

Association is paid the amount owing. Before requiring a tenant to pay lease payments to the Association, the Association's manager or Board shall give the Lot owner notice, which notice shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and (iii) that the Association intends to demand payment of future lease payments from the Lot owner's tenant if the Lot owner does not pay the amount owing within fifteen (15) days.

If a Lot owner fails to pay the amount owing within 15 days after the Association's manager or Board gives the Lot owner notice, the Association's manager or Board may exercise the Association's rights by delivering a written notice to the tenant. The notice to the tenant shall state that: (i) due to the Lot owner's failure to pay an assessment within the required time, the Board has notified the Lot owner of the Board's intent to collect all lease payments until the amount owing is paid; (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid; and (iii) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Lot owner. The manager or Board shall mail a copy of this notice to the Lot owner.

A tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Lot owner: (i) beginning with the next monthly or other periodic payment after the notice is delivered to the tenant; and (ii) until the Association notifies the tenant under Subsection (6) that the amount owing is paid. A Lot owner shall credit each payment that the tenant makes to the Association under this section against any obligation that the tenant owes to the owner as though the tenant made the payment to the owner; and may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an Association as required under this section.

Within five (5) business days after the amount owing is paid, the Association's manager or Board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association. The manager or Board shall mail a copy of this notification to the Lot owner. The Association shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the amount owing is paid; and any cost of administration, not to exceed \$25, is paid. The Association shall, within five (5) business days after the amount owing is paid, pay to the Lot owner any remaining balance.

7.8 Statement of Account. The Manager or Board shall issue a written statement indicating any unpaid assessment with respect to a Lot covered by the request, upon the written request of any Owner, and payment of a reasonable fee not to exceed Ten Dollars (\$10.00). The written statement shall be binding in favor of any person who relies in good faith on the written statement upon the (i) remaining Owners; (ii) Manager; and (iii) Board. Unless the Manager or Board complies with such request within ten (10) days, any unpaid assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.

7.9 Payment by Encumbrancer. An encumbrancer holding a lien on a Lot may pay any unpaid assessment due with respect to the Lot. Upon such payment, the encumbrancer has a lien on the Lot for the amounts paid.

7.10 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.11 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Charter, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Charter and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.12 Rent After Foreclosure. In the event the Association takes title to a Dwelling Unit through foreclosure, the Board may elect to allow the occupant to remain in the Dwelling Unit and the occupant shall be required to pay a reasonable rental to the Association for the Dwelling Unit.

### **ARTICLE XIII** **MAINTENANCE AND REPAIR OBLIGATIONS**

8.1 Maintenance Obligations of Owners. Except for front and side yard landscaping maintenance provided for in Section 9.2 below, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Charter, to maintain, repair, replace and restore all Improvements located on his Lot or structures built by the Owner on the Limited Common Area, and to ensure that the Lot itself is maintained in a neat, sanitary and attractive condition. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive or to otherwise violate this Charter, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, to enter upon such Owner's Lot to perform such emergency and non-emergency repairs or maintenance as the Board deems appropriate and to charge the cost thereof to the Owner. Said cost shall be a Corrective Assessment enforceable as set forth in this Charter. For non-emergency repairs or maintenance, the Owner shall be entitled to Notice of Noncompliance by the Board and Right to Hearing. Owner's may assign certain of their maintenance obligations to the Association under written contract pursuant to a menu of service which may be offered by the Association under the provisions of this Charter relating to Benefitted Assessments.

Each Owner shall also keep the interior of his Dwelling Unit, including, without limitation, interior walls and utility lines therein, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in good sate of repair. In the case of common utility lines shared by two Dwelling Units, such obligations for maintenance and repair shall be shared equally by the two Dwelling Unit Owners, unless, it is established that the damage



or disrepair was the result of an intentional or negligent act of only one owner, in which case such owner shall be entirely responsible for the repairs. In the event that any such Dwelling Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair, and in the event that the owner of such Dwelling Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, at the expense of the owner and without liability to the Owner for trespass or otherwise, to enter said Dwelling Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligations to correct or eliminate any such condition or state of disrepair. All such costs incurred by the Association shall be collected by the Association as a Corrective Assessment.

8.2 Maintenance Obligations of Association. No improvement, excavation or work which in any way alters the Common Area shall be made or done by any person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereon by Founder. The Association shall provide for the maintenance, planting, repair, and replacement of the Common Area and all Improvements (including drainage) thereon in a safe, sanitary and attractive condition, and in good order and repair, and shall likewise provide for the commonly metered utilities serving the Common Area, if any. The Association shall ensure that the landscaping on the Common Area and the Limited Common Area in the front in side yards of the Lot to the exterior walls of the Dwelling Unit are watered and maintained free of weeds and disease. It shall be the obligation of the Owner to replace all plants other than grass, which shall be the responsibility of the Association to replace. The Association shall be authorized, but shall not be required, to maintain any lands within the Properties which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

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

8.3 Damage to Dwelling Units - Reconstruction. If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, the owner of such Lot shall, at the owner's election, either (i) rebuild, repair or reconstruct the Lot and the Dwelling Unit on such Lot in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or (ii) restore the Lot by removing from the Properties all damaged or destroyed building materials. The Owner of any damaged Lot or Dwelling Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Dwelling Unit shall commence and complete reconstruction of the Dwelling Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held

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title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction of the Dwelling Unit or restoration of the Lot in less than thirty (30) days from the date such transferee acquired title to the Lot.

8.4 Access at Reasonable Hours. Except as otherwise provided for in this Article IX, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours for the purpose of performing the maintenance required by this Article.

8.5 Alteration of Certain Maintenance Duties by Rules. The duty of maintenance for the area of a Lot outside the walls of the Dwelling Units, and the Limited Common Areas adjacent and appurtenant to the Dwelling Units may be altered by rule of the Association.

8.6 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, including common walls between Dwelling Units and patio fences, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. However, any utilities (including without limitation water, power and sewer) within the wall and principally serving one Dwelling Unit shall be the responsibility of that Dwelling Unit's Owner, including without limitation all costs of maintenance, repair, and replacement. Any damage resulting from or associated with the utilities principally serving a particular Dwelling Unit shall be the responsibility of the Owner thereof. The Association, through the Board, has the right, but not the obligation, to make repairs associated with or caused by such utility services, and the Association may levy a Corrective Assessment for the cost of the repairs against the Dwelling Unit of the responsible Owner. Further, if the Association's insurance provides any coverage for the damage, the responsible Owner shall pay the deductible and, if such Owner fails to pay the deductible, the Association may also levy a Corrective Assessment against the Owner's Dwelling Unit for the amount of the deductible.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall shall restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.



(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of the Association shall select an arbitrator for the refusing party.

8.7 Mold. Whether or not you as an Owner experience mold growth depends to a great extent on how you manage and maintain your Dwelling Unit. You are hereby given notice to take all reasonable means to detect and prevent growth and infestation of mold and other similar agents. The Founder will not be responsible for any damages, and as Owner you waive any claim to damages, caused by mold, or by some other agent, that may be associated with customary construction practices in the area, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects or losses. Any implied warranties, including but not limited to an implied warranty of workmanlike construction, an implied warranty of habitability, an implied warranty of merchantability or an implied warranty of fitness for a particular purpose, are hereby waived and disclaimed by you as the Owner.

#### **ARTICLE IX** **USE RESTRICTIONS**

All real property within the Properties shall be held, used and enjoyed subject to such limitations and restrictions set forth below.

9.1 Residential Use. Each Dwelling Unit shall be used as a residence. The Dwelling Unit shall not be partitioned physically or otherwise and rented as individual rooms. This Section shall not prohibit fractional ownership of a Dwelling Unit.

9.2 Accountability of Members. As more fully provided in Article XI(d), each Member shall be liable to the Association for any damage to the Common Area sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult.

9.3 Business or Commercial Activity. Subject to the following exceptions, no part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes without the prior written approval of the Board; provided, however, that the Founder, its successors and assigns, may use any portion of the Properties for a model home site, display and sales office in connection with the sale of Lots on the Properties by Founder. Upon written consent from the Board, which consent may contain reasonable restrictions, occupations without external evidence thereof -- including without limitation, traffic generation which are merely incidental to the use of the Dwelling Unit as a residential home -- are permitted for so long as such occupations are conducted in conformance with all applicable governmental ordinances shall be permitted.

9.4 Signs. Except for one professional quality "For Rent" or "For Sale" sign of not more than four (4) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot. Such sign may be placed on the Limited Common Areas. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Founder or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws, and Rules and Regulations, as the same may be amended from time to time.

9.5 Quiet Enjoyment. No noxious or offensive activity or noise shall be carried on upon any part of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

10.6 Parking and Vehicular Restrictions.

(a) Parking:

(i) Garages. Each Owner shall maintain his garage in a manner which ensures that it is capable of accommodating at least one (1) car. All garage doors must remain closed, except when necessary for ingress or egress.

(ii) Streets. There shall be no parking on the streets, except Owners and their guests may temporarily park on the streets for the purpose of loading and unloading only and in no case overnight.

(iii) Guest Parking Areas. The guest parking shall be accommodated for on the driveway on the Lot.

(b) Vehicle Maintenance. No Person shall conduct repairs or restorations of any Vehicle or Recreational Vehicle upon any portion of the Properties, except as specifically provided in this subparagraph (b). However, repair and restoration shall be permitted within an Owner's garage when the garage door is closed, provided that such activity may be prohibited entirely if the Board determines in its discretion that such activity constitutes a nuisance. Owners may, their



driveways, wash the exteriors of any Vehicle or Recreational Vehicle, provided that any debris from the washing is promptly removed.

9.7 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats, birds or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Properties which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept within an enclosed area of the Lot or on a leash attended to by a person when in the Common Areas. Such pets may not be kept in the Limited Common Areas unless attended to at all times by a person. All pet waste must be immediately cleaned up. The following are not considered household pets: reptiles, rodents, swine, insects and animals weighing fifty (50) pounds or more. This Section may be made more restrictive by Rule of the Association.

9.8 Insurance and Governmental Requirements. No Owner shall permit or cause anything to be done or kept on the Properties, or on any Street visible from the Properties, which may increase the rate of insurance on the Properties, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit.

9.9 Construction. Construction of Dwelling Units shall be diligently pursued to substantial completion which generally shall occur within nine months of commencement. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or his contractor. No building, pool, wall, driveway or other improvement shall be erected, altered, placed or permitted to remain on any lot except as follows:

9.9.1 Building Type/Exterior Materials. All buildings shall be constructed using only brick, stone, cultured stone, log or solid wood, textured concrete masonry, or stucco as the main exterior materials. Colors of materials and painted surfaces shall be natural tones chosen to blend well with the area. No fluorescent, bright, tropical colors, or galvanized metallic finished shall be permitted. All colors shall be approved by the Architectural Control Committee. Homes must be site-built and shall not be prefabricated either in whole or in part with the exception of roof trusses. Manufactured homes or mobile homes shall not be permitted.

9.9.2 Roof Specifications. No dome, mansard, geodesic or earthen roof designed Dwelling Units or other buildings homes shall be built.

9.9.3 Garages. All dwellings shall have an attached private garage sufficient to park at least two cars (of at least 20'x24'). No detached garages shall be permitted.

9.9.4 Building and Roof Colors. Only the following colors shall be permitted in the construction or alteration of any building, including the Dwelling Unit: Brown, Tan, Black, Grey or other naturally occurring earthen tones as found in the surrounding areas.

9.9.5 Exterior Appliances. No air conditioning unit, condenser, or cooler may be mounted on any part of the roof area of any dwelling or out-building unless visually screened.

Furthermore, all satellite dishes shall be located in a way which minimizes their visibility from the street.

9.9.6 Height and Size. Outbuildings shall not exceed four thousand (4,000) square feet on one level. All buildings and structures shall be restricted to height limitation of one level with loft, and shall not exceed an overall height of 25 feet above the natural grade at the back of curb on each lot.

9.9.7 Building Location. No building shall be located on any lot nearer to the front line than twenty-five (25) feet when measured from the foundation of such building to the nearest point on the property line; nor nearer than ten (10) feet to the rear lot line; nor nearer than ten (10) feet to a side lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purpose of determining such distances.

9.9.8 Completion of Construction. All buildings and structures shall be completed no later than one year subsequent to the commencement of said construction.

9.9.9 Driveway/Access. All driveways on each lot shall be constructed of a hard and impervious material such as concrete, brick, stone, exposed aggregate, or asphalt, and shall run continuously from the street to the garage. All auxiliary drives shall be improved with those materials listed above or may be constructed using gravel.

9.10 Temporary Buildings. No outbuilding, tent, shack, shed or other temporary building or Improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Properties either temporarily or permanently.

9.11 Drilling. Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Properties, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth-coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted on the Properties.

The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot.

9.12 Further Subdivision; Lease Provisions. No Owner shall further partition or subdivide his Lot or the rooms in the Dwelling Unit and Limited Common Area, including without limitation any division of his Lot into time-share estates, time-share uses, or creation of additional living quarters; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Lot to a single family by means of a written lease or rental agreement; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or some other form of joint



ownership. The terms of any such lease or rental agreement shall be made expressly subject to this Charter and the Bylaws of the Association. Any failure by the lessee of such Lot to comply with the terms of this Charter, the Bylaws of the Association, or the Rules and Regulations shall constitute a default under the lease or rental agreement.

9.13 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot on the Properties, unless an adequate alternative provision is made for proper drainage -- including without limitation, removal of excess water to gutters in the streets, preventing excess water from traveling onto adjacent Lots and Common Area. For the purposes hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Founder, and shall include drainage from the Lots onto the Common Area. Founder shall be held harmless from and against any causes of action related to an alteration in the "established drainage pattern."

9.14 Water Supply and Sewage Disposal Systems. No individual water supply or sewage disposal system shall be permitted on any Lot on the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations, if any, of any public agency having jurisdiction over the Properties, the Iron County, Utah, Health Department, and all other applicable governmental authorities.

9.15 External Apparatus. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Board.

9.16 Limited Common Area Restrictions. The garages may only be used to park vehicles and store such belongings as may fit and still provide for the parking of the number of vehicles for which the garage is designed. Only clean, neat patio furniture may be kept on the patios.

9.17 Trash Receptacles. Owners shall keep trash receptacles in the garage or on the patio, except when placing the receptacles at the curb for pick up. The Board may pass additional Rules and Regulations governing trash receptacles.

9.18 Reserved.

9.19 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

9.20 FCC Antenna and Dish Policy. Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite (ADBS@) antennas (dishes) one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the FCC regulated dish is placed in a location screened from view of the streets. Location of a FCC approved dish may not be restricted by the Association so as to cause

unreasonable delay in installation; unreasonably increases the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the *Common Area* or the property of another Owner. The dish must comply with all applicable city, county and state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits. Installation must be pursuant to the manufacturer=s instructions. In order to protect against personal injury and property damage, an dish may not be placed in a location where it may come into contact with a power line. In order to protect against personal injury and property damage, all dishes must be properly grounded and secured. In order to protect against personal injury, dishes may not block or obstruct any driver=s view of an intersection or street. The Owner is responsible for all costs associated with the installation and maintenance of an dish. The Owner is responsible for all damage caused by or connected with the dish. The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Charter. An Owner must complete the notification form attached as Exhibit D and submit a copy of the completed form to the Association within five (5) business days after installing an antenna allowed pursuant to this Amendment. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna. In the event of a violation of this Section, the Association may bring an action for declaratory relief with the FCC or the Fifth District Court, Iron County, after notice and an opportunity to be heard. If the FCC or Court determines that this Section is enforceable, the Owner shall pay a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time, additional fines of \$10.00 per day will be imposed for each day that the violation continues. If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna. The Association shall be entitled to recover its reasonable attorney=s fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein.

#### **ARTICLE X** **DAMAGE AND CONDEMNATION**

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) If the Common Area is damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.

(b) If the cost of effecting total restoration of such Common Area exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for in Section 6.4(b) , cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Lot and its respective Owner.



(c) To the extent of funds available for restoration, any restoration or repair of such Common Area shall be performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Board.

(d) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. In the event of such damage to the Common Area or Improvement thereon the Board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Area or Improvement thereon with the proceeds from the Association's insurance and assign to the Association's insurance company, its claims against the Member who, by his own acts or the acts (both minor and adult) of his family member, guest, invitee, or assignee, damaged the Common Area or Improvement thereon. In the case of joint ownership of a Lot, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. All such expenses may be levied by the Association as a Corrective Assessment.

(e) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

## ARTICLE XI INSURANCE

11.1. Casualty Insurance. The Association shall secure and at all times maintain the following insurance coverages: A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all Improvements comprising a part of the Common Area. The name of the insured under each such policy shall be in form and substance similar to: "Sunview Homeowners Association" for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.

11.2. Liability Insurance. A comprehensive policy or policies insuring the Owners, the Association, and its Board, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or

property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claims of an Owner in the Development because of negligent acts of the Association or other Owners.

11.3. Fidelity Insurance. A fidelity policy or policies to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums] without at least thirty (30) days prior written notice to all Mortgagees of Lots.

11.4. Additional Insurance Requirements. The following additional provisions shall apply with respect to the insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(b) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(c) The Association shall have the authority to adjust losses.

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

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A Waiver of the insurer's subrogation rights with respect to the Association, the Owners, invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any Board, officer, Manager, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause herein shall not apply with respect to insurance held by the owners.

(f) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.



(g) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(h) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(i) Lots and Dwelling Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Dwelling Unit on a Lot and acts and events occurring thereon.

11.5. Insurance Obligations of Owners. Each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan. However, the Board may elect to take advantage of discounts and/or improved coverage that may be afforded by a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Dwelling Units on the Lots with a co-insurance clause and each owner of such Lots shall be designated as additional insured. The cost of such insurance shall be part of the assessment for such Lot. In this event the insurance cost may be specifically charged to those Lots with Dwelling Units built upon them.

11.6. Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessment may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by, the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's Designee from collecting insurance proceeds.

11.7. Association and Owner's Flood Insurance. In the event that a portion of the Development should be declared to be in a flood area, a blanket policy of flood insurance for that portion of the Common Area located in the flood area shall be maintained by the Association in an amount equal to the full cost of replacement of the Common Area within the flood area. Each Owner of a Lot located within the 100 year flood plain marked on the Plat (including without limitation, Lots 1 - 11) shall acquire and maintain in effect flood insurance for the full replacement

cost of the Dwelling Unit, the Lot and all Improvements thereon, unless such Owner elects not to obtain flood insurance and signs a "Waiver and Acknowledgment" of such election on a form prepared by and acceptable to the attorney for the local municipality prior to issuance of a certificate of occupancy. The Waiver and Acknowledgment shall be binding upon all heirs, successors and assigns of the Owner signing such Waiver and Acknowledgment. All Dwelling Units and buildings within the 100-year flood plain must have an elevation certificate, prepared by a license professional, verifying the finished floor elevation prior to issuance of a building permit. Said certificate's elevation shall be verified by the licensed professional before a certificate of occupancy is obtained. It is recommended that all Owners in the Development obtain flood insurance, even if their Lot is not located within the 100-year flood plain.

## **ARTICLE XII**

### **MORTGAGEE PROTECTION CLAUSE**

Notwithstanding any other provision of this Charter, the following provisions concerning the rights of first Mortgagees shall be in effect:

12.1 Preservation of Regulatory Structure and Insurance. Unless the holders of sixty-seven percent (67%) of all first Mortgagees and seventy-five percent (75%) of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior, appearance of Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.2, or the upkeep of the Common Area;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance values (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of improvements on the Common Area.

12.2 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least sixty-seven percent (67%) of all first mortgagees (based on one (1) vote for each Mortgagee) of the Lots and (2) the Owners of at least sixty-seven percent (67%) of the Lots (not including Lots owned by Founder), the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the owner thereof.



Neither this Article XIII nor the insurance provisions contained in Article XII may be amended without the prior approval of all first Mortgagees.

12.3 Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

(a) there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(b) there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area within ten (10) days after the Association learns of the same the Association plans to abandon or terminate the planned unit development established by this Charter.

12.4 Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association, and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

12.5 Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

12.6 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Founder, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

12.7 Rights Upon Foreclosure of Mortgagee. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

12.8 Deemed Consent. If a security holder's consent is a condition for amending the Declaration or Bylaws, the security holder's consent is presumed given, even if not actually given, if the Association complies with Section 210 of the Act.

### **ARTICLE XIII** **GENERAL PROVISIONS**

13.1 Enforcement. Subject to the provisions of Sections 14.11 through 14.14, this Charter may be enforced by the Association, Founder, and any Owner as follows:

Breach of any of the provisions contained in the Charter and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Founder so long as Founder owns a Lot in the Development, and by the Association. The offending party is entitled to such notice and rights to a hearing as provided for in the Bylaws. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(a) The result of every act or omission whereby any of the provisions contained in this Charter are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Founder for so long as Founder owns a Lot.

(b) The remedies herein provided for breach of the provisions contained in this Charter shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(c) The failure of the Association to enforce any of the provisions contained in this Charter shall not constitute a waiver of the right to enforce the same thereafter.

(d) Any breach or amendment of the provisions contained in this Charter, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Charter, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(e) The Association, through its Board, shall have the power to levy fines for violations of the Association's governing documents and fines may only be levied for violations of the governing documents. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the governing documents. Furthermore, pursuant to Utah Code 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the tenant. The Board shall adopt a rule for the procedure to enforce the governing documents and levy fines, including a schedule of fines.

13.2 Severability. Invalidation of any provision of this Charter by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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

13.4 Interpretation. The provisions of this Charter shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted

Charter

Sunview Homeowners Association

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for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Residential Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Residential Declaration.

13.5 Amendment. Any amendment to this Charter shall require the affirmation of at least sixty-seven percent (67%) of all Membership votes actually represented in person, by proxy, or by ballot that are entitled to be cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board causing to be delivered another Notice of Members Meeting, at which meeting a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Notwithstanding anything herein contained to the contrary, until ninety (90%) of the Lots in the Properties have been sold to purchasers, Founder shall have, and it hereby vested with, the right to unilaterally amend this Charter as Founder believes may be reasonably necessary or desirable. (Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred, except for amendments unilaterally made by the Founder.

13.6 Notice.

Notwithstanding any other provision in the Declaration, Articles, Bylaws or rules and regulations, the Association may provide notice to Owners by electronic means, including text message, email, or the Association's website, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

- (a) when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;
- (b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

(c) when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

(d) when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;

(e) when hand delivered, the notice is deemed effective immediately upon delivery; or

(f) when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

13.7 Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

13.8 Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Founder, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

13.9 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties and fines for the infractions of any Rules and Regulations, this Charter, or the Bylaws. Fines, subject to limitations under the Act, may be assessed as a Corrective Assessment against the Lot. The Board may adopt, amend, cancel, limit, create exceptions to, expand or enforce rules and design criteria of the Association that are not inconsistent with the Declaration or the Act. Except in the case of imminent risk of harm to a Common Area, a limited Common Area, an Owner, a Lot or a dwelling, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding or changing the procedures for enforcing rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration. A rule or design criteria adopted by the Board is only disapproved if member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act

13.10 Assignment of Founder Powers. Any and all rights and powers of the Founder herein contained may be delegated, transferred, or assigned. In the event of any such transfer of Founder rights, the Founder shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Founder(s) shall have all the rights and obligations of Founder contained herein.



13.11. Agreement to Encourage Resolution of Construction Defect Disputes Without Litigation.

(a) Founder, the Association, and all persons subject to this Charter (collectively "Bound Parties") hereby agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving a Claim (as defined in subsection (b)) without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.12 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to the design or construction of improvements by Founder within the Properties.

13.12 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 15.2.11(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Iron County Utah area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

**DISPUTE RESOLUTION TIMELINE**

Claim Between Bound Parties

Day 1	Days 2-30	Days 31-60	Days 61-90+
Written Notice of Claim	Negotiations	Request Mediation	Mediation
<ul style="list-style-type: none"> <li>• Factual Basis</li> <li>• Legal Basis</li> <li>• Propose a resolution</li> <li>• Propose a meeting</li> <li>• Send copy to Board</li> </ul>	<ul style="list-style-type: none"> <li>• Good faith effort</li> <li>• Parties meet in person</li> <li>• May request Board assistance</li> </ul>	<ul style="list-style-type: none"> <li>• Claimant must submit claim</li> <li>• Mediator assigned by Association or independent agency</li> <li>• If Claim is not submitted, it is waived</li> </ul>	<ul style="list-style-type: none"> <li>• Agency supplies rules</li> <li>• Fee split between parties</li> <li>• Written summary from each side</li> <li>• Supervised negotiation</li> <li>• Contractual settlement</li> <li style="text-align: center;">or</li> <li>• Termination of mediation</li> </ul>



Each Party shall bear its own costs of the mediation, including attorney fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from non-complying Party (or if more than one non-complying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including without limitation attorney fees and court costs.

13.13. Initiation of Litigation and Limitation of Action. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Claimant shall not initiate any judicial or administrative proceeding against the Founder for a Claim unless first approved by a vote of seventy-five percent (75%) of the total Class A votes in the Association. This Section shall not be amended unless such amendment is approved by the Founder in writing. *No litigation or dispute resolution may be commenced by a Claimant unless brought within one (1) year from the date the cause of action accrued.*

13.14. Easement to Inspect and Right to Correct. Founder and others it may designate grant the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Properties, including Lots or Parcels, and a perpetual, non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in any emergency, entry onto a Lot or Parcel shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

13.15. Founder's Disclaimer of Representations. Anything to the contrary in this Residential Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Iron County, Utah, Founder makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of the Covered Property can or will be carried out, or that any land now owned or hereafter acquired by Founder is or will be subjected to this Residential Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Residential Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, Founder expressly reserves the right at any time and from time to time to amend the Master Development Plan.

**ARTICLE XIV**  
**ANNEXABLE TERRITORY**

14.1 Annexation by Founder. Founder may expand the real property subject to this Charter by the annexation of all or part of the Annexable Territory. The annexation of such land shall become effective and extend this Charter to such real property upon the Recordation of a Supplementary Charter or similar instrument which:

(a) describes the real property to be annexed or incorporated by reference within the description contained in the Annexable Territory portion of the Plat;

(b) declares that the annexed real property is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Properties subject to the Charter; and

(c) sets forth such additional limitations, restrictions, covenants, conditions complementary additions to the covenants, conditions and restrictions contained in this Charter as are not inconsistent with this Charter and which do not create a character different than exists in the Development and is intended by this Charter.

When such annexation becomes effective, said real property shall be subject to this Charter and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in the Properties shall automatically be members of the Association.

Such annexation may be accomplished in one or more annexations or Phases of Development without limitation as to size or location within the Annexable Territory.

14.2 Limitation on Annexation. Founder's right to annex said real property to the Properties shall be subject to the following limitations, conditions and rights granted to the Founder:

(a) The annexed real property must be part of the Annexable Territory as of the date of this Charter. However, Founder reserves the right to expand the borders of Annexable Territory to real property contiguous to the property described in Exhibits A and B, but with no obligation to do so and no claim as to right, title or interest to said real property.

(b) All Lots added to the Properties shall be for residential purposes, except as otherwise provided for in this Charter.

(c) Founder reserves unto itself and its assigns the right to create Common Area, and Improvements thereon, within any portion of the annexed real property. Founder makes no assurances that such Common Areas or Improvements will be established.



(d) The configuration of annexed land as to Lot size, Common Areas and the type of Improvements is reserved to the Founder.

14.3 Expansion of Definitions. In the event the Properties are expanded, the definitions used in this Charter automatically shall be expanded to encompass and refer to the Properties as so expanded.

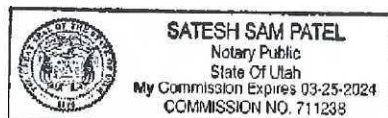
IN WITNESS WHEREOF, Founder executed this Charter on the 27<sup>th</sup> day May, 2021.


Founder:  
Sunview Development, LLC  
A Utah limited liability company

  
By: Jay Gregory Gutowski,  
Its: Manager

STATE OF UTAH, )  
:SS.  
COUNTY OF WASHINGTON )

On this 27th day of May, 2021, personally appeared before me Jay Gregory Gutowski, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the Manager of Sunview Development, LLC, a Utah limited liability company, and that he executed the foregoing Charter on behalf said corporation being authorized and empowered to do so by the Bylaws of said Company or resolution of its directors, and he acknowledged before me that such Corporation executed the same for the uses and purposes stated therein.



  
Notary Public

**EXHIBIT A**

APN:

A-0907-0001-0000

A-0907-0002-0000

A-0907-0003-0000

A-0907-0004-0000

A-0907-0005-0000

A-0907-0006-0000

A-0907-0007-0000

A-0907-0008-0000

A-0907-0009-0000

A-0907-0010-0000

A-0907-0011-0000

A-0907-0012-0000

A-0907-0013-0000

A-0907-0014-0000

A-0907-0015-0000

A-0907-0016-0000

A-0907-0017-0000

A-0907-0018-0000

A-0907-0019-0000

ALL OF LOT 1 THROUGH 19, SUNVIEW ESTATES, PHASE 1, A SUBDIVISION,  
ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE IRON  
COUNTY RECORDER.