article, will be appurtenant to and will run with the land and will pass to each Owner's successors in title.

(f) **Personal Obligation.** Each Owner, by acceptance of a deed to a Lot, whether or not so expressed in the deed, will be deemed to covenant and to agree to pay its share of the costs of the Maintenance Work. No Owner may avoid liability for the costs of Maintenance Work by non-use or abandonment of the Party Wall, Unit, or Lot.

(g) **Effect of Non-Payment for Maintenance Work; Remedies.** If an Owner fails to pay for Maintenance Work as required hereunder, each nondefaulting Unit Owner in the Building will be entitled to recover (from the defaulting Unit Owner) its proportionate share of the defaulting Owner's share of the costs for the Maintenance Work, together with interest thereon at the rate of 12% per annum from the date of expenditure by the nondefaulting Owner.

(h) **Maintenance Easement.** Each Unit Owner in a Building will have an easement across the Lot of each other Unit Owner in the Building, an easement across the exterior and structural portions of the Building and an easement across any adjoining Party Wall for the purpose of performing the maintenance required under this Article.

(i) **Damage Caused by or Attributed to Lot Owner.** Notwithstanding any other provision in this Article, if a Building or Party Wall is damaged by an Owner or by the Owner's Tenant's or Guests, the damage will be repaired at such Owner's expense.

## 9.2 Insurance.

(a) Each Owner will be responsible for obtaining property insurance covering the personal property in its Unit and anywhere on its Lot, including without limitation flooring, carpeting, wall covering, paint and paneling, appliances, and other furnishings.

(b) Each Owner will purchase and maintain insurance sufficient to cover any loss relating to such Owner's Unit, including extended coverage for full replacement value of all improvements on the Owner's Lot.

(c) No Unit Owner in a Building will be liable to any other Unit Owner in the Building for any loss or damage caused by a casualty covered by the insurance policy required under Section 9.2(b), and in the event of insured loss, no insurer of a Unit Owner in the Building will have a subrogated claim against any other Unit Owner in the Building (or such Unit Owner's insurer). This waiver will be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policy. Each Owner agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

### 9.3 Restoration.

(a) **Insurance Proceeds Sufficient to Cover Loss.** If a Party Wall or Building is damaged by a casualty, and if the proceeds of the affected Unit Owners' insurance policies are sufficient to pay all costs of necessary repair or reconstruction, such proceeds will be applied to such repair or reconstruction. The affected Unit Owners' respective insurance policies will be responsible for the cost of repair or reconstruction of the Party Wall and the Building's exterior and structure in proportion to each affected Unit Owner's use thereof.

(b) **Insurance Proceeds Insufficient to Cover Loss.** If proceeds of the affected Unit Owners' insurance policies are insufficient to pay all costs of necessary repair or reconstruction, the Building nonetheless will be promptly repaired or reconstructed. Any proceeds of the affected Unit Owners' insurance policies will be applied toward the costs of necessary repair or reconstruction of the Units so insured. Each Owner will be liable for the costs incurred in repairing or reconstructing its Unit that are not covered by proceeds from its own insurance policy. However, if a casualty has reduced the value of the Building by 75% or more, and if any Unit Owner in the Building wishes, and all first Mortgagees of the Unit Owners in the Building and insurers who have issued policies on the Building agree, the Building will not be repaired or reconstructed. In such case, insurance proceeds will be paid to the covered Owners after the expenses of demolition, debris removal, and Lot restoration are paid.

(c) **Cooperation; Application of Proceeds.** In the event of any insurable loss to a Building, the Unit Owners in the Building will cooperate with each other and their respective insurers to coordinate adjustment of the losses and application of insurance proceeds to reconstruction and repair of the Building. However, to the extent a Unit Owner in the Building fails to maintain the insurance required by Section 9.2(b), each other Unit Owner in the Building will be entitled to first apply insurance proceeds received from its insurer to the repair and reconstruction of the portion of the Building which is located on its Lot.

9.4 **Arbitration.** In the event of any dispute arising under the provisions of this Article, each party will choose an arbitrator, and such arbitrators will choose one additional arbitrator, and the decision will be by a majority of all the arbitrators. Each party to the dispute will be responsible for the costs of its chosen arbitrator and will equally share the cost of the additional arbitrator. Arbitration will be binding and final.

## Article 10 CONDEMNATION

If all or a portion of a Party Wall or the Building is appropriated as the result of condemnation or threat thereof, the following rules will apply:

10.1 **Allocation of Condemnation Award.** Any condemnation award granted with respect to a Building ("Condemnation Award") will be allocated to the Owners in proportion to the diminution in fair market value incurred by them with respect to their respective Lots and Units as a result of the condemnation.

10.2 **Repair and Restoration.** Any Condemnation Award will be used to repair and restore the Units and the Lots if such repair or restoration is feasible.

10.3 **Retention of Rights.** This Article will not be construed to negate an Owner's individual rights to such incidental relief as the law may provide as a result of the condemnation of a Building, Unit, Lot, or any portions thereof.

## Article 11 ARCHITECTURAL REVIEW

11.1 **General.** No improvements of any kind, including, for example, the construction of any Building, garage, outbuilding, parking area, driveway, tennis court, walkway, swimming pool, outdoor hot tub or spa, fence, wall, curb, pool, trampoline, swing set or playground equipment, satellite dish or antenna, solar panel, outside air conditioning equipment, or any other permanent structure may be constructed, erected, or installed on a Lot without the approval of the Architectural Review Committee (“Committee”). No excavation, grading, filling, draining, landscaping, or planting or removal of existing vegetation may be performed without the approval of the Committee. Any Owner may remodel, paint, or redecorate the interior of its Unit without approval by the Committee. However, modifications to the interior of screened porches, patios, or similar portions of a Lot visible from outside the Unit will be subject to Committee approval. All Buildings constructed on the Lots will be designed by and built in accordance with the plans and specifications of a licensed architect. This Article will not apply to Declarant’s activities.

11.2 **Composition of Architectural Review Committee.** Unless Declarant delegates to the Board the authority to appoint the Committee, Declarant will serve as the Committee for so long as Declarant owns any property in the Development. Thereafter, the Board will appoint the Committee, which will consist of at least three individuals.

11.3 **Architectural Guidelines.** The Committee may prepare Architectural Guidelines that establish standards, rules, regulations, restrictions, and guidelines, in addition to those set forth in Article 12, with respect to design features, architectural styles, exterior colors and materials, details of construction, location and size of structures, landscaping, irrigation, and other matters requiring approval by the Committee pursuant to this Declaration. The Architectural Guidelines may also specify the content of the Application that must be submitted to the Committee by an Owner seeking approval to construct improvements and may establish the procedures for submitting the Application. If there is a conflict between the Architectural Guidelines and this Declaration, this Declaration will prevail. While Declarant serves as the Committee, Declarant may amend the Architectural Guidelines in its sole discretion. Thereafter, the Committee may amend the Architectural Guidelines subject to the approval of the Board. The Architectural Guidelines will be binding on all Owners and their agents. However, amendments to the Architectural Guidelines will be applied prospectively only and will not be applied so as to require modifications to or removal of improvements previously approved once construction of the approved improvements has commenced. The Architectural Guidelines need not be the exclusive basis for Committee decisions, and compliance with the Architectural Guidelines will not guarantee approval of any Application. The Committee will make the Architectural Guidelines available to Owners and builders who seek to construct improvements within the Development.

11.4 **Application.** Any Owner seeking to construct improvements must submit an Application to the Committee for review, as specified in the Architectural Guidelines. The required Application materials may include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of the proposed improvements, as applicable. The Architectural Guidelines and the Committee may require the submission of such additional information as may be reasonably necessary to consider any Application.

11.5 **Approval Procedure.** The Committee will make a determination on each Application within 30 days after receipt of a completed Application and all required information. The Committee may (a) approve the Application, with or without conditions; (b) approve portions of the Application and disapprove other portions; or (c) disapprove the Application. The Committee will notify the Applicant of its decision within five (5) days of making the decision. In the case of disapproval, the Committee will specify the reasons for disapproval or offer suggestions for curing any objections. If the Committee fails to render its decision within 30 days after receipt of a completed Application, approval will not be required and the provisions of this Article will be deemed to have been fully complied with.

11.6 **Appeal.** Any Owner adversely affected by an action of the Committee may appeal such action to the Board. Appeals must be made in writing within ten (10) days of the Committee’s action and must contain specific objections to the Committee’s decision or mitigating circumstances justifying overturning the Committee’s decision. A final, conclusive decision will be made by the Board within 30 days after receipt of the appeal.

11.7 **Fees.** The Board may establish and charge a reasonable fee, as specified in the Architectural Guidelines, for reviewing an Application (“**Review Fee**”) and may require the Review Fee to be paid in full before the Committee reviews an Application. The Review Fee may include the reasonable cost of having the Application reviewed by architects, engineers, or other professionals, whom the Committee may employ as it deems necessary to perform the review. The Board may also require an Applicant to submit a deposit (“**Deposit**”), as specified in the Architectural Guidelines, to ensure that the Applicant (a) keeps its Lot in a condition so as to prevent the rubbish and debris that accumulate during the construction or landscaping process from blowing or collecting on neighboring Lots, Common Areas, and Limited Commons Areas; (b) reasonably cleans up its Lot at or near the completion of the construction or landscaping process; (c) repairs any damage to the Property caused by the construction or landscaping process; and (d) otherwise complies in all respects with the provisions of this Article. The Committee may require that an Applicant pay the Deposit before beginning construction of the improvements or at any time during the construction period. Upon satisfactory completion of the construction of the improvements, the Committee will return the balance of the Deposit to the Applicant. The Board may change the amount of the Review Fee or the Deposit at any time to cover increasing costs.

11.8 **Enforcement.** The Committee will notify the Board of any Applicant who fails to comply with the provisions of this Article. The Board may then enforce such violation in accordance with Article 13.

11.9 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Committee will have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. Committee decisions will be rendered in writing and will set forth the actions taken by the consenting Committee members.

11.10 **Liability.** No Committee member will be liable to any Owner, occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed because of any act or omission of the Committee or a member of the Committee, as long as the Committee member has acted in good faith.

11.11 **Nonwaiver.** Consent by the Committee to any matter will not be deemed to be a precedent or waiver preventing the Committee from withholding consent to any similar matter.

11.12 **Effective Period of Consent.** The Committee’s consent to any Application will automatically be revoked one year after issuance unless Owner has begun construction of the proposed improvements or has applied for and received an extension of time from the Committee.

11.13 **Estoppel Certificate.** Within 30 days after written request is delivered to the Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Board to cover costs, the Committee will provide such Owner with an estoppel certificate executed by a member of the Committee, certifying with respect to any Lot owned by the Owner that as of the date of the certificate, either: (a) all improvements located on the Lot comply with this Declaration, or (b) certain improvements do not comply with this Declaration, in which event the certificate will also identify the noncomplying improvements and specify the nature of the noncompliance. Any purchaser of the Owner’s Lot and any Mortgagee or other lienholder will be entitled to rely on the estoppel certificate, which will be conclusive as between the Owner, the Committee, the Association, and such purchaser, Mortgagee, or other lienholder.

## Article 12 RESTRICTIONS

12.1 **Further Subdivision, Lot Line Adjustments, Property Restrictions, Rezoning, Consolidation of Lots.** No Lot may be further subdivided or otherwise separated into smaller parcels by any Owner, and no portion less than all of any Lot, nor any easement or other interest therein, will be conveyed or transferred by any Owner without the approval of the Board. Lot line adjustments are prohibited without the approval of the Board and all Owners of the affected Lots. No further covenants, conditions, restrictions, or easements will be recorded by any Owner or other Person against any Lot without the approval of the Board. No application for rezoning of any Lot and no applications for variances or use permits will be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with this Declaration. The Owner of two adjoining Lots, subject to the approval of the City, may elect to consolidate such Lots into one Lot. The consolidation will be effected by the Owner’s recording in the office of the County Recorder a declaration stating that the two Lots are consolidated, which declaration will

include a written consent executed by the City. Thereafter, the consolidated Lots will constitute one Lot for all purposes of this Declaration, including voting rights and Assessments. Once so consolidated, the consolidated Lot may not thereafter be partitioned, nor may the consolidation be revoked without the approval of the City.

**12.2 Common Areas and Limited Common Areas.** Dumping of trash, rubbish, debris, dirt, yard rakings, construction materials, or other unsightly material onto the Common Areas is prohibited. There will be no obstruction of the Common Areas, nor will anything be kept or stored on the Common Areas, nor will anything be altered or constructed or planted in or removed from the Common Areas without the approval of the Board. No Owner will permit any vehicle which is either unregistered, inoperable, or in an extreme state of disrepair to be abandoned or to remain parked on the Common Areas. Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean sanitary and attractive condition at all time.

**12.3 Permitted Use.**

(a) **Residential Use.** Subject to the provisions of Section 12.3(b), the Lots will be used for single-family residential purposes only.

(b) **Commercial Use Restricted.** Except with the consent of the Board, no trade, craft, business, profession, or commercial activities of any kind will be conducted on the Property, nor will any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on the Property. However, the following will be permitted: (i) activities relating to the rental or sale of Lots; (ii) the right of Declarant, the Association, or any contractor to construct improvements on a Lot, to store construction materials and equipment on a Lot in the normal course of construction, (iii) the right of Declarant to use any Building or Unit as a sales or rental office or as a model home for purposes of sales or rental in the Development; and (iv) the right of an Owner to maintain its professional library, records, or accounts, or to communicate with professional associates, clients, or customers in its Unit, as long as there is no external evidence thereof. The Board will not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable from the outside of the Unit.

(c) **Leases.** No Lot may be leased for a period of less than 30 days. Any lease agreement will be in writing and will provide that the terms of the lease are subject to the Governing Documents, and that any failure by the tenant to comply with the Governing Documents will be considered a default under the lease. Any Owner who leases its Lot will provide a copy of the lease to the Association within 30 days after execution of the lease. No Lot will be subjected to time interval ownership.

(d) **Transient Lodging Use Prohibited.** Lots will not be rented for transient lodging, boarding house, "bed and breakfast", or other uses for providing accommodations to travelers.

(e) **Use of Temporary Structures as a Residence Prohibited.** No trailer, mobile home, camper, camper shell, tent, shack, garage, barn, shed, outbuilding, basement of an incomplete building, or temporary building or structure of any kind will be used at any time for a residence, either temporary or permanent.

(f) **Drilling, Mining Prohibited.** No oil drilling, oil development operations, oil refining, mining, drilling, prospecting, quarrying, mineral exploration, or similar activities will be permitted on the Property.

(g) **Unlawful Use Prohibited.** No unlawful use will be made of the Property or any part thereof, and all applicable federal, state, and local laws, ordinances, and regulations will be observed.

**12.4 Permitted Structures.**

(a) No structures will be erected or permitted to remain on any Lot except Buildings, and structures normally accessory to Buildings, that comply with the Governing Documents and are approved by the Architectural Review Committee.

(b) Each Lot in the Development is located on either a two-Lot Building pad (“Pad”). A two-Lot Pad contains two Lots. Only a single, two-Unit Building may be constructed on Pad. No more than one Unit may be constructed on any Lot.

(c) No mobile home, trailer house, or other previously erected, used, or temporary structure may be installed or maintained on any Lot. No derrick, oil well, tunnel, mine, or similar structure designed for use in drilling for oil, natural gas, water, or minerals will be erected or maintained on any Lot.

12.5 **Size.** Each Unit must have a total finished square footage of at least 800 square feet.

12.6 **Setbacks.** All Lots will comply with City setback requirements.

12.7 **Height.** All improvements on Lots will conform to City height requirements.

12.8 **Landscaping; Irrigation.** Initially, each Lot will be furnished with basic landscaping (turf, trees, shrubs, other limited landscaping) together with a basic sprinkler system. Thereafter, landscaping may include a combination of turf, native grasses, trees, shrubs and other landscaping items, subject to the species, size, amount, and placement requirements set forth in the Architectural Guidelines, and modified or upgraded sprinkler and irrigation systems, as approved by the Architectural Review Committee.

12.9 **Fences, Walls and Hedges.** No fences, walls, hedges or other screening structure will be permitted on a Lot without the approval of the Architectural Review Committee.

12.10 **Nuisances.** No nuisance will be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants.

(a) **Noxious or Offensive Activity.** No noxious or offensive activity will be carried out on any Lot or in any part of the Development, including, without limitation, the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of the Development.

(b) **Unsightliness.** No unsightliness will be permitted on any Lot. This will include, without limitation, the open storage of any building materials (except during the construction of any Building or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, recreational vehicles, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers screened from view in an enclosure such as a garage; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from outside the Lot.

(c) **Lights.** Outdoor lighting will be designed to direct the light downward and limit the field of light to the confines of the Lot on which it is installed.

(d) **Sounds.** No continuously barking dogs, loud speakers or other noises will be permitted to continue on any Lot in a way that might reasonably be expected to annoy or disturb other Owners, Tenants, or Guests, except for security or fire alarms and noise incident to legitimate construction and maintenance work.

(e) **Pests.** No Owner will permit anything or condition to exist upon any portion of the Development which will induce, breed, or harbor infectious plant diseases or noxious insects or vermin.

(f) **Seasonal Decorations.** Seasonal decorations visible from the road may only appear for three weeks prior to a holiday and one week after.

12.11 **Hazards.** No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which could lead to the cancellation of a conventional homeowner’s insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous material in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and

setting open fires (other than properly supervised and contained barbecues). All stacks and chimneys from fire places in which combustibles, other than natural gas, are burned will be fitted with spark arresters. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by City ordinance.

**12.12 Animals.** No wild or dangerous animals, horses, cows, pigs, sheep, fowl, livestock or animals, other than ordinary household pets that do not constitute a nuisance, will be allowed on the Property. Dogs and cats or other household pets belonging to Owners or their Tenants or Guests within the Property must be kept within an enclosure. The enclosure must be maintained such that the animal cannot escape therefrom. Any such contained enclosure areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. Invisible fencing may be used where appropriate. All dogs will be restrained on a leash when off the Owner's Lot. Animal owners are responsible for immediately picking up all animal droppings that are deposited on the Property outside of their own Lot. In no case may any household pet or other animal kept at or around a Lot be allowed to create a nuisance for neighboring Owners due to noise, odors or otherwise. No more than 2 dogs (no large breeds) or 2 cats, or one of each, may be kept on a Lot at any time (except for offspring younger than 6 months).

**12.13 Motor Vehicles.** Within the Development, motor vehicles may be operated only on streets and driveways. ATVs and other recreational vehicles may not be used on the Property at any time.

**12.14 Signs.** No signs will be permitted on a Lot except as follows: (a) one for-sale sign no larger than 5 square feet; (b) one political sign, no larger than 5 square feet; political signs must be removed within 48 hours after the occurrence of the election to which they pertain; (c) one sign, no larger than 10 square feet, placed by a contractor or builder to advertise the improvements being constructed on a Lot; (d) traffic-control signs placed by the City; (e) temporary signs warning of an immediate danger; (f) signs placed by Declarant or its agents in connection with the sale of the Lots.

**12.15 Sewer; Drainage; Fuel; Service Facilities.**

(a) **Sewer Connection Required.** All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Units must be connected to the sanitary sewer system.

(b) **Drainage.** Gutters and leaders will be connected to an underground drainage system.

(c) **Fuel.** No fuel, oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on a Lot. Units must be heated with natural gas, solar, or electric power. Propane or other containerized fuels, other than small tanks for outdoor barbecues, may be used only during construction of a Building until the permanent heating system is installed and operational.

(d) **Service Facilities.** Clotheslines, service yards, storage yards, and mechanical equipment on any Lot that are visible from outside of the Lot are prohibited.

**12.16 Antennas.** No shortwave radio antennas or large ground mounted satellite dishes may be installed on any Lot. A single satellite dish no larger than 48 inches in diameter is permitted as long as the dish and accompanying cabling are placed or screened (to the extent practicable) so that they are not readily visible from the road in front of the Lot. This must be preapproved by the Architectural Review Committee as to size and placement.

**12.17 Completion of Construction.** No structure may be constructed on a Lot before the Building is completed. The construction of any improvement on a Lot, including painting and all exterior finish, will be completed within 12 months after the beginning of construction. The Architectural Review Committee may extend this deadline when an Owner is unable to meet it because of undue hardship. The construction area will be kept reasonably clean, free of litter, and in workmanlike order during the construction period. All unimproved Lots will be kept in a neat and orderly condition, free of brush, vines, weeds, and other debris.

**12.18 Deviations.** Deviations from the standards and restrictions set forth in this Article may be allowed only with the approval of the Architectural Review Committee (or, where applicable, the Board) for good cause shown.

## Article 13 ENFORCEMENT

13.1 **General.** The Board will notify any Member of any violation of the Governing Documents for which the Member is responsible, including violations caused by a Tenant or Guest of the Member, and will specify any necessary remedial action. If the Member (1) has not begun and diligently pursued the remedial action within 10 days of notification; (2) the Member and the Association cannot agree to a mutually acceptable solution consistent with the Governing Documents; and (3) the Association has given the Member reasonable opportunity to be heard; then the Association may do any or all of the following:

(a) Subject to the additional requirements of Section 13.2, impose reasonable fines as an Individual Assessment upon the Member;

(b) Subject to the additional requirements of Section 13.2, retain the Deposit of an Applicant who violates the provisions of Article 11.

(c) Suspend the Member's voting rights and right to use the Common Areas for the period that the violation remains uncured;

(d) Where applicable, enter the offending Member's Lot and remove the cause of the violation, or alter, repair, or change the item which is in violation of the Governing Documents in such a manner as to make it conform thereto, in which case the Association may assess the cost of the remedy as an Individual Assessment against the Member and the Member's Lot;

(e) Bring suit or action against the Member to enforce the provisions of this Declaration;

(f) Pursue any other remedy available at law or in equity.

Nothing in this Section will authorize the Association to deprive any Member of access to and from its Lot.

13.2 **Fines.** Only the Board may assess a fine against a Member. A fine may be assessed only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Governing Documents. A fine must be in the amount specifically provided for in the Governing Documents for the specific type of violation, or in an amount commensurate with the nature of the violation. Any Member assessed a fine may request an informal hearing to protest or dispute the fine within 14 days from the date the fine is assessed ("**Hearing**"). The Hearing will be conducted in accordance with the standards provided in the Bylaws. No interest or late fees may accrue on a fine until after the Hearing has been conducted and a final decision has been rendered, unless the fined Member fails to request a Hearing within the 14-day time-period.

13.3 **Enforcement of Assessment Lien.** The Association will have a lien against each Lot for any Assessment levied against the Lot and the Owner thereof under the Governing Documents from the date on which the Assessment is due. If a Member fails to pay an Assessment levied under the Governing Documents within 30 days of its due date, the Association may foreclose on the lien and may, through its duly authorized agents, bid on the Lot at such foreclosure sale and may acquire, hold, lease, mortgage, or convey the Lot. The Association may bring an action to recover a money judgment for unpaid Assessments without foreclosing or waiving the lien described in this Section. Recovery on any such action, however, will operate to satisfy the lien, or the portion thereof, for which recovery is made.

13.4 **Interest, Expenses and Attorneys' Fees.** Any Assessment or other amount not paid to the Association when due in accordance with this Declaration will bear interest from the due date (unless the Assessment is a fine and a Hearing is timely requested) until paid at a rate [3 percentage points per annum] above the prime rate published in the *Wall Street Journal* at the time, or such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State. A late charge may be levied for each delinquent Assessment in an amount established from time to time by the Board; provided, such late charge may not exceed 15% of such Assessment. If the Association files a notice of lien, the lien amount will also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, which fee will be established from time to time by the Board. If the Association prevails in

any procedure to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action.

**13.5 Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for in this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but will be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law. Failure by the Association to enforce any provision of the Governing Documents will not be deemed a waiver of the right to do so thereafter. Any aggrieved Member may bring an action against another Member or the Association to recover damages or to enjoin, abate, or remedy any violation of the Governing Documents by appropriate legal proceedings.

## **Article 14**

### **MORTGAGES**

**14.1 Subordination of Lien to Mortgages.** The Assessment lien provided for in this Declaration will be subordinate to the lien of any recorded first Mortgage (meaning a Mortgage with first priority over other Mortgages) made in good faith and for value. Sale or transfer of any Lot will not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage will extinguish the lien as to any installments of such Assessments due before the Mortgagee's foreclosure.

**14.2 Notification of First Mortgagee.** Any first Mortgagee which provides a written request to the Association will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot subject to a first Mortgage held by the first Mortgagee.

(b) Any delinquency in the payment of Assessments owed by a Lot subject to a first Mortgage held by the first Mortgagee, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or its Tenants which is not cured within 60 days; and

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**14.3 Reimbursement of First Mortgagees.** First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a lien against any Common Areas or Limited Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Areas. First Mortgagees making such payments will be promptly reimbursed by the Association.

## **Article 15**

### **AMENDMENT AND REPEAL**

**15.1 Declaration.** This Declaration may be amended or repealed with the approval of at least 67% of the Members. However, (a) no amendment under this Section will create, limit, or diminish special Declarant rights without Declarant's written consent; and (b) no amendment under this Article will change the boundaries of any Lot without the consent of the Board and all Owners of the affected Lots.

**15.2 Articles.** The Articles may be amended with the approval of at least 67% of the Members.

## **Article 16**

### **MISCELLANEOUS PROVISIONS**

**16.1 Joint Owners.** Where two or more Owners share the ownership of any Lot, the responsibility of such Owners to comply with this Declaration will be a joint and several responsibility.

**16.2 Tenants/Guests.** Tenants and Guests using the Property under rights derived from an Owner will comply with all applicable provisions of the Governing Documents. Each Owner will be responsible for its Tenants' and Guests' compliance and will be liable for any failure of compliance by its Tenants or Guests in the same manner and to the same extent as if the failure had been committed by the Owner himself.

**16.3 Construction; Severability; Number; Captions; Exhibits.** This Declaration will be liberally construed as an entire document to accomplish the purposes stated in the Recitals. However, each provision of this Declaration will be deemed independent and severable, and the invalidity of any provision will not affect the validity of any other provision. As used in this Declaration, the singular includes the plural and the plural the singular, and the masculine and neuter include the masculine, feminine, and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and will in no way limit any of the provisions of this Declaration. All exhibits attached to this Declaration are incorporated into this Declaration by reference.

**16.4 Approvals, Notices, and Other Writings.**

(a) Within 15 days after taking title to a Lot, the Owner of the Lot will provide the Association with the Owner's postal address (if other than the address at the Lot), phone number, fax number, and email address (if available), and will provide the Association with a copy of the instrument by which the Owner acquired title to the Lot. An Owner will notify the Association of any change in its contact information within 15 days after the change.

(b) Declarant, the Association, the Board, and the Architectural Review Committee may deliver any approval, notice, or other writing permitted or required to be delivered to a Member hereunder: (i) in person, (ii) by certified first-class United States mail, return receipt requested, or by Federal Express, UPS, or other nationally recognized commercial carrier, postage prepaid, or (iii) by fax. Delivery of such notice or other writing will be deemed made: (A) two business days after having been deposited with the United States Postal Service or nationally recognized commercial carrier, addressed to the address provided pursuant to Section 16.4(a) (or at the Lot, if applicable); or (B) as soon as the sender receives electronic confirmation that the fax has been delivered to the fax number given in accordance with Section 16.4(a), so long as the recipient has previously consented to receive notices by fax.

(c) Any approval, notice, or other writing required to be delivered to Declarant, the Association, the Board, or the Architectural Review Committee hereunder will be delivered in person, by certified first-class United States mail, return receipt requested, or by Federal Express, UPS, or other nationally recognized commercial carrier, postage prepaid, and addressed as follows: if to Declarant, Kilgore Properties, 13614 South Carolina Hill Court, Draper, Utah, 84020; if to the Association, the Board, or the Architectural Review Committee, at the address given in the Bylaws. Delivery of such notice or other writing will be deemed made two business days after having been deposited with the United States Postal Service or nationally recognized commercial carrier, addressed to the applicable address.

*[This space intentionally left blank. Signatures appear on following page.]*

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

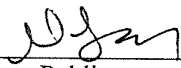
**KILGORE PROPERTIES, LLC,**  
a Utah limited liability company

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

Name: Jason Kilgore  
Title: Manager

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

The foregoing instrument was acknowledged before me this 12th day of December 2018, by Jason Kilgore, manager of Kilgore Properties, LLC.

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



*Signature Page to Declaration*

**Exhibit A**

Instrument: 21901614 Page:0

Legal Description of the Property

Lots 1-40 Block 2 Copper Creek Subdivision

*Exhibit A to Declaration*