

After Recording Return to:  
Parkside Riverton HOA  
PO Box 5555  
Draper, UT 84020

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1/18/2019 12:24:00 PM \$147.00  
Book - 10746 Pg - 7930-7998  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
INTEGRATED TITLE INS SERVICES  
BY: eCASH, DEPUTY - EF 69 P.

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
for  
PARKSIDE  
a Planned Unit Development**

This Declaration of Covenants, Conditions and Restrictions for Parkside, (the "Declaration") is executed by Parkside, LLC, a Utah limited liability company (the "Declarant").

This Declaration shall apply to all phases properly annexed hereto or made a part of this Declaration.

**RECITALS:**

A. Declarant holds all necessary authority to subject the real property described on **Exhibit "A"** attached hereto (the "Property"), to the terms and conditions of this Declaration.

B. Declarant desires to submit the Property, together with all buildings and improvements now or hereafter constructed on the Property, and all easements and rights appurtenant thereto to this Declaration.

C. Developer intends to construct the Common Areas and Lots (as defined in the Declaration) shown on the Plat.

D. Parkside is a planned unit development comprised of several Neighborhoods functioning under this Declaration. All such Neighborhoods shall be bound by this Declaration.

E. By subjecting the Property and Neighborhoods to this Declaration, it is the desire, intent and purpose of Declarant to create a planned residential development in which beauty shall be substantially preserved, which will both enhance the desirability of living, and increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

F. Declarant also desires to expand the Development to include the Additional Land, all of which they desire to be governed by this Declaration, as the same may be supplemented, added to, modified and amended from time to time.

G. The Declarant intends that the Property and Neighborhoods, and such portions of the Additional Land annexed into the Parkside project, shall be maintained, developed and conveyed pursuant to a general plan for the Property and all of the Neighborhoods and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the Neighborhoods as hereinafter set

**COURTESY RECORDING**  
This document is being recorded solely in  
courtesy and an accommodation to the public  
by the Salt Lake County Recorder, INTEGRATED TITLE INSURANCE  
SERVICES, LLC. INTEGRATED TITLE INSURANCE  
SERVICES, LLC hereby expressly disclaims all  
responsibility or liability for the accuracy or the  
content thereof.

forth.

H. The Declarant hereby declares that the Property and all of the Neighborhoods shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of enhancing and protecting the value, attractiveness and desirability of the Neighborhoods, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Neighborhoods or any portion thereof.

I. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Lots and shall be binding upon all persons having or acquiring any right, title, or interest in the Lots, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by the Declarant, the Parkside Riverton Homeowners Association ("HOA"), and/or each Owner, and their respective heirs, executors, administrators, successors and assigns.

J. These Recitals shall be deemed covenants as well as recitals.

## AGREEMENT

NOW, THEREFORE, for the reasons recited above, and in consideration of the reciprocal benefits to be derived from the conditions, covenants, restrictions, easements and requirements set forth below, the parties hereto, and each of them, hereby agree:

### I. DEFINITIONS

As used in this Declaration (including the "Recitals" section above) each of the following terms shall have the indicated meaning:

1.1 The term **Additional Land** shall mean and refer to any land adjacent or in proximity to the Property owned by Declarant, or which may be purchased in the future by Declarant or its affiliates.

1.2 The term **Area of Common Responsibility** shall mean and refer to the area for which the HOA is responsible to maintain, repair, replace, administer and regulate, including the Common Area and Facilities, if any.

1.3 The term **Area of Personal Responsibility** shall mean and refer to the area of privately owned property for which the Owner is responsible to maintain, repair and replace, unless the maintenance, repair and replacement for such privately owned area has been delegated in this Declaration to the HOA.

1.4 The term **Assessment** shall mean and refer to the charge for maintenance, repair, replacement, operation and administration assessed each Owner and/or Dwelling Unit or Lot by the HOA to pay the Operating Expenses, and

shall include an amount to fund an adequate reserve fund or funds.

1.5 The term **Association** or **HOA** shall mean and refer to the Parkside Riverton Homeowners Association. The HOA shall own: all Common Areas and Facilities, and Exclusive Common Area and Facilities throughout the Project (including those located in the Neighborhoods). The HOA may own other real and personal property not described herein.

1.6 The term **Benefited Expense** shall mean, to the extent consistent with Article IV, Section 4.3 below, an expense permitted by each Neighborhood to, with the prior written consent of the HOA, elect, at its sole expense and for its benefit, upgrade its Neighborhood, or any part thereof. Such expenses shall be exclusive to the Neighborhood so benefited and shall not be considered part of the Operating Expenses.

1.7 The term **Board of Directors** shall mean and refer to the Board of Directors of the HOA, appointed or elected in accordance with this Declaration and the Bylaws.

1.8 The term **Builder** shall mean a person or entity that purchases a subdivided lot or subdivided lots for the purpose of constructing Dwelling Units on the Lots for resale in the ordinary course of their business.

1.9 The term **City** shall mean the municipality where the property is located in Salt Lake County, Utah.

1.10 The term **Common Area Manager** shall mean and refer to the person, firm or company designated by the HOA to manage, in whole or in part, the affairs of the HOA and the Common Area and Facilities.

1.11 The term **Common Area and Facilities** shall mean and refer to all common elements, private streets, areas and facilities in the Neighborhoods, including by way of illustration but not limitation all of the land, buildings, space and improvements not privately owned or dedicated to the City.

1.12 The term **Common Assessment** shall mean and refer to the amount imposed upon, assessed or charged an Owner or Member by the HOA.

1.13 The term **Covenant to Share Costs** shall mean and refer to the obligations set forth in this Declaration and any other covenant to share costs executed by the Developer or the HOA which creates easements for the benefit of the HOA, Owners and Members, subject to such Covenant to Share Costs, and/or which obligates the HOA to share the costs of maintaining certain real, personal or mixed property described therein.

1.14 The term **Dedicated Streets** shall mean and refer to those streets and cul-de-sacs within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.15 The term **Declarant** shall mean and refer to Parkside, LLC.

1.16 The term **Declaration** shall mean and refer to this Declaration of

Covenants, Conditions and Restrictions for Parkside.

1.17 The term **Developer** shall mean and include a Builder, its affiliates, successors and assigns, if any, who have acquired Lots in bulk within a Neighborhood for the purpose of: (1) obtaining approvals from the local governmental entity to construct improvements; (2) constructing or causing to be constructed improvements to facilitate the construction of Dwelling Units (e.g., roads, utilities, sidewalks, curb and gutter); and/or (3) constructing Dwelling Units in bulk and any person or persons who might acquire title from said parties to all or some of the unimproved Lots through purchase, assignment or other transfer. The person/entity acquiring any of such property from the Declarant shall be considered a Developer with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration and any Supplemental Declaration applicable to the property. Each Developer may be appointed to serve on the Board of Directors during the Period of Declarant Control and hereby consents to serve as a Director if so appointed by the Declarant to perform such duties.

1.18 The term **Developmental Rights** shall mean and refer to the rights granted hereunder to Developers, their agents, representatives, employees, successors and assigns, to develop and improve the Lots and Neighborhoods.

1.19 The term **Dwelling Unit** shall mean an improvement upon a Lot, intended for the occupancy and use by a single family.

1.20 The term **Entry** shall mean the entry way into the Property or Neighborhoods.

1.21 The term **Entry Monument** shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Property or Neighborhoods located at or near their Entry or entrance.

1.22 The term **Exclusive Common Area** shall mean and refer to that portion of the Common Area and Facilities intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods. Exclusive Common Area shall be owned by the Association.

1.23 The term **Guest** shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant accompanied by a Member, or unaccompanied, who utilizes the rights of the Member in and to the Common Area and Facilities or Exclusive Common Area and Facilities.

1.24 The term **Individual Assessments** shall mean and refer to an assessment levied by the HOA against an Owner or a group of Owners as the situation may require, for all expenses, costs, charges, fines, and attorney's fees resulting from the act or omission of such Owner(s), their guests, tenants or invitees or resulting from corrective action taken by the HOA against the Owner(s) or the Owner's guests, excepting the Owner's failure to pay any Assessment. Individual Assessments shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or guest, tenant, invitee including but not limited to:

1.24.1 The act or negligence of any guest shall be deemed to be the act or negligence of the Owner responsible for the guest.

1.24.2 The cost to repair any damage to any portion of the Common Area and Facilities or Exclusive Common Area and Facilities on account of loss or damage caused by such Owner or guest; or

1.24.3 Any sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner or Guest which the HOA is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

1.24.4 Individual Assessments are secured by a lien in the same manner as other Assessments, as set forth below. The HOA also shall have all other remedies, both legal and equitable, described in this Declaration available against any Owner for nonpayment of such Owner's other monetary obligations.

1.25 The term **Landscaping** shall mean and refer to the decorative rock, grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Project, as well as the appurtenant sprinkling and irrigation systems.

1.26 The term **Lender** shall mean and refer to a Mortgagee.

1.27 The term **Lot** shall mean and refer to a portion of the Neighborhoods intended for any type of independent private ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map, or any amendments or supplements thereto. Where the context indicates or requires, the term Lot includes a Dwelling Unit or any other physical structure or improvement constructed upon the Lot.

1.28 The term **Lot Number** shall mean and refer to the number, letter or combination thereof designating a particular Lot.

1.29 The term **Member** shall mean and refer to a Member of the HOA. Every Owner of a Lot shall be a member of the HOA. If a Lot is owned by more than one person or entity, then all parties acting as a group shall be considered a single Member. The term "Member" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

1.30 The term **Mortgage** shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or Dwelling Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot or Dwelling Unit, or any part thereof or interest therein.

1.31 The term **Mortgagee** shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as in the case of the latter a copy of the contract for deed is given to the HOA) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also

protect the Developer as the holder of a First Mortgage of a Lot or Dwelling Unit, or any interest therein.

1.32 The term **Neighborhood** shall mean and refer to any residential area within the Project which is designated as a Neighborhood, whether or not governed by a Neighborhood Association. By way of illustration and not limitation, a Neighborhood is a group of Lots designated by shown on a Plat and known by a subdivision name, and/or with similar services. In addition, a portion of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development. Other Neighborhoods may be added by the Developer from time to time.

1.33 The term **Neighborhood Association** shall mean and refer to a sub-association or an association of property owners having jurisdiction, in whole or in part, over a specific Neighborhood concurrent with, but subordinate to, this Declaration and the HOA. As stated above, however, no Neighborhood Association is required for any Neighborhood, but may be established if deemed necessary pursuant to Article II, Section 2.11 of this Declaration.

1.34 The term **Neighborhood Assessment** shall mean and refer to an assessment levied by the HOA against a Neighborhood for maintenance items that only affect and benefit a distinct Neighborhood. Neighborhood Assessments are similar to Individual Assessments but are levied against an entire Neighborhood as opposed to an individual therein. Neighborhood Assessment shall be collected as any other assessment described in this Declaration.

1.35 The term **Office of the County Recorder** or **County Recorder** shall mean and refer to the Office of the County Recorder of Salt Lake County, Utah.

1.36 The term **Operating Expenses** shall mean and refer to the common expenses of maintaining, repairing, replacing, and operating the Common Area and Facilities, Project, Neighborhoods and administering the HOA. Unless an expense is deemed an Individual Assessment, Neighborhood Assessment or Benefited Assessment, as defined herein, then all expenses shall be an Operating Expense.

1.37 The term **Owner** shall mean and refer to a person or persons or other legal entity or entities holding fee simple title to any Lot, which Lot is subject to Assessment by the Association, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any holder of a Mortgage or beneficiary under a Deed of Trust or other security holder shown as the title record holder of any Lot as a result of foreclosure or otherwise, and any person taking title through such security holder, by purchase at foreclosure sale or otherwise.

1.38 The term **Period of Declarant Control** shall mean and refer to the period during which the Declarant is entitled to appoint all of the Board of Directors, and otherwise direct and control the development, management and operation of the Project. The Period of Declarant Control shall expire upon the first to occur of the following: (a) Ninety days after Declarant sells its last Lot or Dwelling Unit in the last phase of any property originally submitted to the Declaration or which may be annexed to this Project; or (b) when, in its discretion, the Declarant so determines and records in the Office of the County Recorder a written "Notice of Termination of Period of

Declarant Control."

1.39 The term **Plat** or **Plat Map** shall mean and refer to the Plat Map or Maps showing property subjected to this Declaration, and any amendments or supplements thereto.

1.40 The term **Private Street, Road, Cul-de-sac, Way or Drive** shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.41 The term **Project** or **Property** shall mean and refer to the Neighborhoods, Lots, Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities, and all improvements submitted to this Declaration.

1.42 The term **Regular Common Assessments** or **RC Assessments** shall mean and refer to the annual assessments levied by the HOA to pay the budgeted Operating Expenses.

1.43 The term **Residential Dwelling Unit** shall mean and refer to a residential Lot or Dwelling Unit in the Project. Only single family residences are permitted in the Project.

1.44 The term **Single Family** shall mean that each Lot or Dwelling Unit shall be occupied only by a single family as defined by Salt Lake County.

1.45 The term **Single Family Residence** ("SFR") shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential use permitted,

1.46 The term **Special Common Assessments** or **Special Assessments** shall mean and refer to assessments which the HOA may levy from time to time against all Lots and Dwelling Units, or a Neighborhood in the Project, in addition to the Regular Common Assessments, for unexpected Operating Expenses, major Repairs, Capital Improvements and Additions, or other purposes as provided herein.

1.47 The term **Total Votes of the HOA** shall mean and refer to the total number of votes appertaining to all Lots, Dwelling Units or Developer's/Declarant's interests.

1.48 The term **Unit** or **Dwelling Unit** shall mean and refer to all single-family dwelling Units, whether detached or attached, within the Project which shall be a separate physical part of the Property intended for independent ownership and use. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all walls, floors and ceilings, roofs, exterior surfaces of all kind, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and doorframes, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any

other property of any kind, including fixtures appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit. The maintenance responsibility for a Dwelling Unit shall be the responsibility of the Unit Owner as set forth in this Declaration and by resolution of the Board.

1.49 The term **Use Restrictions** shall mean and refer to the rules, regulations and use restrictions described with particularity in this Declaration, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

1.50 The term **Voting Group** shall mean and refer to a group of Owners, Neighborhoods or sub-associations (if any) designated by the Declarant as a voting group.

## II. INCIDENTS OF OWNERSHIP

2.1 **Types of Ownership.** The Declarant desires to create within the Project the ownership of a residential Lots and/or Dwelling Units. Anything to the contrary notwithstanding, the Declarant expressly reserves the right to create such different types of ownership as Declarant in its sole discretion deems necessary or desirable and shall not be obligated to create any specific ownership types.

2.2 **Membership in the HOA.** Membership in the HOA is appurtenant to and cannot be separated from a Lot or Dwelling Unit.

2.3 **Assignment or Transfer of Memberships in the HOA.** Any attempt to assign, transfer, pledge, alienate, subdivide or partition a membership in violation of this Section shall be voidable by Declarant or HOA.

2.4 **Description and Ownership of Common Area and Facilities.** The Common Area and Facilities shall mean and include all of the Property not privately owned by an individual or entity nor dedicated to the City. The Common Area and Facilities are designated on the Plat. Exclusive Common Area and Facilities are also designated on the Plat.

2.5 **Land Subject to Public Utilities and Drainage Easements.** All Common Area and private drives shown on the final Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Association to assess its members to repair streets, landscaping, etc., where needed to repair or replace the public utilities.

2.6 **Rock Walls.** All rock walls on private Lots are privately owned and shall be maintained by the Owner thereof. All rock wall repairs and maintenance shall be the responsibility of the Owner, if located upon private property, or the Association, if located upon Common Area. Each Owner and/or the Association shall indemnify and hold harmless the Declarant, its officers, boards, employees, agents and assigns, from any and all claims resulting from rock walls located within this Neighborhood in particular and the Project generally.



**2.7 Developmental Rights.** Declarant hereby reserves the right to grant any easement over, under, or through Common Areas and Facilities or Exclusive Common Areas throughout the Project, whether for access, construction or utilities, for a period of fifty (50) years from the recording of this Declaration and the Plat regardless of if it is for the benefit of the Project or not.

The following Developmental Rights are hereby granted to or reserved by Declarant in favor of the Developers:

**2.7.1 Easements.** Declarant is hereby granted an easement throughout the Project for a period fifty (50) years from the recording of this Declaration for the purpose of completing all improvements contemplated by the Declaration and the Plat, including but not limited to improvements to any land annexed. Declarant may assign its rights hereunder to a Developer for any portion of the Project developed by such Developer.

**2.7.2 Construction of Improvements.** Developer and/or Builder is hereby granted the right to construct any improvements shown on the Plat; and any other buildings, structures or improvements that Developer desires to construct on the Property, or any other real estate owned by Developer, regardless of whether the same ever become part of the Project.

**2.7.3 Use of Lots/Dwelling Units as Sales Office.** Developer is hereby granted the right to maintain sales offices, management offices, sales trailers, management trailers, signs advertising the Project and models on any of the Lots which it owns or leases or on the Exclusive Common Area and Facilities of the Neighborhood which it is developing for so long as Developer owns Lots within the Project. All Developer installed signage shall comply with municipal regulations, as the same may be changed from time to time. Developer shall be entitled to utilize, at any one time, any number of Lots or Dwelling Units which it owns or leases and some or all of the Exclusive Common Area and Facilities as sales offices, management offices, sales trailers, management trailers, and models anywhere in the Project. Developer may relocate sales offices, management offices and models to other Dwelling Units or Exclusive Common Area and Facilities at any time.

**2.7.4 Modifications to Property.** Notwithstanding anything to the contrary contained in this Declaration, Declarant may unilaterally, in its sole discretion make such alterations, changes or modifications to any property, Lot or Dwelling Unit owned by Declarant or the adjacent Common Area and Facilities or Exclusive Common Area and Facilities, as Declarant deems necessary or appropriate, including but not limited to, the creation or removal of interior walls and modifications to plumbing and electrical systems. Developer may unilaterally, in its sole discretion make alterations, changes, or modifications to any property, Lot or Dwelling Unit owned by Developer, but must obtain Declarant or HOA approval (as applicable) for modifications to Common Areas and Facilities.

**2.7.5 Storage and Parking.** Developer and Builder are hereby granted the right to store construction materials and other needed equipment on Lots, Exclusive Common Areas, or on the street within the Neighborhood it is developing. Stored materials must be maintained neatly and parked vehicles and equipment may not create an unreasonable hazard for Owners, Developers, or Builders in the Project.

**2.7.6 Developmental Rights.** Neither the HOA, Neighborhood Association, Board of Directors, or any Committee, nor any Owner or Member may take any action or adopt any rule or regulation that interferes or diminishes any Developmental Rights hereunder, without Declarant's and applicable Developer's express prior written consent, and any action taken in violation of this Section shall be null and void and have no force or effect. Developers and Builders may exercise their rights without permission of the HOA or Declarant.

**2.8 Area of Application.** This Declaration shall apply the entire Project, to all of the Neighborhoods, and any annexations or additions thereto.

**2.9 Right to Expand Application, Withdraw Land, Reconfigure Structure, or Change the Nature of the Use.** Without any other additional approval required the Declarant reserves and is hereby granted and shall have the unilateral right to:

**2.9.1 Annexation.** Declarant may expand the application of this Declaration in order to annex additional land, Common Area and Facilities, Exclusive Common Area and Facilities, Dwelling Units, or Lots. When appropriate, a written supplement to this Declaration, duly recorded, shall be necessary and sufficient to expand the application of this Declaration.

**2.9.2 Neighborhoods.** Add, withdraw or merge Neighborhoods and the governing entity of such Neighborhood(s), if any; and

**2.9.3 Withdraw Land.** Withdraw land from this Declaration.

**2.10 Bylaws.** The initial Bylaws of the Association are adopted by the HOA and are attached hereto as Exhibit "B."

**2.11 Neighborhood Associations.** The Declarant and/or the HOA have the right to require any Neighborhood or group of Neighborhoods form a Neighborhood Association which shall assist, but be subordinate to, this Declaration and the HOA. Membership in such Neighborhood Association will be mandatory and all members of the Neighborhood will automatically become a member of the Neighborhood Association. Neighborhood Associations may contain additional covenants, conditions and restrictions, including assessment obligations in addition to those of the HOA. Unless otherwise required by the Declarant or HOA, or voluntarily created by a Developer, Neighborhood Associations are not required.

### III. VOTING

**3.1 Directors.** During the Period of Declarant Control, the Declarant shall have the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion. Following the Period of Declarant Control, the HOA shall be comprised of at least three (3) Directors but not more than five (5) Directors elected by the Owners pursuant to the Bylaws.

**3.2 Voting.** The Owner of each Lot shall be entitled to votes as described in section 3.3, regardless of size or value. The voting rights appurtenant to each Lot or Membership shall vest upon execution and recording of this Declaration.

**3.3 Classes of Membership/Voting Rights.** The membership of the Association shall consist of all Owners within the Association, as defined in the Declaration, any Neighborhood Declaration or Supplemental Declaration. At any meeting of the Association, each Owner shall be entitled to cast votes pursuant to the classes of voting memberships set forth herein. The classes of voting memberships shall be as follows:

**Class A:** The Owner of each Lot or Dwelling Unit, as shown on the Plat Map shall be authorized to cast one (1) vote for each Lot or Dwelling Unit owned.

**Class B:** The Class B members are the Declarant and the Developer(s). Class B Members shall be authorized to cast ten (10) votes per Dwelling Unit and/or Lot owned. The Class B membership and the Class B Control Period shall terminate, and the Class B membership shall convert to Class A membership, upon termination of the Period of Declarant Control.

#### **IV. EASEMENTS**

**4.1 Grant of Easement.** Declarant hereby grants to the HOA, nonexclusive, perpetual rights-of-way and easements over, across and through the Project, when no other access is available, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities and Exclusive Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

**4.2 Common Use of Easement.** Said easement is to be used in common for ingress and egress over the Common Area by the Developer, the HOA, and each applicable Neighborhood Association, subject to all of the terms, covenants, conditions and restrictions set forth herein.

**4.3 Benefited Expense Regarding Landscaping.** Each Neighborhood is hereby empowered to and may, with the prior written consent of the HOA and a sixty percent (60%) approval of the Members in that Neighborhood, elect, at its sole expense and for its benefit, to upgrade the Common Areas and Facilities in, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Operating Expenses of the HOA. Nothing herein shall require a Developer to obtain approval prior to installing, upgrading, replacing, or repairing Common Areas and Facilities in the Neighborhood that it owns and controls.

**4.4 Encroachments.** If any part of the Common Area and Facilities or Exclusive Common Area or Facilities encroaches or shall hereafter encroach upon a Lot or Dwelling Unit or Lots or Dwelling Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Dwelling Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Lot or Dwelling Unit or Lots or Dwelling Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Lots or Dwelling Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project,

by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**4.5 Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot or Dwelling Unit he is occupying, and he shall have the right to the horizontal, vertical and lateral support of his Lot or Dwelling Unit. Neighborhoods may have Exclusive Common Area and Facilities for the Benefit of one or more, but not all, Neighborhoods.

**4.6 Developer's Easement.** The Declarant and HOA hereby grant and convey to the Developer an exclusive easement to make such use of the Common Area and Facilities and Exclusive Common Area and Facilities, as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration or as desired by Developer, including, without limitation, the right to construct the Common Area and Facilities for use by the Owners and Members.

**4.7 Construction Easements.** The Declarant and HOA hereby grants to Developer and Builder and their affiliates and assignees a temporary construction easement over the Common Area and Facilities and Exclusive Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots, Dwelling Units, Common Area and Facilities, and Exclusive Common Area and Facilities. The Owners of Lots and Dwelling Units do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots, Dwelling Units and the Common Area and Facilities, and Exclusive Common Area and Facilities until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Developer shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Lots, Dwelling Units and Common Area and Facilities and Exclusive Common Area and Facilities in the Project. Developer's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

**4.8 Locations Facilities Easements.** Declarant grants Developer a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further grants Developer a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities and Exclusive Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant grants Developer the perpetual right to transfer by easement, license agreement or other conveyance the rights granted hereunder to one or more telecommunication facilities providers. Developer may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the HOA. The HOA, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Developer documenting the rights hereunder, in form satisfactory to the Developer, and any assignee of its rights hereunder.

4.9 **Entry Monument.** Declarant grants Developer a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace the Entry Monument for their respective Neighborhood.

4.10 **Developer's Non-Exclusive Easement.** Declarant grants Developer a nonexclusive easement for itself and its affiliates and assignees over, through and under the Property for ingress to, egress from, and installation of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity, fiber optic, and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Developer. Upon installation of such utilities the responsibility to repair, maintain and replace the utilities shall be assumed by the HOA or the City or other public or quasi-public entity having jurisdiction over the utility.

4.11 **Reservation of Rights.** All conveyances of Lots or Dwelling Units within the Project hereafter made, whether by Developer or otherwise, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

4.12 **Common Area Repairs.** All Common Area and Facilities shown on plats are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the municipality to require the Homeowners Association to assess its members to repair streets, landscaping etc., where needed to repair or replace the public utilities.

## V. NOTICES

5.1 **Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, email or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board of Directors for the purpose of service of such notice, or to the Lot or Dwelling Unit of such Owner if no such address has been given to the Board of Directors. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if emailed or faxed, when the email or fax is received, except that if the email or fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board of Directors. It is the responsibility of the Lot or Dwelling owner to provide current contact information to the HOA.

## VI. INSURANCE

6.1 **Insurance.** The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the Project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

6.2 **Insurance Obligation of the Association.** The Association shall obtain the following insurance coverage (collectively, "Association Policy"):

6.2.1 **Public Liability.** Public liability coverage for the Common Area and Facilities;

6.2.2 **Common Area and Facilities.** Property, fire and extended hazard coverage for all Common Area and Facilities;

6.2.3 **Buildings and Dwelling Units.** Property, fire and extended hazard coverage for all buildings that contain more than one Dwelling Unit for the full replacement value thereof, including any improvement which is a permanent part of a building and is considered Common Area and Facilities. Those owners who reside in a building containing more than one Dwelling Unit for which the Association pays the property, fire and hazard insurance, shall be individually assessed for this increase in Association expenses;

6.2.4 **D&O Insurance.** Directors and officers coverage; and

6.2.5 **Fidelity Bond.** A fidelity bond.

NOTICE: The Association Policy **does not** cover the contents or the personal property in the Dwelling Unit or belonging to the Dwelling Unit Owner or renter (as defined below), or personal liability. Coverage C (as that term is defined by the standard homeowners insurance policy) - Personal Property is excluded from the Association Policy. The Association **is not required** to cover property, fire or hazard insurance on a Dwelling Unit for temporary housing, loss of business, rents or rental income although it expressly reserves and is hereby granted the right to obtain such and other coverage for its benefit.

6.3 **Minimum Amount of Insurance Coverage.** The liability insurance purchased by the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate and optional umbrella liability coverage to be determined by the Board of Directors from time to time for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Board of Directors.

6.4 **Name Association as "Loss Payee" or "Additional Insured."** Any insurance policy obtained independently by a Neighborhood Association, if any, shall name the HOA as a certificate holder, additional insured and/or loss payee if applicable.

6.5 **Premium is a Common Expense.** The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

6.6 **Insurance Obligation of Owners.** The foregoing obligation and right of the Association to purchase insurance coverage does not preclude the right or negate the obligation of each Owner to insure his own Lot and/or Dwelling Unit for his benefit. **EXCEPT AS PROVIDED FOR IN SECTION 6.2.3 ABOVE, EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE** (collectively, "Owner Policy"):

6.6.1 **Public Liability Insurance.** Public liability coverage for his/her Lot and/or Dwelling Unit. The limits of this public liability insurance policy shall be in

an amount not less than \$500,000.00 for bodily injury, death and property damage.

6.6.2 **Coverage "A" Building** (as that term is defined by the standard homeowners insurance policy) A coverage "A" building policy in the amount of the full replacement value of the building.

6.6.3 **Individual Owner Insurance.** EXCEPT AS PROVIDED IN SECTION 6.2.3 ABOVE, EACH LOT OWNER SHALL PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO HIS LOT AND DWELLING UNIT.

6.6.4 **Changes in Amounts of Required Insurance.** The amounts of insurance required may be increased or decreased unilaterally by the Board of Directors.

6.6.5 **Coverage C** (as that term is defined by the standard homeowners insurance policy) - **Personal Property/ Contents and Lost Rents.** EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C - PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS LOT AND/OR DWELLING UNIT, TEMPORARY HOUSING AND LOST BUSINESS, RENTS OR RENTAL INCOME. For use herein the term "contents" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original design and specifications, and all personal property, belongings and effects in the Lot, Dwelling Unit, Building or Common Area and Facilities not covered by the Association Policy. It is highly recommended that Owners purchase "dwelling coverage," commonly known as "Coverage A," of no less than \$10,000.

6.6.6 **Premium Is An Individual Expense.** The insurance premium on the Owner Policy shall be an Individual Expense.

6.6.7 **Maintenance of Coverage.** The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

6.6.7 **Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

6.6.8 **Name Association as "Additional Insured."** Each Owner Policy shall name the, Homeowners Association as an "Additional Insured."

6.6.9 **Certificate of Insurance.** Each Owner shall provide the Association with a "Certificate of Insurance" upon request.

6.7 **Owner's Default.** If an Owner fails to obtain his Owner Policy or fails to

provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if an Owner fails to obtain his required Owner Policy, then he shall be personally responsible to pay any deductible on the Association Policy as well as any and all costs, up to the minimum amount of coverage, incurred for repairs of or to the building as defined in Subsections 6.6.2 and 6.6.3 above.

**6.8 Payment of Deductible.** It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot and/or Dwelling Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Dwelling Unit Owner shall be responsible for the deductible.

**6.9 Damages.** Each Owner is responsible for the maintenance of his Lot and/or Dwelling Unit and for the repair of any damage he causes to another Lot and/or Dwelling Unit or the Common Area and Facilities.

**6.10 Validity of Document.** If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

**6.11 Right to Adjust Claims.** The Association has the right, power and authority to adjust claims.

**6.12 Use of Insurance Proceeds and Repairs.** Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

**6.13 Quality of Insurance Company.** The Association and Owners shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

**6.14 Primary Coverage.** It is the intent of the Declarant that the Owner's Coverage A - Building provide **primary** coverage up to the amount of the Association's deductible.

## VII. MAINTENANCE

**7.1 Operation and Maintenance of Common Area.** The HOA shall have the power, authority, right, and duty to operate, maintain, keep, and replace all Common Area and Facilities and Exclusive Common Area and Facilities not separately maintained by a Neighborhood Association in a state of good repair and condition. As



stated above, there may not be a distinct Neighborhood Association to carry out such maintenance obligations in a given Neighborhood area. In such cases the HOA shall perform maintenance as required in this Article VII. The HOA may track the costs to perform maintenance to specific Neighborhoods and allocate those costs to the Owners benefitted thereby as Neighborhood Assessments as provided in Article X.

**7.2 Area of Common Responsibility.** Unless the maintenance responsibility is expressly delegated to, and accepted in a written agreement by, a Neighborhood Association, the maintenance, replacement, and repair of the Common Area and Facilities and Exclusive Common Area and Facilities, shall be the responsibility of the HOA.

**7.3 Common Parking and Utilities.** The HOA shall also maintain, replace, and repair all common parking areas, and all common utilities, conduits, ducts, plumbing and wiring, not maintained by the City or utility. Where, however, such utilities, conduits, ducts, plumbing and wiring and other facilities for the furnishing of gas, power, water and sewer service are associated with a single Lot or Dwelling Unit, the Owner of such Dwelling Unit shall be responsible for the maintenance, replacement, and repair.

**7.4 Owner Maintenance.** Each Owner shall have the obligation to provide exterior and interior maintenance of the Lot and Living Unit, and the Limited Common Areas serving each respective Lot and Living Unit, including but not limited to painting, repair, replacement, and care of roofs, gutters, down spouts, exterior building surfaces, driveways, structural elements of the Lot and Living Unit, foundations, windows, doors, utility lines that solely service the Lot or Living Unit. The responsibility and cost to maintain, repair and replace, shared roofs, party walls, or other shared facilities shall be borne equally by the Lots Owners benefitted thereby. As necessary or desirable, each Owner shall paint, repair, and otherwise maintain the exterior and interior of his Living Unit and shall maintain, repair, and replace all mechanical devices, including but not limited to, appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems.

**Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on or servicing their Lot.**

Notwithstanding the foregoing the Association shall be responsible to maintain the landscaped areas of the Limited Common Area and private Lots surrounding the townhome/attached buildings (if any). The Association shall not be responsible to maintain any approved landscaping not included within the original construction of the Project, except at the discretion or approval of the Board.

Owners shall be responsible to maintain, repair, and replace any non-perimeter fences which mark the boundaries of their Lots or the Limited Common Areas serving their respective Lots. Such fences may be included as part of the original construction. In the event a Lot Owner fails to provide unrestricted access, or access restricted by the presence of any pet or pet waste, to the landscaped area within an enclosed Limited Common Area, the Association shall have no obligation to maintain, repair, or replace such areas while access is restricted, or to maintain, repair, or replace landscaping, irrigation systems, or any other unmaintained or damaged property arising out of or resulting from the Lot Owner's failure to provide unrestricted access.

The cost and responsibility to maintain, repair, and replace any portion of such non-perimeter fence, which serves, benefits, or bounds one Lot or backyard Limited Common Area shall be borne exclusively by the Lot Owner bounded thereby. When such non-perimeter fences serve, benefit, or otherwise mark a boundary of two or more Lots or backyard Limited Common Areas, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne equally by all Lot Owners of backyard Limited Common Areas bounded thereby.

After the Period of Declarant Control has ended, the Association, by a majority vote of those owners in attendance at a meeting noticed to discuss exterior maintenance and/or repair obligations, may vote to add said maintenance and/or repairs to a Neighborhood Assessment.

**7.5 Incidental Damages.** All incidental damages caused to private property by the maintenance, replacement, and repairs of the Common Area and Facilities or utility services shall be repaired promptly and the cost thereof charged as an Operating Common Expense.

**7.6 Access Through Common Area.** Because some of the Common Area and Facilities and Exclusive Common Area and Facilities are, or may be located within private property or may be conveniently accessible only through such property, the HOA shall have the irrevocable right to have access to each Lot or Dwelling Unit when no other access is available and to all Common Area and Facilities and Exclusive Common Area and Facilities from time to time during such reasonable hours and after reasonable notice as may be necessary, for the cleaning, repair or replacement of any Common Area and Facilities and Exclusive Common Area and Facilities, or for making any emergency repairs at any time, and when necessary to prevent damage either to the Common Area and Facilities or to any Lot or Dwelling Unit.

**7.7 Access Through Lots or Dwelling Units.** The HOA shall also have the irrevocable right to have Access to any Lot or Dwelling Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction, or reconstruction for which the HOA is responsible, or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the HOA.

**7.8 Damage to Dwelling Units - Reconstruction.** Owners are responsible for their detached dwelling and Lot. 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 rebuild, repair, or reconstruct the Lot and the Dwelling Unit in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty, or as otherwise approved by the Board of Directors, or restore the Lot by removing 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 the Owner's 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 title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction or restoration of the Lot or Dwelling Unit in less than thirty (30) days from the date such transferee acquired title to the Lot.

## **VIII. GRANT OF POWERS TO THE BOARD OF DIRECTORS AND DECLARANT**

**8.1 Board of Directors.** The management and maintenance of the Project and the administration of the affairs of the HOA shall be conducted by a Board of Directors, who shall be elected or appointed as provided in this Declaration and in the Bylaws.

**8.2 Delegation of Powers.** The Board of Directors may appoint committees to assist the Board of Directors. Notwithstanding anything to the contrary, to the extent of any conflict between decisions of Board of Directors and any committee, the decision of the former shall in all respects govern and control.

**8.3 Grant of Powers.** Unless limited by this Declaration or Bylaws, the Board of Directors shall have all the powers, duties and responsibilities as are now or may hereafter be provided herein, including but not limited to the following:

**8.3.1 Rules and Regulations.** To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Lots and Dwelling Units and to levy fines, after notice and an opportunity to be heard, for the violation thereof.

**8.3.2 Common Area and Facilities,** To make and enforce all rules and regulations governing the conduct of all persons upon the Common Area and Facilities, the Lots, and Dwelling Units.

**8.3.3 Common Area Manager.** To engage the services of the Common Area Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

**8.3.4 Operation of Common Area.** To operate, maintain, repair, improve and replace the Common Area and Facilities and Exclusive Common Area and Facilities.

**8.3.5 Payment of Operating Expenses** To determine, budget for, and pay the Operating Expenses.

**8.3.6 Assessments to Owners.** To assess and collect the proportionate share of Operating Expenses from the Owners.

**8.3.7 Neighborhood Assessments.** To assess and collect Neighborhood Assessments, Benefited Assessment and Individual Assessments.

**8.3.8 Authority to Execute Documents.** To enter into contracts, deeds,

leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.3.9 **Bank Accounts.** To open bank accounts on behalf of the HOA and to designate the signatories therefore.

8.3.10 **Conveyance of Lot/Dwelling Unit.** To purchase, hold, sell, convey or mortgage any one or more Lots or Dwelling Units in the name of the HOA or its designee.

8.3.11 **Litigation.** To bring, prosecute and settle litigation for the HOA and the Project. The prevailing party in any such dispute shall be entitled to recover their costs and reasonable attorney fees.

8.3.12 **Insurance.** To obtain insurance for the HOA, Neighborhood Associations, Dwelling Units, the Common Area and Facilities and the Exclusive Common Area and Facilities, as well as worker's compensation insurance.

8.3.13 **Damage or Destruction.** To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Declaration.

8.3.14 **Disposal of Personal Property.** To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the HOA and the Board of Directors and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

8.3.15 **Books and Records.** To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The HOA or the Board of Directors shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Dwelling Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the HOA. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

8.3.16 **All Other Accounts.** To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Dwelling Unit if the same is necessary to protect or preserve the Project.

8.3.17 **Budgets.** To prepare, adopt, amend and disseminate budgets and, other information from time to time in accordance with the terms of this Declaration, the Bylaws or policies of the Association.

8.3.18 **Common Area Rights-of-Way.** To grant conveyances, easements and rights-of-way over the Common Area and Facilities and Exclusive Common Area and Facilities and to approve signage for the Project.

**8.3.19 Enforcement of Rules.** To adopt and enforce the rules, regulations, policies and procedures of the HOA.

**8.3.20 Delegation of Committees.** Subject to the limitations of applicable law, the Board of Directors may delegate to a committee, a Neighborhood Association, Common Area Manager by written agreement all or some of the foregoing powers, duties and responsibilities.

**8.4 Officers, Agents and Employees.** Members of the Board of Directors, the officers and any assistant officers, agents and employees of the HOA shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the HOA in their capacity as such; shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for and/or by them in their capacity as such; and shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

**8.5 Limitation of Liability.** When a member of the Board of Directors, a committee member or other member volunteer is sued for liability for actions undertaken in his or her role as a member of the Board of Directors (or in another authorized capacity stated above), the HOA shall indemnify him or her for losses or claims.

**8.6 Subcontracts.** The HOA acting through the Board of Directors may enter into a contract or management agreement with a Neighborhood Association, Common Area manager, or other manager for the management of the Project, in whole or in part, which complies with the covenants, conditions and restrictions set forth herein. All such contracts shall be in writing signed by the parties. The person or entity so engaged shall be responsible for managing the Project, or any portion thereof, for the benefit of the HOA and the Owners or Members, and shall, to the extent permitted by law and by the terms of the agreement with the HOA, be authorized to perform any of the functions or acts required to be performed by the HOA itself.

**8.7 Special Declarant Rights.**

**8.7.1 Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- 1) Any roads, infrastructure, or improvements shown on the Plat or included in the Project;
- 2) Any infrastructure, improvements, Lots, and corresponding Dwelling Units upon all or any portion of the Additional Land; and
- 3) Any other buildings, structures, or improvements that Declarant desires to construct on the Property, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

**8.7.2 Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Lots and Dwelling Units to be constructed thereon.

1) The Project may be expanded by the addition of all or a portion of the real property designated by Declarant, such real property or portions thereof where applicable being referred to as "Additional Land".

2) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the HOA, Developer, or any Owner.

3) Declarant's right to expand the Project shall not expire until the Declarant elects in writing to not add the Additional Land to the Project.

4) The Additional Land may be added in total or in part, and in any order as Declarant may determine.

5) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein.

6) The Declarant simultaneously with the submission of Additional Land to the Project shall prepare and record in the Salt Lake County records, a Plat pertaining to such Additional Land to be added showing the location and dimensions of each Lot created from and located upon such Additional Land, and the designation of each Lot so created.

7) Simultaneously with the recording of said Plat, the Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall: (i) reference this Declaration, (ii) state that the provisions of this Declaration apply to the Additional Property, and (iii) include a legal description of the Additional Land added to the Project.

**8.7.3 Other Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and Bylaws and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

1) the right to dedicate any roads and streets within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;

2) the right to convert any part or portion of the Project to a different regime of residential ownership;

3) the right to create or designate additional Common Area or Limited Common Area within the Project;

4) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;

5) unless expressly and specifically bound by a provision of the Declaration, Declarant shall be exempt from the provisions of the Declaration and other governing documents;

6) the right to withdraw land from the Project until the termination of the Period of Declarant Control;

7) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;

8) the right to exert any right allowed to the Board or the Association pursuant to the Community Association Act and this Declaration;

9) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and

10) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Declarant Control Period and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

8.7.4 Exercising Special Declarant Rights. Declarant may exercise its Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association, Developer, or any Owner.

8.7.5 Transfer of Special Declarant Rights. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to Developers, or any other person or entity in whole or in part. The Declarant's successor(s) shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references to Declarant shall equally apply to its successor. A contract transferring Declarant's Rights may, but shall not be required to, be recorded in the office of the Salt Lake County Recorder.

8.7.6 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

8.7.7 Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant or Developer, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant or Developer.

8.7.8 No Modification of Declarant Rights. Any Declarant Rights in this Declaration or other governing documents shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until 6 years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment

attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

8.7.9 **Reservation of Rights.** Declarant reserves the right, for a period of fifty (50) years following the recording of this Declaration, to unilaterally and without notice to or consent of the Owners or the HOA, bind the Property and the buildings or physical improvements to the utilization of the services of any service company, service district or improvement district or any entity or organization acting in a similar capacity, including Declarant, its affiliates, successors and assigns (collectively referred to as "Service District"), established for the purpose of providing utility service or quasi-utility services or similar common service to the Property and/or other adjacent or proximate Properties of property, and to include the charges and assessments from such Service District as a "Operating Expense" or "Neighborhood Expense," as the case may require.

## IX. ARCHITECTURAL REVIEW COMMITTEE

9.1 **Members of the Committee.** An Architectural Review Committee ("ARC") shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. The ARC may be a designated and paid agent of the Board, if determined to be in the best interests of the community. A member of the ARC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ARC may be removed at any time, with or without cause. In the event that no committee is appointed, the Board shall serve as the ARC.

9.2 **Appointment.** So long as the Declarant owns any Lot or parcel within the Property, the Declarant shall have the sole right to appoint and remove all members of the ARC. The ARC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ARC. In the absence of such designation, the vote of any two (2) members of the ARC shall constitute an act of the ARC.

9.3 **Compensation.** The members of the ARC and/or its agent, may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and may be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

9.4 **Non-Liability.** Neither the ARC, or any member thereof, or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ARC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application.

Every person who submits an application to the ARC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ARC, or any member thereof, or



any officer, partner, employee, agent, successor or assign thereof to recover such damages.

**9.5 Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ARC. Developers and Builders may obtain bulk approval for all improvements and Dwelling Units within a Neighborhood from the ARC or Declarant. IN ADDITION, THE ARC, BY AND THROUGH THE BOARD, MAY ESTABLISH A SEPARATE AND DISTINCT SET OF RULES ENTITLED **ARCHECTURAL GUIDELINES** WHICH SHALL SUPPLEMENT THIS ARTICLE AND CONTAIN ADDITIONAL RESTRICTIONS CONSISTENT WITH THE DEVELOPMENT OBJECTIVES AND TERMS OF THIS DECLARATION. ALL SUCH IMPROVEMENTS OR ADDITIONS SHALL REQUIRE THAT THE APPROVALS AND PROCEDURES HEREIN TO BE FOLLOWED.

**9.6 Established Drainage Patterns.** Establish Drainage Pattern: Depending on the topography of each Lot, additional grading or improvements may have been performed, as needed, to facilitate the drainage of the Lot along with surrounding lots. Each Owner is responsible for ensuring that any drainage improvements, facilities, or modifications put in place by the Declarant or other local governing bodies are maintained, unaltered, and remain unobstructed to enable water to flow consistent with the Established Drainage Pattern (EDP = drainage pattern of each Lot at the time the certificate of occupancy was issued). Additionally, each Owner understands that no structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken, which may damage or interfere with the EDP, established public utility easements, lot ratios, create erosion or sliding problems, or may change the direction or flow of drainage channels, or obstruct the flow of water through the channels.

If an Owner interferes with the EDP, then he or she agrees to restore the property to its original condition and pay for any damages, including attorney's fees to enforce this provision. The Owner additionally understands that while Declarant or Association may or may not enforce this damage clause, it will be available for each Owner's neighbors to reference should they seek recompense for damage to their Lot caused by changes an Owner has made to his or her own Lot.

**9.7 Variances.** The ARC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the Architectural Guidelines, or any prior approval when, in the sole discretion of the ARC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations/hardships may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ARC.

If a variance is granted as provided herein, no violation of this Declaration, ARC Rules/ARC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ARC Rules/ARC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ARC shall have the right to consider and grant a variance as herein provided either with or without notice to

other Owners or a hearing of Owners thereon.

The granting of a variance by the ARC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of Salt Lake County, Utah or any annexing municipality.

**9.8 Application.** To request ARC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form as may be required by the ARC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ARC:

- (a) Site Plan. A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements, at a scale no smaller than 1" = 200'.
- (b) Building Plan. A building plot plan at a scale no less than 1" = 20'. Building elevation drawings of the north, south, east and west sides, and detailed specifications which shall indicate, by sample if required by the ARC, all exterior colors, materials and finishes, including roof, to be used.
- (c) Landscape Plan. A landscape plan for portions of the Lot to be landscaped which - shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways. Builders of more than one home shall submit prototypical plans for ARC approval - such plans to be approved pursuant to this Declaration.
- (d) Builder Bulk Approvals. Builders or Developers of more than one Dwelling Unit may submit prototypical plans of Dwelling Units to be constructed for ARC approval. The Builders' and Developers' plans shall show all proposed elevations, sample landscaping plans, and sample site plans. The ARC may approve a Builders' or Developers' plans in bulk allowing the Builders or Developers to obtain a single ARC approval for all Lots and Dwelling Units owned by the Builders or Developers. However, the exterior elevations to be used on each Dwelling Unit must be specifically approved to ensure building diversity. To the extent that the Builder or Developer constructs a Dwelling Unit and Lot substantially similar to the sample plans, the Builder shall be in compliance with the ARC's approval. Once bulk approval and exterior elevation approval is obtained, the Builder or Developer need not obtain additional approvals for the improvements or Dwelling Units to be constructed in the Project.

The ARC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ARC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ARC in reviewing and processing the application.

The Developer or Builder for detached Dwelling Units must have the front landscaping installed by close of escrow on a transaction where Developer or Builder sells the Lot to an Owner (the "Closing Date") or no later than May 15<sup>th</sup> of the year following the Closing Date when closings occur between November 1 and May 15. Rear and side yard landscape must be fully installed and completed within twelve (12) months of the Closing Date on the purchase of the Dwelling Unit in accordance with this Declaration and the Architectural Guidelines of the Association. For attached Dwelling Units (if any), Developer or Builder is responsible to install all landscaping in the Neighborhood.

**9.9 Decision.** In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ARC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Project as a quality residential development.

Unless extended by mutual consent of the Owner and the ARC, the ARC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted and complete application. The decision of the ARC can be in the form of an approval, a conditional approval or denial. If, however, an Owner has not received a decision by the ARC within the above-mentioned thirty (30) day period, there is no automatic default approval of the Owner's plans. The Owner must then send to the Association a written notice requesting a response to its request. If there is no response from the ARC upon confirmation that the ARC did, in fact, receive the certified letter, then the plans shall be approved so long as the application, plans and materials submitted do not result in the construction of a structure in violation of the Association's Architectural Guidelines.

The decision of the ARC shall be in writing, signed by a member of the ARC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

**9.10. Inspection and Complaints.** The ARC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating thereof or is violating this Declaration or the ARC Rules/ARC Standards or the approved plans and specifications.

Each owner or builder shall instruct their respective workers and employees to

follow construction only per ARC approved plans. Any modifications or deviations from approved plans must be re-approved by the ARC prior to installation.

The ARC is empowered to receive from other Owners ("Complainant") complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable ARC Rules/ARC Standards. In the event the ARC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

Should the ARC determine, within thirty (30) days of the complaint, that there has been a substantive deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ARC determine there has been no substantive deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant. Notwithstanding any other remedy available to the ARC or the Board, the Board may levy fines/Individual Assessments for deviations or violations of the ARC Rules/ARC Standards of the Association.

**9.11 Hearing.** An Owner submitting an application under this Section, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ARC for the purpose of presenting facts and information to the ARC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ARC is mailed to the Owner (and Complainant) as evidenced by the records of the ARC. The hearing shall be held within thirty (30) days following receipt by the ARC of the request for a hearing, unless the ARC shall extend said period of time because of the unavailability of ARC members.

A hearing may be continued by the ARC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ARC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ARC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ARC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant or consultants to advise the ARC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 9.12 below.

**9.12 Appeal.** Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ARC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ARC adverse to the Owner

or the Complainant reached following a hearing held pursuant to Section 9.10, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant, or their authorized representatives, have participated in the ARC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within fifteen (15) days from the date of the decision by the ARC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ARC. The failure of an Owner or Complainant to appeal a decision of the ARC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall hold the hearing at the next regularly scheduled Board meeting.

**9.13 Enforcement.** The ARC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to levy a fine, commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ARC Rules/ARC Standards or the approved plans and specifications.

The ARC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ARC shall have the sole discretion to commence such proceedings.

The authority of the ARC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

**9.14 Non-Exclusive Remedy.** The right of the Association to levy an Individual Assessment as described in Sections 9.12 and 9.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Individual Assessments, proceed to collect any amount due directly from the Owner, levy fines against the Owner, and/or pursue any other remedies available at law or in equity.

**9.15 Private Rights.** The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

**9.16 Developers and Builders.** Builders and Developers who receive notice of a complaint may appeal the complaint directly to Declarant, who shall have ultimate authority in deciding whether a violation exists, whether substantial compliance has occurred, and the remedial measures to be taken by Builders or Developers to cure the violation. Declarant's decisions under this Section are final against the Association, ARC, and Owners. Neither the Association, the ARC, nor the Owners

shall have the right to challenge the Declarant, Developer, or Builder with respect to any decisions related to Builders or Developers.

## **X. ASSESSMENTS**

**10.1 Obligation of Members of Association.** Each Member of the Association, unless otherwise exempted herein, shall pay to the HOA its share of the Operating Expenses.

**10.2 Obligation of Declarant to Pay Assessments.** The Declarant may, but is not required to, pay assessments.

**10.2.1 Neighborhood Subsidies.** Each Developer is responsible to subsidize their respective Neighborhood during the build out phase as needed or as determined by the Declarant.

**10.3 Covenant to Pay.** Each Owner, unless otherwise exempted herein, by virtue of accepting a deed or other document of conveyance to a Lot or Dwelling Unit, hereby covenants and agrees to pay his share of all Operating Expenses and Assessments.

### **10.4 Assessments.**

**10.4.1 Annual Assessments.** The regular Annual Assessment shall be paid by all Lots within the Project that are subject to assessment. The regular Annual Assessment shall be computed by subtracting all Common Expenses incurred by the HOA that are unique to, or arise from, a specific Neighborhood Association from the total expenses of the Association and then allocating this figure equally to all Lots in the Project.

**10.4.2 Neighborhood Assessments/Benefited Assessments.** In addition to regular Annual Assessments, the Board shall account for the Common Expenses specific to each Neighborhood and then allocate these expenses equally to all Lots within each specific Neighborhood. The Board may elect to incorporate Neighborhood Assessment (or Benefited Assessment) amounts into the same billing as sent for the Annual Assessment. A Neighborhood Association, if any, may also elect to have its sub-association assessments incorporated into the HOA's billing for Annual and Neighborhood Assessments.

**10.4.3 Individual Assessments.** The HOA may levy Individual Assessments against a particular Owner of a Lot or Dwelling Unit to pay the costs directly attributable to, or reimbursable by that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, plus interest and attorney's fees. Fines and penalties levied by the Board of Directors pursuant to this Declaration and the Rules and Regulations may be assessed as an Individual Assessment. Individual Assessments may only be levied upon the vote of the Board of Directors after notice to the Member and an opportunity for a hearing.

**10.5 Computation of Assessments.** The HOA shall base the annual Assessments upon budgeted estimates of the Operating Expenses expected to be incurred during the coming calendar year, plus amounts required to establish an

adequate reserve.

**10.6 Apportionment of Operating Expenses.** With the exception of Declarant and Developers, the Operating Expenses shall be allocated equally among all of the Members.

**10.7 Budget.** The HOA shall prepare and furnish to each Member an operating budget for the HOA for the coming year at the Annual Meeting or at least thirty (30) days prior to the beginning of each year. The HOA shall also prepare and furnish to each Member subject to a Neighborhood Assessment an operating budget for the Exclusive Common Area and Facilities of each applicable Neighborhood for the coming year at the Annual Meeting or at least thirty (30) days prior to the beginning of each year.

**10.8 Books and Records.** The HOA shall (a) keep books and records in accordance with generally accepted accounting practices and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Operating Expenses and any other charges.

**10.9 Payment.** Neighborhood Assessments and Assessments shall be payable in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the HOA. Payment of the assessments must be made to the HOA within on the first day of each month. A late fee of \$25.00 per month shall be assessed on all payments not received by the tenth day of the month. In addition, delinquent accounts shall be charged interest at the rate of 1.5% per month, on the last day of each month, on the outstanding balance delinquent accounts. The HOA may elect to accelerate the entire Assessment in the event of default.

**10.10 Reserves.** The HOA shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements. In the event the reserve account(s) fall below an amount considered acceptable by the Board of Directors, then, in its sole discretion and without any additional approval required, the HOA may restore or replenish the account(s) by an equitable increase in the monthly Assessment, a Special Assessment, or any combination.

**10.11 Analysis Report.** The Board of Directors shall prepare and update a written reserve analysis report as provided for in Title 57 Chapter 8a Section 211 of the Utah Community Association Act.

**10.12 Miscellaneous Provisions.** The making and collection of Assessments by the HOA from Owners of Lots or Dwelling Units and Memberships for their share of common expenses shall be made as follows and subject to the following provisions:

**10.12.1 Distribution of Common Profits, Expenses and Voting Rights.** The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to the residential Lot and Dwelling Unit Owners on an equal basis regardless of size or value of the Lot or Dwelling Unit.

**10.12.2 Creation of Funds.** At least two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for

reserve expenses.

10.12.3 **Assessments.** Assessments shall include both regular Assessments and Special Assessments.

10.12.4 **Operating Common Expenses.** Until the HOA makes an assessment for common expenses, the Developer shall pay all common expenses of their Neighborhood.

10.12.5 **Regular Common Assessments.** After an assessment has been made by the HOA, Regular Assessments must be made at least annually, based on a budget adopted at least annually by the HOA in accordance with the provisions of this Declaration and the Bylaws.

10.12.6 **Commencement of Regular Common Assessments.** Regular Common Assessments shall be levied against each separate Lot or Dwelling Unit, and shall commence when an Owner takes title from a Developer or Builder.

10.12.7 **Changes in Regular Common Assessments.** The Board of Directors may make equitable changes in the Regular Common Assessments during any calendar year provided, however, the HOA shall provide notice, by email or by first class mail to all Owners, of any increase in the Regular Common Assessments not less than ten (10) nor more than ninety (90) days prior to the date any modified Regular Common Assessment is due.

10.12.8 **Special Assessments.** In addition to the Regular Assessments, the HOA may levy in any year, Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unforeseen expenditure or the construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area and Facilities, including the necessary' fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Assessments from the Owners.

10.12.9 **Special Common Assessment.** Any Special Common Assessment levied against a particular Lot or Dwelling Unit shall be levied on an equal basis.

10.12.10 **Exclusive Common Area and Facilities.** Special Assessments for Exclusive Common Area and Facilities or Special Assessments for maintenance, repair and replacement of exterior elements of attached Dwelling Units (if any) may be levied by the Board of Directors and allocated to the Neighborhood in which it benefits.

10.12.11 **Allocation of Special Assessment.** These provisions with respect to the imposition or allocation of Special Assessments shall not apply when the special assessment is to pay an increase in real property taxes.

10.12.12 **Providing Notice.** The Board of Directors shall provide notice by email or by first class mail to all Owners or Members of any Special Assessments not less than thirty (30) days prior to the date such Assessment is due.



10.12.13 **Payment of Assessments.** All payments of Assessments shall be first applied to accrued interest, late fees and other collection costs, and then to the Assessment payment first due.

10.12.14 **Judgments.** All Assessments to pay a judgment against the HOA may be made only against the Lots, Townhouses or Dwelling Units in the Project at the time the judgment was entered, in proportion to their liabilities for Operating Common Expenses.

10.12.15 **Misconduct of Owner.** If any Operating Common Expense is caused by the misconduct of any Owner, the HOA may assess that expense exclusively against such Owner's Lot, Town house or Dwelling Unit.

10.12.16 **Unpaid Assessments.** There shall be a lien upon the applicable Lot, Townhouse or Dwelling Unit for all unpaid Assessments, together with late fees, interest and costs (including administrative, collections and/or attorneys' fees) charged pursuant to this Declaration.

10.12.17 **Lien for Unpaid Assessments.** The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Board of Directors, the Common Area Manager, or the attorney for the HOA.

10.12.18 **Notice of Lien.** The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Lot, Townhouse or Dwelling Unit and a description of the Lot, Townhouse or Dwelling Unit.

10.12.19 **Priority of Lien.** Any Assessment levied against each Lot, Townhouse or Dwelling Unit is a debt of the Owner and/or Member at the time the Assessment is made and is collectible as such. If any Owner or Member fails or refuses to pay an Assessment when due, that amount constitutes a lien on the Owner's Lot, Townhouse or Dwelling Unit, which lien is prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the Lot, Dwelling Unit or Membership in favor of any assessing Dwelling Unit or special improvement district; and

(ii) First Mortgages; and

(iii) encumbrances on the interest of the Owner or Member recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. Non-judicial lien foreclosures are permitted.

10.12.20 **Foreclosure.** In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being

foreclosed.

10.12.21 **Assessments During Foreclosure.** The Owner shall also be required to pay to the HOA any Assessments against the Lot, Townhouse or Dwelling Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed.

10.12.22 **Authority of HOA.** The Board of Directors shall have the right and power in behalf of the HOA to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot, Townhouse or Dwelling Unit in the name of the HOA.

10.12.23 **Action Against Owner.** In furtherance of such foreclosure rights, the HOA may bring an action at law against the Owner personally obligated to pay the same or the HOA may foreclose the lien in accordance with the provisions of Title 57, Chapter 1 of the Utah Code.

10.12.24 **Appointment of Trustee.** The HOA and each Owner hereby appoints the attorney of the Association (who has been retained by the Association at the time a foreclosure is initiated) as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., or as may be amended from time to time.

10.12.25 **Appointment of Successor Trustee.** The HOA reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code. Each Owner hereby conveys all of its right, title and interest in its Lot, Dwelling Unit or Membership to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments.

10.12.26 **Bid on Lot.** The HOA may, through its duly authorized agents, bid on the Lot, Dwelling Unit or Townhouse at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

10.12.27 **Recovery.** The lien procedures described herein do not prohibit actions to recover sums for which this Declaration creates a lien or prohibit the HOA from taking a deed in lieu of foreclosure.

10.12.28 **Unpaid Assessments.** The Board of Directors, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Lot, Dwelling Unit or Townhouse. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the HOA, the Board of Directors, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith. The HOA may charge a fee of up to \$50 for this service.

10.12.29 **Common Assessment.** The amount of any common Assessment against any Lot, Dwelling Unit or Membership shall be the personal obligation of the Owner.

10.12.30 **Recovery of Judgment.** Suit to recover a money judgment for such personal obligation shall be maintainable by the HOA without foreclosing or waiving the lien securing the same.

10.12.31 **Owner Waiver of Amenities.** No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities or by abandonment of his Lot, Dwelling Unit or Townhouse or by waiving any services or amenities provided for in this Declaration.

10.12.32 **Recovery of Unpaid Assessments.** In the event of any suit to recover a money judgment of unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the HOA in connection therewith, including reasonable attorneys' fees.

10.12.33 **Conveyance.** In a voluntary sale, transfer, conveyance, exchange or assignment, the personal obligation of an Owner or Member to pay unpaid Assessments against his Lot, Dwelling Unit or Townhouse shall also pass to his successors in title.

10.12.34 **Sale or Transfer Affecting Lien.** A lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Lot, Dwelling Unit or Townhouse unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

10.12.35 **Purpose of Reserve Account.** The Board of Directors shall not expend funds designated as reserves for any purpose other than unforeseen expenses or the repair, restoration, replacement or maintenance of major components of the Common Area and Facilities or Exclusive Common Areas and Facilities for which the HOA is responsible and for which the reserve fund was established or for litigation involving such matters.

10.12.36 **Management of Reserve Account Funds.** The Board of Directors shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve Account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above.

10.12.37 **Notice to Owner.** If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant pay to the HOA all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the HOA is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this subsection.

10.12.38 **Obligations of First Mortgagee.** Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot, Townhouse or Dwelling Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the Mortgagee.

10.12.39 **Reinvestment Fee.** Each purchaser of a Lot, excluding Developers, shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law. The Reinvestment Fee shall be assessed and used in accordance with Utah Code Section 57-1-46. Such amounts paid shall not be deemed to be advance payments of the Assessment, but shall be in addition thereto.

10.12.40 **Transfer of Title.** The Association, or its agent, may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of a lot owner's sale of the lot owner's lot, as provided for in Utah Code 57-8a-106. Additional paperwork required in a private sale between an owner and purchaser may be obtained from the Association but may incur additional fees.

## XI. USE RESTRICTIONS

11.1 **General.** Subject to the Developmental Rights, the Lots, Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities shall be used in accordance with the following restrictions:

11.1.1 **No Commercial Use.** Except to the extent specifically permitted by this Declaration, Owners shall not make any commercial use of the Residential Lots, Townhouses or Dwelling Units, or any portion thereof, with the exception of home occupations which do not increase traffic into the Property, subject to rules and regulations enacted by the Board of Directors; provided, however, that nothing in this subsection shall prevent Developer or an affiliated entity or a duly authorized agent from using any Lot, Townhouse or Dwelling Unit owned or leased by Developer as sales offices and model Dwelling Units or a property management office or for other commercial purposes.

Home based businesses are allowed under limited circumstances, and must comply with community guidelines. The prior written consent of the Board of Directors is required for any type of home based business. No businesses are allowed that have employees of any kind, or that have any customers that are not residents of the community. Examples include, but are not limited to: day care/pre-schools, hair/nail salons, photo studios, auto repair, general office (i.e. mortgage, accounting, legal), call centers, etc. In the event of a dispute between an Owner and the Board of Directors regarding compliance with this subsection, the decision of the Board of Directors shall be final, conclusive and binding.

11.1.2 **Subject to Project Documents.** Use of the Lots and Dwelling Units shall be pursuant to the Project documents, rules and regulations of the HOA, as each document may be amended from time to time.

11.1.3 **Signs.** Signs are prohibited on all Lots except one (1) "for sale" sign or "for lease" sign is permitted in the front yard so long as it does not exceed 378 square inches. Political signs may be placed on a Lot no more than three weeks prior to the election and must be removed within seven days after the election.

Anything herein to the contrary notwithstanding, this signage restriction does not apply

to and is not binding upon the Declarant or Developer, who is expressly authorized to employ and use whatever signs or signage it deems appropriate to market its Lots.

**11.1.4 Owner Rights of Occupation and Use.** Subject to the payment of all Assessments and other charges approved by the HOA and levied against the Owners and Members, and subject to compliance with the provisions of this Declaration, and with rules and regulations promulgated from time to time by the HOA, each Owner and Member shall have the right with all other Owners and Members to occupy and use the Lots, Dwelling Units and the Common Area and Facilities.

**11.1.4.1 Rental Restrictions.** No more than 20% of the Dwelling Units per Neighborhood may be rented at any specific time with exceptions permitted under state and federal law. All rentals MUST be registered with the Association. Registration Regulations may be created and/or modified by the Board from time to time.

**11.1.4.2 Leases Subject to Project Documents.** Any lease agreement between an Owner and a renter for a Lot or Dwelling Unit shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and any rules and regulations and any failure by the renter to comply with the terms of such documents shall be a default under the lease.

**11.1.4.3 Leases Must Be In Writing.** All such lease agreements shall be in writing.

**11.1.4.4 Owner Responsible for Renters.** An Owner shall be responsible and liable for any damage to the Project caused by his renter.

**11.1.4.5 Minimum Lease Terms.** All leases shall be for a minimum initial term of six (6) months.

**11.1.5 No Construction.** No Owner shall erect or construct, in the Common Area and Facilities, and Exclusive Common Area and Facilities any structure of any type whatsoever.

**11.1.6 Placement of Outbuildings.** Outbuildings such as sheds are only permitted on Lots with detached Single Family Residences and then only upon approval of the ARC and/or Board of Directors.

**11.1.7 Storage of Vehicles.** No Owner shall place, store, keep or permit to be placed, stored or kept, upon the Common Area and Facilities or Exclusive Common Area and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the rules and regulations of the HOA without the prior written approval of the Board of Directors.

**11.1.8 Unauthorized Activity.** No noxious, offensive, illegal or unauthorized activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Lot, Dwelling Unit or Townhouse, an Owner or Member acknowledges that noises, lights and odors

common to recreational and commercial activities, as well as construction activities, may exist on or near the Property, at anytime and from time to time.

**11.1.9 Safety.** No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

**11.1.10 Signage/Flags.** Except for United States Flags of reasonable size and as permitted by State and Federal law, no signs, flags or advertising devices of any nature, including, without limitation, for sale or for rent signs not addressed elsewhere in this Declaration, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Developer as part of its sales program, except to advertise the Project, or except as otherwise approved by Developer or, after expiration of the Period of Declarant Control, the Board of Directors.

**11.1.11 Restriction of 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 Neighborhoods which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept within the boundary of the Lot or on a leash attended to by a Person when in the Common Area or Exclusive Common Area. All pet waste must be immediately cleaned up. The following are not considered household pets; reptiles, rodents, swine, insects and animals exceeding 75 pounds. This Section may be made more restrictive by Rule of the HOA. A dog or cat which repeatedly barks or howls, whether or not within the Owner's yard, will be considered to be a nuisance. No outside dog houses or dog runs are allowed without the prior written consent of the Board of Directors.

**11.1.12 Smoking.** No smoking is permitted within any attached Dwelling Units, Common Area and Facilities and Exclusive Common Areas. Utah Code Section 78-13-1(3) has defined second hand tobacco smoke that drifts into a residential unit as a nuisance under the law. Therefore, in order to enforce and maintain the integrity of the covenants of the Association and to promote the health, safety and welfare of the community, all attached Dwelling Units shall be "smoke free" and Owners may be fined or all other legal remedies explored, in the event that smoking occurs within an attached Dwelling Unit.

**11.1.13 Littering.** Owners and Members shall not, and shall not permit their Guests to litter.

**11.1.14 Trash.** No burning trash, garbage or other waste materials will be permitted on the Property. Garbage cans must be screened from view from the street (when viewed from the front of the Dwelling Unit), except for a period not to exceed 24 hours on the day of garbage collection.

**11.1.15 Window Coverings.** The Board of Directors shall have the right to establish rules requiring interior and exterior window coverings to present a uniform

appearance or common design scheme from the exterior of Dwelling Units and Townhouses. Generally all interior window coverings visible from the exterior shall be white, beige or natural materials and colorings with exterior window coverings being approved by the Architectural Review Committee. Sheets and tin foil are not an approved window covering.

**11.1.16 Reasonable Capacity.** No Dwelling Unit shall be used to accommodate more persons than it was designed to accommodate comfortably and safely.

**11.1.17 Alterations.** Except as otherwise permitted by this Declaration, no Owner shall, without the prior written consent of the Board of Directors, make or permit to be made any alteration, improvement or addition in or to any Lot or Dwelling Unit.

Examples of improvements that must be submitted for review include but are not limited to the following: swimming pool, tennis courts, basketball court, accessory buildings (storage sheds, detached garage structures, etc.) fencing, landscaping, decks and walls. In addition, any alterations of any kind or nature to the primary structure including changes in colors or materials, awnings, roofing, windows, porches, courtyards, etc. must also be submitted for review. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all exterior changes or improvements must be submitted for review and approval prior to construction.

**11.1.18 Maintaining Structural Soundness.** No Owner shall, without the prior written consent of the Board of Directors, do any act that would impair the structural soundness or integrity of the Common Area Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project.

**11.1.19 Actions Affecting Insurance.** Nothing shall be done or kept in any Lot, Townhouse or Dwelling Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Lot, Townhouse or Dwelling Unit which would increase the rate of insurance on the Project or any part thereof over what the HOA but for such activity, would pay, without the prior written consent of the Board of Directors.

**11.1.20 Violation of Statutes.** Nothing shall be done or kept in any Lot, Townhouse or Dwelling Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

**11.1.21 Damage or Waste.** No damage to, or waste of, the Neighborhoods or any part thereof shall be committed by any Owner, Member, Guest, tenant, visitor or invitee, and each Owner or Member shall indemnify and hold the HOA and the other Owners or Members harmless against all loss resulting from any such damage or waste caused by him or his Guests, tenants, visitors, or invitees.

**11.1.22 Use of Lots.** No Owner shall violate the rules and regulations for

the use of Lots, Dwelling Units, Common Area and Facilities and Exclusive Common Area and Facilities as adopted from time to time by the HOA.

**11.1.23 Rules and Regulations.** The Board of Directors shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

**11.1.24 Owner-Occupation and Joint Value Agreement.** By accepting title to a Lot, each Owner (for himself and for his heirs, successors-in-title and assigns) understands, accepts and agrees that this Project is intended to be an owner-occupied subdivision and that "churning," the excessive buying and selling of real estate, in the market or second home ownership has, or may have, an adverse affect upon this stated purpose of the Project

**11.1.25 Partition of Property.** By accepting title to a Lot, each Owner, for himself and for his heirs, successors-in-title and assigns, does absolutely and forever waive any right to seek or obtain physical partition of the property, or any portion thereof, and does further waive the right to seek or obtain partition of the property by means of the sale of thereof, in whole or in part, unless the institution of such suit or action for partition has been approved by the affirmative vote of the same number of Owners that would be required to sell all or any portion of the Project pursuant to and in compliance with this Declaration and the Developer, if Developer still then retains the right to control the HOA. Notwithstanding the foregoing, there shall be no limitation on judicial sale in lieu of partition in the case of co-owners of individual Lots.

**11.1.26 Validity of Declaration.** It is intended that this Declaration alone, incorporating by reference the Bylaws, Articles, rules and regulations of the HOA, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Property. Accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of the property which an Owner might otherwise have are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration shall remain in effect.

**11.1.27 Fencing.** The following fencing is expressly prohibited: Front yard fencing of any kind (the only exceptions may be on corner lots and/or collector roads if approved in writing by the Board of Directors), fencing inside fencing, fencing (including by way of illustration but not limitation all hedges, trees, bushes, shrubs or other animate or inanimate, natural or artificial objects) behind and planter boxes or special landscaping established by the Developer, spite fences, and any other fencing not expressly approved by the Board of Directors in writing. White vinyl fencing is approved. Block and wrought iron fencing and any other type of fence must be approved in advance and in writing by the Board of Directors. Fencing of the front yard is not allowed. Fencing on corner lots must be 3 feet off the back of the sidewalk.

**11.1.28 Satellite Dishes.** Satellite dishes may be installed in accordance with FCC regulations and ARC prior approval taking into consideration the written guidelines established for or by Board of Directors. Further, Developer may identify the location of satellite ports on each Lot or Dwelling Unit where an acceptable quality



signal can be obtained. In the event, the Developer so designates the location of the satellite ports then any satellite dish must be installed at the location of the port. The preferred location of satellite dishes is 15 feet back from the front corner of the house. Affected units shall contact the HOA for preferred placement locations.

**11.1.29 Storage and Parking of Motor Vehicles, Trailers and Transportation Devices.** Except as otherwise expressly and specifically stated herein or in a Neighborhood Declaration (and in the event of a conflict the more restrictive provision shall apply), the driving, parking, standing and storing of motor vehicles throughout, the Project shall be subject to the following:

**11.1.30 Parking Rules.** The parking rules and regulations adopted by the Board of Directors may, among other things, regulate times, areas, location and assignment of parking spaces on public and private streets and may be enforced by the HOA on both the public and private streets.

**11.1.31 Reserved Parking Spaces.** The Board of Directors may assign parking spaces in the Common Area and Exclusive Common Area to facilitate the use and demands of the Lots and Dwelling Units, and, among other things, may reserve spaces for a particular Neighborhood, may create tow, automatic tow and other zones, and may adopt parking rules and regulations.

**11.1.32 Recreational Vehicles.** Recreational vehicles must be stored behind a fence or in a garage, except for loading and unloading which cannot exceed 24 hours in any 72 hour period. In no event may recreation vehicles be stored overnight in any part of the Project. Recreation vehicles shall include boats, trailers, utility trailers, buses, motor homes, motorcycles, all terrain vehicles, off road vehicles, snowmobiles, campers, and any other related vehicles defined as recreational vehicles by the Board.

**11.1.33 Parking Obstacles or Dangerous Situations.** No motor vehicle or trailer may be parked or stationed in such a manner so as to create a potentially dangerous situation, so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Lot, or in an unauthorized Common Areas.

**11.1.34 Designated Parking Areas.** Residents may only park their motor vehicles within their garages or in other areas designated by the Declarant or HOA.

**11.1.35 Parking in Red Zones and Fire Lanes.** Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas.

**11.1.36 Guest Parking.** Guests and visitors shall park their motor vehicles in Common Area designated for "Guest" or "Visitor" parking.

**11.1.37 Vehicle Repairs.** No Owners or Residents shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable

movement thereof to a proper repair facility.

11.1.38 **Parking Garage Alterations Prohibited.** No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonable parked in the garage as originally designed and constructed.

11.1.39 **Vehicle Access.** No motor vehicle shall be parked in such a manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

11.1.40 **Parking - Intended Purposes.** All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.

11.1.41 **Damaged or Disabled Vehicles.** Vehicles that are not operational or licensed or which leak fluids must be stored in a garage or behind an enclosure and so as not to be visible from the street or another Lot or Dwelling Unit.

11.1.42 **Landscaping.** See the Architectural Guidelines for minimum landscape standards.

11.1.43 **Maintenance Costs for Entry and Entry Monument.** The Developer may provide water and power utility services to the Entry, Entry Monument and other common elements at its expense (the "Common Utility Service"). Such Common Utility Service shall be maintained and paid for by the HOA as a Common Expense; provided, however, the Developer may elect to provide such Common Utility Services through a meter or meters on an individual Lot or Lots and, if so, each such Owner agrees, by accepting a deed or other document of conveyance to such Lot, to provide, and not terminate, delay or interrupt, those Common Utility Services to the Entry, Entry Monument or other common elements not separately metered and billed to the HOA by the provider, although in such circumstance the Owner of each such Lot shall be entitled to reasonable water and power credits for the additional charges as determined by the Board of Directors.

11.1.43 **View Impairment.** The Developer and its affiliates and assigns do not guaranty or represent that any view over and across any property, including any Lot, Dwelling Unit or Building will be preserved without impairment. Neither the Developer nor the ARC shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

## XII. TERMINATION

12.1 **Termination.** The Project may be terminated only by the unanimous agreement of all Owners, giving each Owner one (1) vote for each Lot owned.

12.2 **Recording of Notice of Removal.** All of the Owners may remove the Project from the provisions of the Declaration by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Lots consent or agree by instruments duly recorded that their liens are transferred to the undivided ownership interest of the Owners in the Project. Provided further, as long as Developer has

ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of this Declaration. Upon removal of the Project from the provisions of this Declaration, the Project shall be deemed to be owned in common by the Owners. In the event the Project is removed from the provisions of this Declaration, all owners of lots, parcels and any interest in property in the Project shall be deemed to have consented to the creation of an Assessment Area, a Local District or a Special Service District pursuant to applicable provisions of State law or local ordinance for the purpose of providing ongoing and perpetual maintenance of any landscaping or other improvements of a public or common nature, and such owners, by accepting any and/or all benefits and interests of ownership of Lots, Units or interests in the Project further waive any contest or protest period associated with the creation of an Assessment Area, Local District or Special Service District, and give their consent to the assessment of taxes and or fees as required for the provision of the necessary services.

**12.3 Termination Agreement.** A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

**12.4 Mortgagees.** Following termination, Mortgagees holding Mortgages on the Lots, Dwelling Units or Memberships which were recorded before termination may enforce those liens in the same manner as any lienholder.

**12.5 Common Area and Facilities.** In the event of the dissolution of the HOA, the Common Area and Facilities, including Exclusive Common Area and Facilities, shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and Facilities and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

### **XIII. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

#### **13.1 General.**

**13.1.1 Bound Parties.** Declarant; Developers; Builders; Association; the Owners; the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted

such Claim to the alternative dispute resolution procedures set forth in Section 13.2 in a good faith effort to resolve such Claim.

13.1.2 Claims. As used in this Article, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

13.1.2.1 the interpretation, application, or enforcement of the Governing Documents;

13.1.2.2 the rights, obligations, and duties of any Bound Party under the Governing Documents; or

13.1.2.3 the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Association or Architectural Committee under the Design Guidelines and other provisions of Article X hereof, which shall not be subject to review and shall not be subject to this chapter.

13.1.3 Exclusion from Definition of Claims. The following shall not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

13.1.3.1 any suit by the Association to collect assessments or other amounts due from any Owner;

13.1.3.2 any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce any of the provisions of this Declaration (including architectural guidelines);

13.1.3.3 any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

13.1.3.4 any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 13.2;

13.1.3.5 any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this;

13.1.3.6 any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

13.1.3.7 any suit or dispute involving a governmental entity as a party.

## 13.2 **Dispute Resolution Procedures.**

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

13.2.1.1 the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

13.2.1.2 the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

13.2.1.3 the Claimant's proposed resolution or remedy;

13.2.1.4 that the person alleged to be responsible for the acts giving rise to the Claim shall have six months to cure or resolve the Claim; and

13.2.1.5 the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

13.2.2 Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six months to rectify alter, or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 13.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

13.2.3 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.

13.2.4 Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

13.2.4.1 Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in 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.

13.2.4.2 Termination of Mediation Proceedings. If the parties do not settle the Claim within 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 that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

13.2.4.3 Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

13.2.5 Settlement. Any Claim settlement 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 such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the 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.

**13.3 Initiation of Litigation by Association.** The requirements of this Section are intended to be in addition to those requirements set forth in Section 57-8a-228 of the Act. After expiration of the Declarant Control Period, the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control unless:

13.3.1 The Right to Cure period set forth in Section 13.2.2 above has expired;

13.3.2 the legal action is approved in advance at a meeting by Owners holding at least 51% of the total allocated voting interests of the Owners in the Association:

(i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 13.4.1 and 13.4.2 below.

13.3.3 the Association provides each Owner with the items described in Section 13.4.1 and 13.4.2, below;

13.3.4 the association establishes a trust account, described in Section 13.4.3 below; and

13.3.5 the Association first goes through the procedures described in Section 13.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.

13.3.6 The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:

13.3.6.1 initiated by Declarant during the Declarant Control Period on behalf of the Association;

13.3.6.2 initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

13.3.6.3 initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);

13.3.6.4 initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

13.3.6.5 to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Declarant Control Period. Any such amendment shall also be approved by a vote of 67% of the total votes of the Association.

13.4 **Informed Vote.** Before the Owners, as Members of the Association may vote to approve any claim of legal action, the Association shall first provide each Owner with:

13.4.1 A written notice stating:

- (i) that the Association is contemplating legal action;
- (ii) the percentage vote required for approval of the litigation;
- (iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
- (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and

13.4.2 A written report from an attorney licensed to practice in Utah, which provides an assessment of:

- (i) The likelihood that the legal action will succeed;
- (ii) The likely amount in controversy in the legal action;
- (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
- (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective lot buyer's ability to obtain financing for a lot due to a pending legal action.
- (v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

13.4.3 Before the Association commences any legal action as authorized above, the Association shall:

- (i) allocate an amount equal to 10% of the cost estimated to resolve the legal action not including attorney fees; and
- (ii) place the 10% allocated funds in a trust account that the Association may only use to pay the costs to resolve the legal action.

Sections 13.3 and 13.4 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$25,000.00.

13.5 **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The

Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

13.6 **Warranties.** The Declarant provides no warranty or guarantee of any kind for any lot or structure in the Project. Any warranty issued by a Developer or Builder shall not bind or obligate the Declarant in any way. The Association and all Owners shall have no right to seek the performance of or take assignment of any rights in any warranty to pursue litigation against the Declarant.

13.7 Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of a Lot Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas and facilities.

13.8 ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

13.9 The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

13.10 **Enforcement of Resolution.** If the Bound Parties agree to resolve any Claim through negotiation in accordance herewith and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to an award following mediation or arbitration, and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth herein. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorney fees and court costs.

#### XIV. SECURITY

14.1 **Security.** The HOA may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the HOA, the Declarant, nor the Developer shall in any way be considered insurers or guarantors of security within the Project, however, and



neither the HOA, the Declarant, nor the Developer shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her or its tenants, Guests and invitees acknowledge that the Declarant, the Developer, the HOA and its Board of Directors do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglar alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner or his, her or its tenant, guest or invitee acknowledges and understands that the Declarant, the Developer, the Board of Directors and the HOA are not insurers and that each Owner or his, her or its tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that the Declarant, the Developer, the Board of Directors and the HOA have made no representations or warranties nor has any Owner or his, her or its tenant, Guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

## **XV. AMENDMENT**

**15.1 General.** Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the HOA cast either in person or by proxy or by ballot at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the HOA. In such instrument an officer or delegate of the HOA shall certify that the vote required by this Section for Amendment has occurred.

**15.2 Declarant's Right to Amend.** Declarant may unilaterally amend this Declaration for any purpose at Declarant's sole discretion prior to the expiration of the Period of Declarant Control subject to the following: (i) Declarant must meet and consult with Developer(s), if any, prior to amending the Declaration, (ii) no amendment shall materially and adversely affect the rights of any Developer as set forth herein without the consent of the affected Developer, which consent shall not be unreasonably withheld, and (iii) Declarant shall not alter or limit Developer rights pertaining to architectural approvals that were accepted prior to the adoption of the amendment, including any approvals granted under Section 9.8(d) herein.

**15.3 To Satisfy Requirements of Lenders.** Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, Dwelling Units or

Memberships, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, Dwelling Unit or Membership, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots or Dwelling Units and Memberships and all persons having an interest therein. It is the desire of Declarant to retain control of the HOA and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Declaration to restore such control.

**15.4 Declarant's Rights.** No provision of this Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

## **XVI. MISCELLANEOUS**

**16.1 Covenants to Run with Land.** This Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Declaration and any other party which has, acquires, or comes to have any interest in the property or which occupies or uses the property, a Lot or Dwelling Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Member and Owner, all Lots, Dwelling Units and Townhouses. Each Owner and occupant, by virtue of Accepting a deed or other document of conveyance to, or the possession of any Dwelling Unit, Townhouse or Lot, or use of the property, hereby consents and agrees to be subject to and bound by this Declaration and all of the conditions, covenants, restrictions, easements, provisions and requirements hereof.

**16.2 Partial Invalidity.** The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any party to this Declaration, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any party to this Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

**16.3 Effective Dates and Duration.** This Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective in perpetuity, unless sooner terminated and extinguished by a written Termination of Declaration filed with the Salt Lake County Recorder, and executed by all of the parties hereto.

**16.4 Construction.** Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

**16.5 Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

**16.6 Professional Manager.** The HOA and each Neighborhood Association must at all times be managed by a professional manager, who must be selected or approved by the HOA and, during the Period of Declarant Control, the Declarant; provided, however, the Board of Directors may delegate some of their management responsibilities to a professional manager or company, and they may employ general laborers, grounds-crew, maintenance personnel, bookkeeping, administrative and clerical workers as necessary to perform their management responsibilities. In the event of a conflict of opinion, the decision of the Declarant shall be conclusive, final and binding.

**16.7 Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.

**16.8 Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, Common Area facilities and buildings, or deviations from provisions of the Governing Documents. Any modification or accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

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

[end of document]



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PARKSIDE**

Beginning at a point on the Southerly Right-of-Way Line of 12600 South Street, said point being South 89°13'05" East 712.83 feet along the section line and South 00°46'55" West 61.00 feet from the North Quarter Corner of Section 31, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 89°13'05" East 477.65 feet along the Southerly Right-of-Way Line of said 12600 South Street; thence South 19°43'55" West 135.06 feet; thence Southeasterly 57.35 feet along the arc of a 70.00 foot radius curve to the right (center bears South 43°22'47" West and the chord bears South 23°08'56" East 55.76 feet with a central angle of 46°56'34"); thence North 89°40'39" West 42.00 feet; thence Northwesterly 43.98 feet along the arc of a 28.00 foot radius curve to the left (center bears North 89°40'39" West and the chord bears North 44°40'37" West 39.60 feet with a central angle of 89°59'57"); thence North 89°40'36" West 80.83 feet; thence South 00°19'21" West 987.00 feet; thence South 89°59'57" East 103.91 feet; thence Northerly 15.95 feet along the arc of a 25.00 foot radius curve to the left (center bears North 53°07'45" West and the chord bears North 18°35'48" East 15.68 feet with a central angle of 36°32'54"); thence North 89°41'40" East 42.00 feet; thence Southeasterly 23.65 feet along the arc of a 15.00 foot radius curve to the left (center bears South 89°40'39" East and the chord bears South 44°50'18" East 21.27 feet with a central angle of 90°19'18"); thence South 89°59'57" East 146.75 feet; thence South 00°19'24" West 54.00 feet; thence North 89°59'57" West 155.14 feet; thence Southwesterly 16.85 feet along the arc of a 20.00 foot radius curve to the left (center bears South 41°24'32" East and the chord bears South 24°27'25" West 16.36 feet with a central angle of 48°16'07"); thence South 89°39'22" West 42.00 feet; thence Northerly 16.23 feet along the arc of a 25.00 foot radius curve to the left (center bears North 89°40'39" West and the chord bears North 18°16'24" West 15.94 feet with a central angle of 37°11'30"); thence North 89°59'57" West 192.83 feet; thence Southerly 15.95 feet along the arc of a 25.00 foot radius curve to the left (center bears South 53°07'45" East and the chord bears South 18°35'48" West 15.68 feet with a central angle of 36°32'54"); thence South 89°41'40" West 42.00 feet; thence Northwesterly 23.65 feet along the arc of a 15.00 foot radius curve to the left (center bears North 89°40'39" West and the chord bears North 44°50'18" West 21.27 feet with a central angle of 90°19'18"); thence North 89°59'57" West 76.24 feet to the Easterly Boundary Line of the Provo Reservoir Canal as recorded in that certain Warranty Deed recorded as Entry No. 394935; thence North 00°25'00" West 1,004.80 feet along the Easterly Boundary Line of said Provo Reservoir Canal; thence North 18°38'00" West 198.02 feet along the Easterly Boundary Line of said Provo Reservoir Canal; thence North 06°14'00" East 4.67 feet along the Easterly Boundary Line of said Provo Reservoir Canal to the point of beginning.

Excepting from Parcel described above all minerals including but not limited to coal, oil, gas and metals of whatsoever kind and nature in subject property, excepted by the State of Utah in that certain Quit Claim Deed recorded December 11, 1963 as Entry No. 1965515 in Book 2132 at Page 454 of Official Records.

**Being the Proposed Parkside Plat 1 Subdivision**

Parcel Identification No. 27-31-202-001

AND

Beginning at a point on the Southerly Right-of-Way Line of 12600 South Street, said point being South 89°13'05" East 1,190.48 feet along the section line and South 00°46'55" West 61.00 feet from the North Quarter Corner of Section 31, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 89°13'05" East 139.18 feet along the Southerly Right-of-Way Line of said 12600 South Street; thence South 00°19'24" West 1,134.66 feet; thence North 89°59'57" West 146.75 feet;

thence Northwesterly 23.65 feet along the arc of a 15.00 foot radius curve to the right (center bears North 00°00'03" East and the chord bears North 44°50'18" West 21.27 feet with a central angle of 90°19'18"); thence South 89°41'40" West 42.00 feet; thence Southwesterly 15.95 feet along the arc of a 25.00 foot radius curve to the right (center bears North 89°40'39" West and the chord bears South 18°35'48" West 15.68 feet with a central angle of 36°32'54"); thence North 89°59'57" West 103.91 feet; thence North 00°19'21" East 987.00 feet; thence South 89°40'36" East 80.83 feet; thence Southeasterly 43.98 feet along the arc of a 28.00 foot radius curve to the right (center bears South 00°19'24" West and the chord bears South 44°40'37" East 39.60 feet with a central angle of 89°59'57"); thence South 89°40'39" East 42.00 feet; thence Northwesterly 57.35 feet along the arc of a 70.00 foot radius curve to the left (center bears North 89°40'39" West and the chord bears North 23°08'56" West 55.76 feet with a central angle of 46°56'34"); thence North 19°43'55" East 135.06 feet to the point of beginning.

Excepting from Parcel described above all minerals including but not limited to coal, oil, gas and metals of whatsoever kind and nature in subject property, excepted by the State of Utah in that certain Quit Claim Deed recorded December 11, 1963 as Entry No. 1965515 in Book 2132 at Page 454 of Official Records.

Parcel Identification No. 27-31-202-004.

**Being the Proposed Parkside Plat 2 Subdivision.**

## EXHIBIT B

### BYLAWS OF THE PARKSIDE RIVERTON HOMEOWNERS ASSOCIATION

THESE BYLAWS, for PARKSIDE RIVERTON HOMEOWNERS ASSOCIATION, a Utah non-profit corporation, are hereby adopted as the official Bylaws of said Association.

#### ARTICLE I. DEFINITIONS

The following terms used in these Bylaws shall be defined as follows:

1.1 **Articles.** The Articles of Incorporation of Parkside Riverton Homeowners Association, a Utah non-profit corporation, including any amendments thereto duly adopted.

1.2 **Bylaws.** These Bylaws of the Association including any amendments thereto duly adopted.

1.3 **Corporation.** As used herein, the term "Corporation" shall refer to The Parkside Riverton Homeowners Association, a non-profit entity organized under the laws of the State of Utah.

1.4 **Lot.** A portion of the Parkside Riverton Development which is subject to the Declaration hereafter defined and as set forth on the plat as a "lot," and subject to Assessment by the Association, and the Owner of which is a Member of the Association.

#### ARTICLE II. MEETING OF MEMBERS

2.1 **Place of Meeting.** The Board of Directors may designate any place within the State of Utah as the place of meeting for any annual meeting or for any special meeting of the Members. If no such designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Corporation in the State of Utah.

2.2 **Annual Meeting.** After turnover of administrative control to the members, the annual meeting of the membership (for the election of directors and for the transaction of such other business as may properly come before the members) shall be held each year. Each annual meeting shall be held on or near the same quarter, place and time as the previous year unless all members are properly notified otherwise. In any event, all Members shall be given notice of all meetings as provided for below. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

2.3 **Waiver.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners



present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

**2.4 Notice of Annual Meeting.** At least ten (10) days prior to the date of an annual meeting, written notice stating the place, day and hour of the meeting shall be sent via, email, text, hand-delivery, or regular mail to each Member, who, thirty (30) days prior to the date of said annual meeting appears of record in the books of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his/her address as it appears on the membership books of the Association or to such other last known address of which the Association may have notice, with postage thereon. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Member's email address or telephone number registered with the Association. Members may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Member will not accept notices by way of email or text.

**2.5 Deferred Annual Meeting.** If for any reason the annual meeting of the Members be not held as herein provided, such annual meeting shall be called by the President, or by the Board, as soon as it is convenient. In the event the Board fails to call the annual meeting, any Member may make a demand in writing by registered mail addressed to an officer of the Association that such meeting be held within a reasonable time. If the annual meeting is not called within sixty (60) days following such written demand, any Member may compel the holding of such annual meeting by legal action directed against the Board as provided by law.

**2.6 Special Meetings.** Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, by the Board of Directors or by the Members holding not less than thirty-five percent (35%) of the votes entitled to be cast at such meeting.

**2.7 Notice of Meeting.** At least ten (10) days prior to the date of a special meeting, written notice stating the place, day and hour of the meeting shall be sent via, email, text, hand-delivery, or regular mail to each Member, who, thirty (30) days prior to the date of said annual meeting appears of record in the books of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his/her address as it appears on the membership books of the Association or to such other last known address of which the Association may have notice, with postage thereon. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Member's email address or telephone number registered with the Association. Members may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Member will not accept notices by way of email or text.

**2.8 Quorum.** The number of Members present either in person or by proxy, shall constitute a quorum at any annual or special meeting of Membership. The vote of the majority of the votes entitled to be cast by the Members present, or represented

by proxy at a meeting at which a quorum is present shall be the act of the Members, unless the vote of a greater number is otherwise required by the Articles of Incorporation, these Bylaws, the Amended and Restated Declaration or by law.

**2.9 Members Entitled to Vote.** The Members entitled to receive notice of and to vote at any meeting of the Members shall be determined from the Association's records at the time notice is mailed but not earlier than ten (10) days prior to the last day notice may properly be mailed.

**2.10 Temporary Adjournment.** An annual or special meeting of the Members may adjourn from time to time without new notice being given until the business is completed. The fact of and reason for such adjournment shall be recorded in the minutes of proceedings of the meeting.

**2.11 Officers of a Meeting of Members.** The presiding officer at a meeting of the Members shall be the President of the Association, or in his/her absence the Vice-President, or in the absence of both the President and the Vice-president the managing agent may conduct the meeting.

**2.12 Voting Rights.** Each Member of the Association holding a Class A membership shall be entitled to one (1) vote in person or by proxy for each Lot owned by said Member. Each Member of the Association holding a Class B membership shall be entitled to ten (10) votes for each Lot owned by said Member. Except in cases in which it is otherwise provided by statute, the Articles of Incorporation, the Declaration, or these Bylaws, a majority of the total votes cast by each class of membership shall be required for the election and for the passage of any measure.

**2.13 Voting by Certain Members.**

(a) A membership standing in the name of another corporation may be voted by such officer, agent or proxy as the Bylaws of such corporation may prescribe or, in the absence of such provision, as the Board of Directors of such other corporation may determine.

(b) A membership held by an administrator, executor, guardian or conservator may be voted by such person, either in person or by proxy, without a transfer of the membership into the name of said person.

(c) A membership standing in the name of a trustee may be voted by said trustee, either in person or by proxy.

(d) A membership in the name of a receiver may be voted by such receiver, and a membership held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so be contained in the appropriate order of the court by which such receiver was appointed.

(e) A Member whose membership is pledged shall be entitled to vote such membership until the membership has been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the membership so transferred.

## 2.14 Proxies.

(a) A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary or designee in accordance with procedures adopted by resolution of the Board of Directors.

(b) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution.

(c) No proxy shall be valid if it purports to be revocable without notice.

(d) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.16 below.

(e) Every proxy shall automatically cease upon sale of the Lot.

**2.15 Action Without a Meeting.** Any action which, under any provisions of the Articles of Incorporation or these Bylaws may be taken at a meeting of the members, may be taken without a meeting as provided for in Title 16 Chapter 6a Section 707 of the Utah Revised Nonprofit Corporation Act.

## 2.16 Action By Written Ballot In Lieu of a Meeting.

(a) Action By Written Ballot. At the discretion of the Board of Directors, any action, except election or removal of directors, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting as provided for in Title 16 Chapter 6a Section 709 of the Utah Revised Nonprofit Corporation Act.

### (b) Form and Effect of Ballot

(i) The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(ii) A written ballot may not be revoked.

(c) Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

(i) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

(ii) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following:

(1) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

(2) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

(3) A date certain on which all ballots must be returned to be counted.

(d) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(i) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(ii) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.

(iii) Votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

**2.17 Absentee Ballots.** Members entitled to vote may vote by absentee ballot. For all matters that require a vote of the membership, the Board shall distribute "absentee ballots" to those who have specifically requested such a ballot. In addition, the Board may distribute absentee ballots to all members for any matter to be voted upon. The absentee ballot shall be the same ballot used by those who vote in person at a regular or special meeting, except for statements that the ballot being used is an absentee ballot. Absentee ballots may be received up until the time any such meeting begins. A member may not vote in person at a meeting if they have already submitted an absentee ballot.

**2.18 Elections; Voting.** As set forth in the Declaration, at each election for the persons to serve on the Board of Directors of the Association, every Member entitled to vote at such election shall have the right to one vote on each matter or issue, in person or by proxy, for each vote to which such Member is entitled. Cumulative voting is not allowed. For the purpose of electing directors, the greater of the total votes cast in the combined Class A and Class B memberships (if there exists any Class B membership) shall be required for election.

**2.19 Records.** Records of the proceedings of meetings of Members shall be kept at the registered office of the Association.

### ARTICLE III. BOARD OF DIRECTORS

**3.1 Number of Directors.** After the Period of Declarant Control, the business of the Association shall be managed by a Board of Directors comprised of at least three (3) but no more than five (5) persons, all of whom shall be required to be a Member of the Association. During the Period of Declarant Control, the qualification requirements of these Bylaws shall not apply and the Board of Directors shall be comprised solely of Directors appointed by Declarant, in the Declarant's sole discretion.

**3.2 Elections-Term of Office.** Each director so elected shall hold office for the term elected and until his/her successor is elected and qualified.

During the Declarant Control Period the Declarant will appoint the members of the Board of Directors.

After the Declarant Control Period, the election of the Board of Directors shall be by ballot; or by verbalized acclamation if moved upon, seconded and voted on by a majority of those in attendance in person or by proxy. At such election each Member, or his proxy, may cast one vote for each vacancy for each Class A or three votes for each vacancy for each Class B Membership to which he is entitled. Cumulative voting is not allowed. The person(s) receiving the largest number of votes shall be elected.

After turnover of administrative control to the members, at the first annual meeting of the membership, the terms of the Board shall be staggered so that the terms of one-third of the Board will expire (one-year, two-years and three-years) and successors will be elected at each annual meeting of the Association as provided in these Bylaws. Thereafter, at such annual meetings, successors to the Board whose terms then expire shall be elected to serve terms of three (3) years.

**3.3 Vacancies.** Vacancies in the Board of Directors shall be deemed to exist upon the death, resignation or removal from office of a director, or if the Members increase the number of directors and fail to elect the full number of authorized directors. Vacancies in the Board of Directors shall be filled by a majority of the remaining directors, though they constitute less than a quorum of a full Board of Directors and such appointed Directors shall hold office for the unexpired term. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his/her term of office.

#### **3.4 Meetings.**

(a) Regular meetings of the Board of Directors shall be held as determined by the Board of Directors. The Board may adopt a schedule of meetings, to be provided to requesting Owners.

(b) Within thirty (30) days following each annual meeting of Members of the Association, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers and the transaction of such other business as may properly come before the meeting. No formal notice of such meeting need be given.

(c) Special meetings of the Board of Directors of the Association may be called for any purpose at any time by the President or by the Vice-President

or by any two directors.

(d) Notice of any special meeting shall be given at least three (3) days prior to the time set for such meeting by written notice delivered personally or mailed to each director at his/her business address or by email. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. Any director may waive notice of any meeting. The attendance of a director to a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of the business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Notice of the time and place of holding an adjourned meeting of the Board of Directors need not be given to absent directors if the time and place be fixed at the meeting adjourned.

**3.5. Quorum.** A majority of the duly elected and qualified Directors comprising the Board of Directors as fixed by the Declaration and Bylaws shall be necessary to constitute a quorum at all meetings of the Board of Directors for the transaction of business, except to adjourn as hereinafter provided, and the actions and decisions of a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act or acts of the Board of Directors. Provided, however, that if all of the directors shall approve the proceedings of a meeting of the Board of Directors by execution of that approval in the minutes or other records of the meeting, such meeting shall be legal regardless of the manner in which it was called, or the number of directors present.

**3.6 Action Without Meeting.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting in accordance with Title 16 Chapter 6a Section 813 of the Utah Revised Nonprofit Corporation Act.

**3.7 Adjournment.** A quorum of the directors may adjourn any director's meeting to meet again at a stated day and hour; provided that in the absence of a quorum, a majority of the directors present at the meeting, either general or special, may adjourn from time to time until a quorum shall be present and prior to the time fixed for the next regular meeting of the Board of Directors.

**3.8 Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

**3.9 Open Meetings.** Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may

hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners

**3.10 Compensation.** Directors shall not receive any stated salary for their services as directors but the expenses incurred in the performance of their duties may be allowed.

**3.11 Removal.** A member of the Board of Directors, or the entire Board of Directors may be removed, with or without cause, by a vote of a majority of all the Members. The removal of a director, or the entire Board of Directors, in the manner prescribed in this Section may occur at any special meeting of the Members called for that purpose.

**3.12 Presumption of Assent.** A director of the Association who is present at a meeting of the Board of Directors at which action on any Association matters is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless such director shall file written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

**3.13 Powers.** The property, business and affairs of the Association shall be controlled and managed by a Board of Directors and it shall have all lawful powers necessary or convenient to carry out the same unless prohibited by law, the Articles of Incorporation, these Bylaws or the Declaration.

#### **ARTICLE IV. OFFICERS**

**4.1 Authorized Officers.** The officers of the Association shall be a President, a Secretary and a Treasurer, which shall be elected by the Board of Directors as provided in Section 4.3 of this Article. At its discretion, the Board of Directors may elect one or more Vice-Presidents, a general manager and such other officers and agents as may be necessary for the business of the Association and specify the duties and authority of each.

**4.2 Combining Offices.** Any two (2) or more of the offices may be combined in one person except President and Secretary.

**4.3 Election of Officers.** The officers of the Association, except those appointed in accordance with Section 4.4 of this Article, shall be chosen by the Board of Directors annually at their meeting following the annual meeting of the Members. Each officer shall hold office for one (1) year or until such officer's successor shall have been duly elected and shall have qualified or until such his/her death or until he/she shall resign or shall have been removed in the manner provided in Section 4.5 of this Article.

**4.4 Filling Vacancies.** A vacancy in any office from whatever cause may be filled at any regular or special meeting of the Board of directors for the unexpired portion of the term.

**4.5 Removal.** Any officer or agent of the Association may be removed by action of the Board of Directors at any meeting thereof by a majority vote of the directors in office.

**4.6 Resignation.** The resignation of any officer or agent of the Association shall become effective by written notice to the Board of Directors, President or Secretary at the time therein specified, without acceptance by the Board, of Directors.

**4.7 Powers and Duties of Officers.**

(a) President. The President (i) shall be the chief officer of the Association generally supervising the performance of all business policies adopted and approved by the Board of Directors; (ii) shall be the general managing officer of the operations of the Association; (iii) shall preside at all meetings of Members and the Board of Directors; (iv) shall be responsible for long-term planning of financial policies of the Association and periodically shall report and recommend financial policies and programs to the Board of Directors; (v) may sign, with attestation by the Secretary, certificates of membership in the Association and with or without attestation any deeds, mortgages, bonds, notes, contracts or other instruments which the Board of Directors has authorized to be executed. The President shall perform those duties and have and exercise that authority and responsibility customarily incident to the office of president of a corporation of the nature of this one and, furthermore, shall perform those special duties and functions delegated to the President by the Board of Directors.

(b) Vice-President. In the absence of the President or in the event of the President's death, inability or refusal to act, the Vice-president (or in the event there be more than one Vice-president, the Vice-Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President and when so acting shall have all the powers of and be subject to all restrictions upon the President. The Vice-president shall be direction responsible to the President and shall have such authority and perform such duties as shall be assigned to him/her by the President or by the Board of Directors.

(c) Secretary. The Secretary shall: (i) keep the minutes of the proceedings



of the Members and of the Board of Directors in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents, the execution of which, on behalf of the Association, under its seal is authorized and directed by the Board of Directors; (iv) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (v) sign with the President, or Vice-president, certificates of membership in the Association, the issuance of which shall have been authorized by resolution of the Board of Directors; (vi) have general charge of the membership book of the Association; and (vii) in general perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him/her by the President or by the Board of Directors. In the event a vacancy exists in the office of Vice-president, the Secretary shall have the power and duties specified in Section 4.7(b) of this Article IV.

(d) Treasurer. The Treasurer shall (i) keep full and accurate account of the receipts and disbursements in books belonging to the Association and shall ensure the deposit of all monies and other valuable effects in the name and to the credit of the Association at such banks and depositories as may be designated by the Board, but shall not be personally liable for the safekeeping of any funds or securities so deposited pursuant to the order of the Board; (ii) disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements and shall render to the President and directors at the regular meetings of the Board and, whenever they may require, accounts of all transactions as Treasurer and of the financial condition of the Association; and (iii) perform the duties usually incident to the office of Treasurer and such other duties as may be prescribed by the Board of Directors or by the President and those duties set forth in the Declaration. The Treasurers duties may be delegated to a professional bookkeeper, accountant or management company.

(e) Assistant Secretary-Assistant Treasurer. If and when elected, the Assistant Secretary or the Assistant Treasurer shall perform such duties and have such authority as prescribed by the President.

**4.8 Bonds.** The Board of Directors may, by resolution, require any or all of the officers of the Association to give a bond with sufficient surety, conditioned for the faithful performance of the duties of their respective offices.

**4.9 Salaries.** No salaries are to be paid to Board members or officers. All such officers, directors and committee members shall be reimbursed for costs actually incurred.

## ARTICLE V. COMMITTEES

After the right of the Declarant to do so shall expire, the Board of Directors shall appoint an Architectural Control Committee, as provided in the Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes. A committee shall not have powers, duties, or

responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

## **ARTICLE VI. CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**6.1 Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

**6.2 Loans.** The Board of Directors may receive loans for the benefit of the HOA, however, loans in excess of the annual assessment per Lot or Dwelling Unit shall be approved by a majority of those present in person or by proxy at a special meeting called for such purpose.

**6.3 Checks, Drafts, Etc.** All checks, drafts and other order for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, employee or employees, or agent or agents of the Association and in such manner as shall from time to time be determined by the Board of Directors.

**6.4 Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies and other depositories as the Board of Directors may select.

## **ARTICLE VII. ASSESSMENTS**

The Association shall have the right to assess, levy and collect Assessments as provided in the Declaration, which assessments may be enforced as provided in the said Declaration.

## **ARTICLE VIII. AMENDMENTS**

**8.1 Amendments by Declarant.** During the Period of Declarant Control, the Declarant acting alone may amend, alter, or repeal and adopt new Bylaws for any reason, without Owner approval. No other amendment shall be valid or enforceable during the Period of Declarant Control unless the Declarant has given written consent to such amendment. Any amendment during the Period of Declarant Control shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Salt Lake County Recorder.

**8.2 Amendments by Association.** After termination of the Period of Declarant Control, the Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Salt Lake County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote of any one

Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

**8.2 Conflict.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

#### **ARTICLE IX. GENERAL PROVISIONS**

**9.1 Ownership Interest.** Except as may be specifically provided to the contrary in the Articles of Incorporation, these Bylaws or the Declaration with respect to the rights of the Class B membership, every Member shall have the same rights and interests in the Association and in the real and personal property owned by the Association and no Member can have or acquire a greater interest therein than any other Member.

**9.2 Suspension of Rights.** The rights of a Member may be suspended or withdrawn as more particularly provided in the Declaration. The loss of such rights shall not relieve the Member from the Member's obligation to pay any of the Assessments properly levied by the Board. Restoration of full rights of membership must meet the conditions prescribed by the Board which may include payment of all amounts due the Association, execution and delivery of covenants and/or other security that future violations will not occur and any other terms and conditions reasonably imposed by the Board.

**9.3 Contracts.** The Association shall have the power to enter into any contracts and incur indebtedness on behalf of the Association, but shall be specifically limited by the limitations, if any, contained in the Articles of Incorporation, these Bylaws or the Declaration.

**9.4 Rules, Regulations and Standards.** The Board shall have the power to promulgate rules, regulations and standards for its own government, to aid and assist the Board and its committees in the carrying out of duties and to set standards of design, construction, maintenance in addition to establishing the rules of conduct of Owners and occupants and Members of the Association. Reasonable fines may also be levied to help ensure compliance of the covenants, rules and policies of the Association.

**9.6 Inspection of Records.** The Association shall keep at its registered office records of proceedings of the Members and of the Board of Directors. Each Member shall have the right to examine in person or person's attorney at any reasonable time or times during regular business, for any reasonable purpose, any and all of the books and records of the Association and to make extracts therefrom.

**9.7 Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**9.8 Indemnification.** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

**9.9 Insurance.** The Association shall purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.

**9.10 Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

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