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RODNEY D. CAMPBELL  
UTAH COUNTY RECORDER  
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RECORDED FOR RANCHES HOA

**SECOND AMENDED AND RESTATED  
COMMUNITY DECLARATION  
FOR  
THE RANCHES AT EAGLE MOUNTAIN MASTER  
HOMEOWNER'S ASSOCIATION, INC.**

This Second Amended and Restated Community Declaration (hereafter "Community Declaration") is made on the date evidenced below by The Ranches at Eagle Mountain Master Homeowner's Association, Inc., a Utah Non-Profit Corporation (hereafter "Association").

This Second Amended Community Declaration replaces and supersedes in its entirety the previously recorded First Amended and Restated Community Declaration for The Ranches at Eagle Mountain Master Homeowner's Association recorded as Entry No. 65905:2004, in the Utah County Recorder's Office originally recorded on June 8, 2004, and all amendments thereto. All previously adopted amendments have been incorporated herein.

It is the intent and purpose of this Second Amended and Restated Community Declaration to (a) clarify heretofore ambiguous provisions contained in the original Community Declaration; (b) to better balance enforcement rights of the Association with rights of Owners; (c) to better define the obligations and expectations of expansion and annexations within The Ranches; (d) to clarify assessment obligations for all members of the Master Association and those who also belong to a Sub-Association, as these terms are used herein; and (e) to simplify the overall structure of the Association.

In addition and in order to protect the overall property values of the Project Area, this Community Declaration creates a relationship between the Association and all Sub-Associations whereby the Association has the authority to discharge any duty placed upon a Sub-Association in the event that a Sub-Association fails to fulfill any such responsibility or duty, all for the general welfare of the community-at-large.

**ARTICLE I**

**GENERAL**

**Section 1.1 Project Area.** Declarant was and is the owner of certain parcels of land in the incorporated area of Eagle Mountain, Utah, containing approximately 6,100 units, known as "The Ranches," which, with other parcels, is defined in this Community Declaration as the "Project Area." By resolutions adopted March 10, 1998, the Town Council of Eagle Mountain approved the project area for The Ranches. The Declarant and neighborhood builders, intend to develop the Project Area as a balanced, planned community accommodating a mix of residential, commercial, and other land uses, including substantial non-urban area and open space in accordance with this Community Declaration as the same may be amended from time to time.

**Section 1.2 Purposes of Declaration.** The property which is or becomes subject to this Community Declaration in the manner hereinafter provided shall be referred to as the "Community Association Area."

This Community Declaration is executed:

- (a) In furtherance of a common and general plan for those portions of the Project Area which may become part of the Community Association Area;
- (b) To protect and enhance the quality, value, desirability and attractiveness of all property which becomes part of the Community Association Area;
- (c) To provide for a Community Association as a vehicle to hold, maintain, care for and manage Community Association Area;
- (d) To define the duties, powers and rights of Owners of Privately Owned Sites within the Community Association Area.

**Section 1.3 Declaration.** Declarant, for itself, its successors and assigns, including neighborhood builders, hereby declares that all property which becomes subject to this Community Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Community Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, for the duration thereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Project Area.

The provisions of this Community Declaration are intended to and shall run with the land and shall bind, be a charge upon and inure to the mutual benefit of: (a) all of the property which becomes part of the Community Association Area and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Community Association and its successors and assigns, and (d) all Persons having or acquiring any right, title or interest in any property which becomes part of the Community Association Area or any part or parcel thereof or any improvement thereon and their heirs, personal representatives, successors and assigns.

## ARTICLE II DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Community Declaration shall have the meanings hereinafter specified.

**Section 2.1 Annexable Area.** "Annexable Area" shall mean any of the real property described on Exhibit "A" attached hereto, which has not already been annexed into the Community Association Area as of the date of recording of this Declaration, and any portion of which may from time to time be made subject to this Community Declaration pursuant to the provisions of Article III of this Community Declaration. Further, the Annexable Area may be expanded or contracted as provided in Article III.

**Section 2.2 Articles of Incorporation.** "Articles of Incorporation" shall mean the Articles of Incorporation of The Ranches at Eagle Mountain Master Homeowner's Association, Inc., which have been or will be filed in the office of the Division of Corporations and

Commercial Code of the State of Utah, a copy of which is attached hereto as **Exhibit "C"**, as the same may be amended from time to time.

**Section 2.3 Assessment.** "Assessment" shall mean the Common Assessment Fund, namely the General Operating Assessment Fund and the General Reserve Assessment Fund, the Exclusive Amenity Assessment and Reserve Fund, a Special Assessment or a Reimbursement Assessment, as necessary, and as hereinafter set forth.

**Section 2.4 Board of Trustees.** "Board of Trustees" or "Board" shall mean the Board of Trustees of the Community Association.

**Section 2.5 Budget.** "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Community Association in performing its functions under this Community Declaration and prepared pursuant to Section 8.13 of this Community Declaration.

**Section 2.6 Bylaws.** "Bylaws" shall mean the Bylaws of the Community Association which have been or will be adopted by the Board of Trustees of the Community Association, a copy of which is attached hereto as **Exhibit "B"**, as the same may be amended from time to time.

**Section 2.7 Commercial Site.** "Commercial Site" shall mean a Privately Owned Site within the Community Association Area which is designated in a Supplemental Declaration covering that Site for commercial uses. For purposes of this Declaration, the term "Commercial Site" shall also include but not be limited to churches, schools, hospitals and other such sites designated for non-residential type purposes. Commercial Sites shall be subject to all provisions of this Declaration except those provisions governing voting rights and assessments.

**Section 2.8 Common Area.** "Common Area" shall mean any portion of the Community Association Area designated as Common Area which is for the primary use and benefit of the Owners of Privately Owned Sites.

**Section 2.9 Common Assessment Fund.** "Common Assessment Fund" shall mean the fund consisting of the General Operating Assessment Fund and the General Reserve Assessment Fund, created to maintain assessments levied for the purpose of covering the portion of the annual costs of operating the Community Association, including expenses incurred in connection with any authorized function of the Community Association, which are to be paid by each Owner to the Community Association for purposes provided herein and charged to such Owner and to the Privately Owned Site of such Owner. Monies received by the Community Association from Common Assessments shall be deposited in the Assessment Funds as set forth in Article VIII.

**Section 2.10 Community Association.** "Community Association" shall mean The Ranches at Eagle Mountain Master Homeowner's Association, Inc., a Utah Corporation, its successors and assigns.

**Section 2.11 Community Association Area.** "Community Association Area" shall mean any real property which is or hereafter becomes subject to this Community Declaration by the execution and recording of a Supplemental Declaration as provided in Article III of this Community Declaration.

**Section 2.12 Community Association Properties.** "Community Association Properties" shall mean all real and personal property, including improvements, now or hereafter owned by the Community Association or with respect to which the Community Association holds an easement for the use, care or maintenance thereof, held for the common use and enjoyment of certain of its Members as provided herein and for other purposes as may be permitted by this Community Declaration.

**Section 2.13 Community Declaration.** "Community Declaration" shall mean this instrument as it may be amended from time to time.

**Section 2.14 Condominium.** "Condominium" shall mean a "condominium unit" defined as (a) that portion of real property owned by a cooperative housing corporation, as defined in Section 216 of the Internal Revenue Code, to which a shareholder is entitled to exclusive occupancy; or (b) a unit in a project in which an undivided interest in land is coupled with the right of exclusive ownership or occupancy of any space located thereon.

**Section 2.15 Declarant.** "Declarant" shall mean The Ranches, LLC, a Utah Limited Liability Corporation, its successors and assigns. A Person shall be deemed a "successor and assign" of The Ranches, LLC as Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Community Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Community Declaration which are specifically designated in the written instrument. However, a successor to The Ranches, LLC by consolidation or merger shall automatically be deemed a successor or assign of The Ranches LLC as Declarant under this Community Declaration.

**Section 2.16 Deed of Trust.** "Deed of Trust" shall mean a Mortgage as hereinafter defined.

**Section 2.17 Delegate.** "Delegate" shall mean the natural person selected by Members within a Delegate District pursuant to Article IV hereof and the Bylaws to represent such Delegate District and to cast votes on behalf of Members within such Delegate District as provided in this Community Declaration.

**Section 2.18 Delegate District.** "Delegate District" shall mean a geographical area which may constitute any portion or portions of the Community Association Area and from which all Members in that Delegate District shall elect a single Delegate to represent their collective voting power, as further provided in Article IV hereof and the Bylaws.

**Section 2.19 Design Guidelines.** "Design Guidelines" shall mean the unrecorded Ranches Design Guidelines as adopted by the Board of Trustees and as may be amended from time to time by a majority vote of the Board of Trustees provided that the Trustees determine, by a unanimous vote of a quorum, that the amendment is insignificant. If the Board of Trustees determines that a suggested amendment is significant, then such amendment must be approved by a two-thirds vote of the Delegates. There shall be a presumption that any change to the Design Guidelines is significant. To overcome the presumption and determine that a change is insignificant, a unanimous vote of Board members present at a meeting where a quorum is established shall be required.

**Section 2.20 Design Review Committee.** "Design Review Committee" shall mean the Committee provided for in Article X of this Community Declaration.

**Section 2.21 Exclusive Amenity Fund.** "Exclusive Amenity Fund" shall consist of a "Amenity Operations Assessment" and a "Amenity Reserve Assessment" and shall be the fund established in the event that the Association maintains or provides a benefit to a Sub-Association for the maintenance of an amenity, including the Common Areas. In such cases, the Association shall levy an Exclusive Amenity Assessment against that specific Sub-Association for the services, materials, labor and cost so incurred in performing said maintenance.

**Section 2.22 General Operating Assessments.** "General Operating Assessments" shall mean all expenses as are necessary and proper under this Community Declaration, except Exclusive Amenity Assessments, as hereinafter defined, and shall include, without limitation, providing management and administration of the Community Association, providing

architectural review services under Article X hereof, incurring reasonable attorneys' fees, Manager fees, and accountants' fees, obtaining errors and omissions insurance for officers, trustees and agents of the Community Association, obtaining fidelity bonds for any Person handling funds of the Community Association, paying taxes levied against the Community Association Properties, incurring filing fees, recording costs and bookkeeping fees, obtaining and maintaining offices and office furniture and equipment and performing other such reasonable and ordinary administrative tasks associated with operating the Community Association, including maintenance and repairs to the Community.

**Section 2.23 Improvements.** "Improvements" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water fixtures.

**Section 2.24 Improvement to Property.** "Improvement to Property" shall mean any Improvement, change, alteration or addition to any property within the Community Association Area. "Improvement to Property" is more particularly defined in Article X of this Community Declaration.

**Section 2.25 Industrial Site.** "Industrial Site" shall mean any Privately Owned Site within the community Association Area designated in the Supplemental Declaration covering that Site for industrial uses.

**Section 2.26 Manager.** "Manager" shall mean any one or more Persons employed by the Community Association as hereinafter provided in this Community Declaration who is engaged to perform any of the duties, powers or functions of the Community Association.

**Section 2.27 Member.** "Member" shall mean the Person, or if more than one, all Persons collectively, who constitute the Owner of a Privately Owned Site with Improvements on it.

**Section 2.28 Miscellaneous Use Site.** "Miscellaneous Use Site" shall mean any Privately Owned Site within the Community Association Area designated in the Supplemental Declaration covering that Site for agricultural, mixed residential and office, or other uses, except any Residential Site, Industrial Site or Commercial Site. The manner in which any Miscellaneous Use Site will utilize any Community Association Properties and contribute to the cost of operating the Community Association shall be set forth in the Supplemental Declaration covering such Site.

**Section 2.29 Mortgage.** "Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Privately Owned Site, encumbering the Privately Owned Site to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

**Section 2.30 Mortgagee.** "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee.

**Section 2.31 Mortgagor.** "Mortgagor" shall mean the Person who mortgages his or its property to another (i.e. the maker or grantor of a Mortgage). The term "Mortgagor" shall include a trustor under a Deed of Trust.

**Section 2.32 Notice and Hearing.** "Notice and Hearing" shall mean a written notice and a public hearing before the Board of Trustees or a tribunal appointed by the Board, in the

manner provided in the Bylaws.

**Section 2.33 Notice of Completion.** "Notice of Completion" shall mean written notice to the Design Review Committee of the completion of any Improvement to Property pursuant to Article X of this Community Declaration.

**Section 2.34 Owner.** "Owner" shall mean the Person, including Declarant, or if more than one, all Persons collectively, who hold fee simple title of record to a Privately Owned Site, including sellers and including buyers under executory contracts of sale and excluding buyers thereunder. The Owner of a Privately Owned Site developed as rental apartments shall be the Owner for purposes of this Community Declaration, and not the lessees or tenants thereof.

**Section 2.35 Person.** "Person" shall mean a natural person, a corporation, a partnership or any other entity.

**Section 2.36 Privately Owned Site.** "Privately Owned Site" or "Site" shall mean any Condominium or any lot, density unit (which includes single family, attached single family, and multi-family dwellings, including apartments and condominiums), or parcel of land within the Community Association Area which is shown upon any Recorded plat map, the approved Ranches Master Plan, or any other parcel of land which may be sold or conveyed without violation of the provisions of Utah law pertaining to the subdivision of land. "Privately Owned Site" or "Site" shall include, without limitation, any lot or parcel developed as rental apartments containing one or more apartment buildings, but shall not include: (a) any property owned by a public body, (b) the Community Association Properties, (c) any Common Area as defined herein, or (d) any Commercial Site.

**Section 2.37 Project Area.** "Project Area" shall mean the aggregate of the Community Association Area, which is subject to this Community Declaration at any point in time, and the Annexable Area, which may at any time thereafter be annexed to the Community Association Area and thereby be made subject to this Community Declaration.

**Section 2.38 Record or Recorded.** "Record" or "recorded" shall mean the filing for record of any document in the office of the Recorder of Utah County, Utah.

**Section 2.39 Reimbursement Assessment.** "Reimbursement Assessment" shall mean a charge against a particular Owner and his Privately Owned Site for the purpose of reimbursing the Community Association for expenditures and other costs of the Community Association in curing any violation, directly attributable to the Owner, of the Community Declaration or the Rules and Regulations, pursuant to Article VIII hereof, together with late charges and interest as provided for herein.

**Section 2.40 Residential Site.** "Residential Site" shall mean any Privately Owned Site within the Community Association Area designated in the Supplemental Declaration covering that Site for apartment rental, single family or multi-family dwelling purposes.

**Section 2.41 Rules and Regulations.** "Rules and Regulations" shall mean rules and regulations adopted by the Board of Trustees as provided in Article V of this Community Declaration.

**Section 2.42 Special Assessment.** "Special Assessment" shall mean a charge against each Owner and his Privately Owned Site representing a portion of the costs to the Community Association for the purpose of funding major capital repairs, maintenance, replacements and improvements, pursuant to Article VIII hereof.

**Section 2.43 Sub-Association.** "Sub-Association" shall mean any Utah corporation, or unincorporated association, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations and of

which the membership is composed of Owners of Privately Owned Sites within all or part of the area covered by the Supplemental Declarations. In addition to this Declaration, some Owners may also be governed by a "Sub-Association Declaration" and/or other governing documents or provisions. Such additional governing provisions may supplement or be more restrictive than this Declaration so long as they are consistent with the general scheme of governance established by this Declaration. However, if a Sub-Association's governing provisions conflict with this Declaration, this Declaration shall be the controlling document.

**Section 2.44 Supplemental Declaration.** "Supplemental Declaration" shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which may be recorded on any portion of the Annexable Area in accordance with Article III of this Community Declaration.

### ARTICLE III

#### ANNEXATION TO COMMUNITY ASSOCIATION AREA

**Section 3.1 Property Which May Be Annexed.** The Declarant and Board acting together may, but shall in no way be required to, from time to time, unilaterally without Member consent, add to the Community Association Area all or any portion of the Annexable Area. Delays in development or sale of the Privately Owned Sites, resulting from causes beyond the reasonable control of Declarant, shall not affect the right of Declarant to annex further property to the Community Association Area.

**Section 3.2 Manner of Annexation.** Consistent with Section 3.1 above, real property within the Annexable Area (hereafter "Annexed Property"), as defined above, may, from time to time, become part of the Community Association Area and subject to this Community Declaration effective upon the Recordation in the office of the Recorder of Utah County, Utah, of a supplemental Declaration meeting the requirements hereinafter set forth.

A Supplemental Declaration:

- (a) Shall be executed and acknowledged by the owner of the Annexed Property described therein;
- (b) Shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant and the Board for so long as the Declarant owns any property in the Project Area and has the power to annex additional property to the Community Association Area;
- (c) Shall contain an adequate legal description of the Annexed Property;
- (d) Shall contain a reference to this Community Declaration which shall state its date, its date of Recordation and the book and page of the Records of the Recorder of Utah County, Utah, where this Community Declaration is Recorded;
- (e) Shall state the land classification (residential, commercial, industrial or otherwise) of the Annexed Property;
- (f) Shall designate the assessment Area or Assessment Areas covered by the Supplemental Declaration;
- (g) Shall contain a statement that the Annexed Property is declared to be part of the Community Association Area under this Community Declaration and that the Annexed Property shall be subject to this Community Declaration;

- (h) Shall indicate the voting rights of the annexed property;
- (i) Shall provide that Sites therein shall be subject to the jurisdiction of a Sub-Association or shall not be subject to the jurisdiction of a Sub-Association.

A Supplemental Declaration may provide for phased annexation so that real property may be made subject to the Supplemental Declaration and this Community Declaration at different times. A deed by which Declarant conveys a parcel of property to another Person may constitute a Supplemental Declaration if it meets the foregoing requirements.

A Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions than those set forth in this Community Declaration, taking into account the unique and particular aspects of the proposed development of the Annexed Property covered thereby.

A Supplemental Declaration may provide for a Sub-Association of Owners within the property described in the Supplemental Declaration and for the right of the Sub-Association to assess such Owners.

Upon Recordation of a Supplemental Declaration, the Annexed Property shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, except to the extent specifically stated in the Supplemental Declaration.

No annexation of Annexed Property by Declarant through a Supplemental Declaration shall have the direct effect of increasing the then current budgeted expenses for the Community Association by more than twenty percent (20%) or substantially overburdening the Community Association Properties.

If any such annexation would have such effect, Declarant may nevertheless annex such Annexed Property so long as Declarant agrees to subsidize directly to the Community Association no less than the amount of any excess expenses over one hundred twenty percent (120%) of the then current budgeted expenses of the Community Association.

**Section 3.3 FHA/VA Approval of Annexations.** So long as the FHA or the VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Community Association Area, made with respect to the initial sales by Declarant of Residential Sites, then a condition precedent to such annexation by Declarant shall be that the Annexation be in accordance with the Development Guide, which shall theretofore have been approved by the FHA or the VA, in the manner set forth in Article XI of this Community Declaration.

**Section 3.4 Withdrawal of Annexed Property by Declarant.** Annexed Property for which a Supplemental Declaration has been Recorded may be withdrawn from the Community Association Area and from this Community Declaration by Declarant to correct a surveyor error or other technical or clerical error or otherwise. Such withdrawal may be accomplished by the execution, acknowledgment and Recordation of a Notice of Withdrawal; provided that (i) no vote has then been exercised with respect to the Annexed Property to be withdrawn, and (ii) no Assessments to the Community Association have then commenced with respect to the Annexed Property to be withdrawn.

**Section 3.4.1 Notice of Withdrawal.** The Notice of Withdrawal (a) shall be executed and acknowledged by the Owner of the Annexed Property; (b) shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has



the power to Annex additional property to the Community Association Area; (c) shall contain an adequate legal description of the Annexed Property (d) shall contain a reference to the Supplemental Declaration for the Annexed Property which reference shall state the date thereof, the date of Recordation thereof and the book and page of the Records in the office of the Recorder of Utah County, Utah, where the Supplemental Declaration was Recorded; and (e) shall contain a statement and Declaration that the Annexed Property is withdrawn from the Community Association Area and shall not be thereafter subject to this Community Declaration or the Supplemental Declaration for the annexed Property. The withdrawal shall be effective upon Recording of the Notice of Withdrawal and, upon Recording of the Notice of Withdrawal, the Annexed Property described therein shall no longer be part of the Community Association Area or subject to this Community Declaration or to the Supplemental Declaration for the Annexed Property.

**Section 3.5 Expansion or Contraction of Annexable Area.** The Annexable Area may be expanded or contracted to add or delete real property effective upon the Recordation of a written instrument, executed by Declarant, describing such real property and declaring that such real property shall thereafter be added to or deleted from the Annexable Area. No real property shall be added to the Annexable Area without a majority vote of the Board of Trustees voting at a meeting duly called.

**Section 3.6 Sub-Associations.** As stated above and in addition to this Declaration, some Owners may also be governed by a "Sub-Association Declaration" and/or other governing documents/provisions. Such additional governing provisions may supplement or be more restrictive than this Declaration so long as they are consistent with the general scheme of governance established by this Declaration. However, if a Sub-Association's governing provisions conflict with this Declaration, this Declaration shall be the controlling document.

**Section 3.7 Relationship between "Master" Association and Sub-Associations; Jurisdiction and Enforcement.** It is the purpose and intent of this Declaration that the Community Association shall have concurrent jurisdiction and authority over all Sub-Associations. Specifically, all lots or units within a Sub-Association shall be bound by the terms of this Declaration and the terms herein shall be covenants that run with the land within each Sub-Association. Accordingly, the Community Association shall have the authority to enforce all covenants, conditions, restrictions and rules contained in, or originating from, this Declaration and the Community Association's Bylaws. Moreover, in the event that a Sub-Association, by and through its governing body, fails or refuses to enforce the specific covenants, condition, restrictions, bylaws or rules and regulations applicable to any Sub-Association then the Community Association shall have jurisdiction and authority to enforce the terms of any Sub-Association's governing documents or provisions (including but not limited to a supplemental declaration, bylaws, rules and regulations).

As an example, but in no way a limitation, the Community Association may require and/or compel Owners within a Sub-Association to maintain their lots/units to a standard consistent with the Sub-Association's declaration, bylaws, rules and architectural requirements. The Community Association may require and/or compel Sub-Association common area that has fallen into a state of disrepair to be adequately repaired or maintained by the Sub-Association Owners.

In the event that a Sub-Association has not elected a Board of Trustees/Managing Committee, for whatever reason, the Community Association may appoint a transitional governing body (which may or may not include members of the Sub-Association) to fulfill the obligations contained within this Declaration and the Sub-Association's governing documents. Such transitional governing body shall have all powers, rights and authority as if

originally established under the Sub-Association's Articles, Declaration and Bylaws.

The Community Association may assess Sub-Association members to fund an Exclusive Amenity Fund and may require and/or compel that a Sub-Association adequately budget and fund a contingency or reserve fund. In the event that the Community Association is required to spend Community Association funds to exercise its rights under this Section, then the Community Association shall assess such Sub-Association Owners the costs thereof which shall for all purposes be treated in the same manner as assessments for the Exclusive Amenity Fund as described in Article VIII.

## ARTICLE IV COMMUNITY ASSOCIATION OPERATION

**Section 4.1 Community Association.** The Community Association has been formed as a Utah corporation under the Utah Nonprofit Corporations Act. The Community Association shall have the duties, powers and rights set forth in this Community Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth herein, the Community Association shall have a Board of Trustees to manage its affairs. The Board of Trustees shall be elected by the Delegates of the Community Association, as set forth in this Community Declaration and the Bylaws. Delegates shall be elected by the Owners within each Delegate District as set forth herein and in the Bylaws.

**Section 4.1.1 Involuntary Nonprofit Status Dissolution or Expiration.** In the event that the Community Association (or Sub-Association) is involuntarily dissolved due to a failure to renew or similar circumstances, the Board by its own majority vote, may re-incorporate the Association.

**Section 4.2 Community Association Board of Trustees.** The affairs of the Community Association shall be managed by a Board of Trustees. The number, term and qualifications of the Board of Trustees shall be fixed in the Articles of Incorporation and Bylaws. The Board of Trustees may, by resolution, delegate portions of its authority to an executive committee or to other committees or to officers of the Community Association. Such delegation of authority, however, shall not relieve the Board of Trustees of the ultimate responsibility for management of the affairs of the community Association. No action by or on behalf of the Community Association may be taken by the Board of Trustees or any duly authorized executive committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Community Declaration.

**Section 4.3 Membership in Community Association.** Each Owner of a Privately Owned Site with Improvements within the Community Association Area shall be a Member of the Community Association. There shall be one Membership in the Community Association for each Privately Owned Site with Improvements within the Community Association Area. The Person or Persons who constitute the Owner of a Privately Owned Site with Improvements shall automatically be the holder of the Membership appurtenant to that Privately Owned Site with Improvements, and the Membership appurtenant thereto shall pass with fees simple title to the Privately Owned site with Improvements.

Declarant shall hold a Membership in the Community Association for each Privately Owned Site with Improvements owned by Declarant. Membership in the Community Association shall not be assignable separate and apart from the fee simple title to a Privately Owned Site with Improvements except that an owner may assign some or all of his rights as an Owner and as a Member of the Community Association to a tenant or Mortgagee and may

arrange for a tenant to perform some or all of such Owner's obligations as provided in this Community Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Community Declaration.

**Section 4.4 Establishment of Delegate Districts.** The Community Association Area shall be divided into Delegate Districts as determined and created by the Board, and each Delegate District shall elect one (1) Delegate to the community Association to exercise the voting power of all the Members in such Delegate District. If a Sub-Association is created by the Recordation of a Supplemental Declaration, then all of the Annexed Property within the jurisdiction of the Sub-Association shall constitute a Delegate District. In the event that there shall not be created a Sub-Association for any portion of the Annexed Property (as defined in Section 3.3 hereof), then the Delegate Districts shall be established by the Board.

**Section 4.5 Voting Rights of Members.** Each Member shall have the right to cast votes for the election of the Delegate to the Community Association in order to exercise the voting power of the Delegate District in which the Member's Privately Owned Site with Improvements is located. The Delegates shall elect the Board of Trustees.

If such Delegate District is within the Jurisdiction of a Sub-Association, then the Member shall have the same voting rights for the election of the Delegate from that Delegate District as are provided for in the election of the Board of Trustees of the Sub-Association.

If such Delegate District is not subject to the jurisdiction of a Sub-Association, then the Member shall be entitled to one (1) vote for each Privately Owned Site which he or she owns within the Delegate District

The Bylaws of the Community Association shall provide for the manner, time, place, conduct, and voting procedures for Member meetings for the purpose of electing a Delegate in any such Delegate District.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, a Member must be in good standing with the Community Association to be eligible to vote. For purposes of this provision, good standing shall mean that the Member has no violation(s) pending on their Privately Owned Site and is not more than thirty (30) days past due on payment of all Community Association assessments including without limitation, Common Assessments, Supplemental Common Assessments, Special Assessments, Reimbursement Assessments, Fines, and any late charges and/or interest on any of the assessments or fines.

**Section 4.6 Voting Rights of Delegates.** Each Delegate may cast one (1) vote for each Privately Owned Site which is subject to this Community Declaration and located in the Delegate District represented by such Delegate.

Each Delegate shall cast the votes which he represents in such manner as he may, in his sole discretion, deem appropriate, acting on behalf of all the Members owning Privately Owned Sites in his Delegate District.

A Delegate shall have the authority, in his sole discretion, to call a special meeting of the Members owning Privately Owned Sites in his Delegate District, in the manner provided in the Bylaws, for the purpose of obtaining instructions as to the manner in which he is to vote on any issue to be voted on by the Delegates.

When a Delegate is voting in his own discretion, without instruction from the Members whom he represents, then such Delegate may cast all of the votes which he represents as a unit or such Delegate may apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It will be conclusively

presumed for all purposes of Community Association business that any Delegate casting votes on behalf of the Members owning Privately Owned Sites in his Delegate District will have acted with the authority and consent of all such Members.

All agreements and determinations lawfully made by the Community Association in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding on all Members, and their successors and assigns.

## ARTICLE V DUTIES AND POWERS OF COMMUNITY ASSOCIATION

**Section 5.1 General Duties and Powers of Association.** The Community Association has been formed to further the common interests of the Members. The Community Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Community Association Properties and to improve and enhance the attractiveness, desirability and safety of the Community Association Area.

**Section 5.2 Duty to Accept Property and Facilities Transferred by Declarant.** The Community Association shall accept title to any property, including any Improvements thereon and personal property transferred to the Community Association by Declarant. Any property or interest in property transferred to the Community Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Trustee, be transferred to the Community Association free and clear of all liens and encumbrances (other than the lien of property taxes and assessments not then due and payable).

**Section 5.3 Duty to Manage and Care for Property.** The Community Association shall manage, operate, care for, maintain and repair all Community Association Property and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The Community Association shall manage, operate, care for, maintain, and repair all Town of Eagle Mountain property within the Project area except public road right of ways and unimproved open space.

**Section 5.4 Duty to Pay Taxes.** The Community Association shall pay all taxes and assessments levied upon the Community Association Properties and all taxes and assessments properly imposed against the Community Association.

**Section 5.5 Duty to Maintain Casualty Insurance.** To the extent the Community Association owns any real property, the Community Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire, and extended coverage insurance with respect to all insurable Improvements and personal property owned by the Community Association including coverage for vandalism and malicious mischief and if available and if deemed appropriate, coverage for flood, earthquake and war risk. Casualty, fire and extended coverage insurance with respect to insurable Improvements shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost.

**Section 5.6 Duty to Maintain Liability Insurance.** The Community Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage including, if the Community Association owns or operates motor vehicles,

public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Public liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, have limits of not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) per occurrence.

**Section 5.7 General Provisions Respecting Insurance.** Insurance obtained by the Community Association may contain such deductible provisions as good business practice may dictate. Insurance obtained by the Community Association shall, to the extent reasonably possible without undue cost, cover each Member without each Member necessarily being specifically named. Insurance obtained by the Community Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Community Association, each Member and any Person claiming by, through or under such Member and as against any officer, trustee, agent or employee of any of the foregoing.

Insurance obtained by the Community Association shall, to the extent reasonably possible, and provided Declarant reimburses the Community Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Trustees to ascertain whether coverage under the policies is sufficient in the light of the current values of the Community Association Properties and in the light of the possible or potential liabilities of the Community Association. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Community Association Properties and property of Declarant.

**Section 5.8 Fidelity Bonds Required.** The Community Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Community Association including, but not limited to, employees of the Manager. Each such bond shall name the Community Association as obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Community Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds.

**Section 5.9 Other Insurance and Bonds.** The Community Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Community Association shall deem necessary or desirable.

**Section 5.10 Insurance and Bonds Required by Government Mortgage Agencies.** The Community Association shall obtain and keep in full force and effect such insurance and bonds as may be required by Government Mortgage Agencies to the extent that any such Government Mortgage Agency holds, or has agreed to insure or to guarantee, any Mortgage on any Privately Owned Site within the Community Association Area, except to the extent such insurance or bond is not available or has been waived in writing by such Government Mortgage Agency.

**Section 5.11 Duty to Prepare Budgets.** The Community Association shall prepare Budgets for the Community Association as elsewhere provided in this Community Declaration.

**Section 5.12 Duty to Levy and Collect Assessments.** The Community Association shall levy and collect Assessments as elsewhere provided in this Community Declaration.

**Section 5.13 Duty to Provide Audit.** The Community Association shall provide for an

annual independent audit of the accounts of the Community Association upon a majority vote of the Board. Copies of the report of the audit shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same. Members may request and obtain, at their own cost, an audit of the Association's accounts upon reasonable notice to the Board.

**Section 5.14 Duties with Respect to Design Review Approvals.** The Community Association shall perform functions to assist the Design Review Committee as elsewhere provided in Article X of this Community Declaration.

**Section 5.15 Power to Acquire Property and Construct Improvements.** The Community Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property by a majority vote of the Board of Trustees. The Community Association may construct Improvements on property and may demolish existing improvements.

**Section 5.16 Power to Adopt Rules and Regulations.** The Community Association may adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Community Declaration, the operation of the Community Association, the use and enjoyment of Community Association Properties and the use of any other property within the Community Association Area, including Privately Owned Sites.

Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Trustees. Notice of the adoption, amendment or repeal of any Rule or Regulation shall be given in writing to each Delegate and each Member at the address for notices to Delegates and Members as elsewhere provided in this Community Declaration or the Bylaws, and copies of the Currently effective rules and regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same.

Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Community Declaration.

In the event of conflict between the Rules and Regulations and the provisions of this Community Declaration, the provisions of this Community Declaration shall prevail.

**Section 5.17 Power to Enforce Declaration and Rules and Regulations.** The Community Association shall have the power to enforce the provisions of this Community Declaration and of Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Person claiming by, through or under such Member, such as tenants, guests and invitees.

Without limiting the generality of the foregoing, the Community Association shall have the power to enforce the provisions of this Community Declaration and of Rules and Regulations of the Community by any one or more of the following means:

(a) By entry upon any property within the Community Association Area without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Community Declaration or Rules and Regulations;

(b) By commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Community Declaration or the Rules and Regulations, by mandatory injunction or otherwise;

(c) By commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Community Declaration or the Rules and Regulations;

(d) By the exclusion of any Member (their tenants, guests and invitees) from use of any recreational facilities on the Community Association Properties during and for up to sixty (60) days following a breach or violation by such Member of this Community Declaration or such Rules and Regulations, unless the breach or violation is a continuing breach in which case such exclusion shall continue for so long as such breach or violation continues;

(e) By suspension of the voting rights of a Member during and for up to sixty (60) days following a breach or violation by such Member (their tenants, guests and invitees) of this Community Declaration or the Rules and Regulations, unless the breach or violation is a continuing breach in which case such suspension shall continue for so long as such breach or violation continues;

(f) By levying and collecting a Reimbursement Assessment against any Member (their tenants, guests and invitees) for breach of this Community Declaration or the Rules and Regulations; and

(g) By levying and collecting reasonable fines and penalties, established in advance in the Rules and Regulations of the Community Association, from any Member for breach of this Community Declaration or the Rules and Regulations by such Member or tenants, guests and invitees of such Member.

**Section 5.18 Power to Provide Public Functions.** The Community Association shall have the power to acquire, construct, operate, manage, maintain, repair and replace public facilities and to provide public functions.

**Section 5.19 Power to Provide Services to Sub-Associations.** In addition to the provisions set forth in Article III, Section 3.7 of this Declaration, the Community Association shall have the power to provide services to Sub-Associations.

Such services to any Sub-Association shall be provided pursuant to an agreement in writing between the Community Association and such Sub-Association which shall provide for the payment by Sub-association to the Community Association of the reasonably estimated expenses of the Community Association of providing such services to the Sub-Association including a fair share of the overhead expenses of the Community Association (referred to hereafter as Exclusive Amenity Operations Assessments and Reserves).

Services which may be provided to a Sub-Association may include, without limitation:

(a) The construction, care, operation, management, maintenance, repair and replacement of Improvements owned by the Sub-Association;

(b) The enforcement of the provisions of any Declaration or Supplemental Declaration for, on behalf of, and in the name of the Sub-Association;

(c) The collection of assessments for, in the name of, and on behalf of a Sub-Association, including assessments for the Exclusive Amenity Fund, if necessary.

(d) The payment of taxes for a Sub-Association with funds of the Sub-Association;

(e) The obtaining of insurance for a Sub-Association;

(f) The collection of charges for use of facilities of a Sub-Association; and

(g) Appointment and supervision of a Manager or Managers for a Sub-

Association.

**Section 5.20 Power to Provide Special Services for Members.** The Community Association shall have the power to provide services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, or through one or more supplemental Declarations, which shall provide for payment to the Community Association by such Member or group of Members of the reasonable estimated costs and expenses of the Community Association of providing such services, including a fair share of the overhead expenses of the Community Association and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Member or group of Members and that the payment for such services shall be secured by a lien on the property of the Member or group of Members.

**Section 5.21 Power to Charge for Facilities and Services.** The Community Association shall have the power to establish reasonable and uniformly applied charges for the use of facilities and services. The charges may include reasonable admission or other fees for any special or extraordinary use of property or facilities or services of the Community Association such as special parking privileges, special recreation facilities, conference rooms, instruction, day-care- or child-care services or similar uses beyond the ordinary use of Community Association Properties, facilities and services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Board of Trustees.

**Section 5.22 Power to Grant Easements.** The Community Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under Community Association Properties.

**Section 5.23 Power to Convey and Dedicate Property to Government Agencies.** The Community Association, with the approval of a majority vote of the Board of Trustees voting at a meeting duly called, shall have the power to grant, convey, dedicate or transfer any Community Association Properties or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Community Association shall deem appropriate, subject to the provisions elsewhere contained in this Community Declaration for approval of the same by Government Mortgage Agencies, by Declarant with respect to property transferred to the Community Association by Declarant, and by Delegates representing the Owners of Residential Sites that has any exclusive amenities.

**Section 5.24 Power to Borrow Money and Mortgage Property.** The Community Association shall have the power to borrow money and, with the approval of two-thirds (2/3) of the votes represented by the Delegates, as described in this Community Declaration and the Bylaws, voting at a meeting duly called, to encumber Community Association Properties as security for such borrowing, subject to provisions elsewhere in this Community Declaration with respect to required approvals and consents to such action.

**Section 5.25 Power to Employ Managers.** The Community Association shall have the power to retain and pay for the services of a Manager or Managers to undertake any of the management functions for which the Community Association has responsibility under this Community Declaration to the extent deemed advisable by the Community Association, and may delegate any of its duties, powers, or functions to any such Manager.

Any contract or agreement with any such Manager shall be terminable by the Community Association for cause with no less than thirty (30) days prior written notice, and shall be terminable by the Community Association without cause and without payment of a



termination fee with no less than ninety (90) days prior written notice.

Any such contract or agreement shall be for a term of no more than five (5) years but may be subject to renewal for succeeding terms of no more than five (5) years each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Community Association, the Community Association and its Board of Trustees shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. Any agreement or contract with a Manager shall contain any other provisions which are required to be contained therein by any Government Mortgage Agency.

**Section 5.26 Power to Engage Employees, Agents and Consultants.** The Community Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Community Association under this Community Declaration.

**Section 5.27 General Corporate Powers.** The Community Association shall have all of the ordinary powers and rights of a Utah corporation formed under the Utah Nonprofit Corporation Act, including without limitation entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Community Declaration or in the Articles of Incorporation or Bylaws.

The Community Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Community Declaration or the Articles of Incorporation and Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Community Association under this Community Declaration and the Articles of Incorporation and Bylaws.

## ARTICLE VI

### COMMUNITY ASSOCIATION PROPERTIES

**Section 6.1 Members' Rights of Use and Enjoyment Generally.** Each Supplemental Declaration shall specify, in the manner set forth in Article III of this Community Declaration, which Members or other Persons may utilize which Community Association Properties, or portions thereof, and the manner in which such Members shall contribute to the cost of operating and maintaining such Community Association Properties.

All Members may use the Community Association Properties, unless otherwise provided in the Supplemental Declaration governing the Site of any such Member or in the Supplemental Declaration governing a particular Community Association Property, or both.

**Section 6.2 Right of Association to Regulate Use.** The Community Association, acting through the Board, shall have the power to regulate use of Community Association Properties by Members to further and enhance the overall rights of use and enjoyment of all Members, including imposing reasonable limits on the times of use and numbers of guests permitted to use Community Association Properties.

**Section 6.3 Right of Association to Allow Public Use.** The Community Association, acting through the Board, shall have the right to allow members of the general public to use Community Association Properties, subject to reasonable limitations, and provided that use by the general public does not unreasonably interfere with or impair the rights of use and enjoyment of Owners.

**Section 6.4 No Partition of Community Association Properties.** No Owner shall have the right to partition or seek partition of the Community Association Properties or any part thereof.

**Section 6.5 Liability of Owners for Damage by Member.** Each Member shall be liable to the Community Association for any damage to Community Association Properties or for any expense or liability incurred by the Community Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Member or any Person using the Community Association Properties through such Member and for any violation by such Member or any such Person of this Community Declaration or any Rule or Regulation adopted by the Community Association.

The Community Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Community Association on account of any such damage or any such violation of this Community Declaration or of such Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or any such violation.

**Section 6.6 Association Duties if Damage, Destruction or Required Improvements.** In the event of damage to Community Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction or replacement of any Community Association Properties, the Community Association shall have the duty to repair, reconstruct or replace the same.

Any insurance proceeds payable by reason of damage or destruction of Community Association Properties by fire or other casualty shall be paid to the Community Association and shall be used, to the extent necessary, to pay the cost of repair, reconstruction or replacement.

If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Community Association is required to make repairs, replacements or Improvements by governmental authorities, the Community Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement, levy a Special Assessment in accordance with Article VIII, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the Member or group of Members responsible therefore, to provide the additional funds necessary as elsewhere provided in this Community Declaration.

Repair, reconstruction or replacement of Community Association Properties shall be done under such contracting and bidding procedures as the Community Association shall determine are appropriate. If insurance proceeds available to the Community Association on account of damage or destruction exceed the cost of repair, reconstruction and replacement, the Community Association may use the same for future maintenance, repair Improvement and operation of other Community Association Properties.

**Section 6.7 Association Powers in the Event of Condemnation.** If any Community Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Community Association, except to the extent payable to any other Person with an interest in such property including any Mortgagee of such property.

The Community Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interest of all Owners therein. Any award or

funds received by the Community Association shall be held by the Community Association in the appropriate Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of Community Association Properties or may be used for Improvements or additions to, or operation of, Community Association Properties.

**Section 6.8 Title to Community Association Properties on Dissolution of Community Association.** In the event of dissolution of the Community Association, the Community Association Properties shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies or to a nonprofit corporation, association, trust or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Community Association Property was held by the Community Association.

To the extent the foregoing is not possible, the Community Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to the manner in which Common Assessment Fund was calculated. However, the proceeds from the sale or disposition of any exclusive amenity shall be distributed to those Members entitled to use such facility or Improvements.

## ARTICLE VII DECLARANTS RIGHTS AND RESERVATIONS

**Section 7.1 Period of Declarant's Rights and Reservations.** Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Community Association and the Community Association Properties from the date hereof, until the time that all property in the Annexable Area has become part of the Community Association Area and the last Privately Owned Site within the Community Association Area has been sold and conveyed by Declarant.

The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each conveyance of property by Declarant to the Community Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Community Association Area is conveyed by Declarant.

The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of this Community Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Community Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

**Section 7.2 Right to Construct Additional Improvements on Community Association Properties.** Declarant shall have and hereby reserves the right, but shall not be obligated to, construct additional Improvements on Community Association Properties at any time and from time to time in accordance with the Development Guidelines and this Community Declaration for the improvement and enhancement thereof and for the benefit of the Community Association and Owners, so long as such construction does not directly result in an increase in the then current and applicable Common Assessments by more than twenty-percent (20%).

Declarant shall convey or transfer such Improvements to the Community Association and the Community Association shall be obligated to accept title to, care for and maintain the

same as elsewhere provided in this Community Declaration. If any such Improvements are not completed when transferred to the Community Association, Declarant shall provide a bond or letter of credit (or other assurance as the Community Association and the government Mortgage Agencies may reasonably require) to assure that the cost thereof will be paid by Declarant and the Improvements completed free of liens and encumbrances relating to the construction of the Improvements.

**Section 7.3 Declarant's Rights to Use Community Association Properties in Promotion and Marketing of Community Association Area.** Declarant shall have and hereby reserves the right to reasonable use of Community Association Properties and of services offered by the Community Association in connection with the promotion and marketing of property within the boundaries of the Project Area.

Without limiting the generality of the foregoing, Declarant may erect and maintain Improvements on any part of the Community Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Project Area, who are not Owners or Members of the Community Association, to use Community Association Properties at reasonable times and in reasonable numbers; and may refer to the Community Association and to the Community Association Properties and services offered by the Community Association in connection with the development, promotion and marketing of property within the boundaries of the Project Area.

**Section 7.4 Declarant's Rights to Complete Development of Project Area.** No provision of this Community Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Project Area; to construct or alter Improvements on any property owned by Declarant within the Project Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Project Area.

Nothing contained in this Community Declaration shall limit the right of Declarant or require Declarant to obtain approvals (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or (b) to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Project Area, or (c) to require Declarant to seek or obtain the approval of the Design Review Committee or of the Community Association for any such activity or Improvement to Property by Declarant on any property owned by Declarant. Nothing in this Community Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Community Declaration.

**Section 7.5 Declarant's Approval of Conveyances or Changes in Use of Community Association Properties.** Until Declarant has lost the right to appoint a majority of the members of the Design Review Committee, the Community Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Community Association Properties, mortgage the Community Association Properties or use Community Association Properties other than solely for the benefit of Members.

**Section 7.6 Declarant's Rights to Grant and Create Easements.** Declarant shall have and hereby reserves the right to grant or create temporary or permanent easement, for access, utilities, drainage, water and other purposes incident to development and sale of the Project Area, located in, on, under, over and across (a) Privately Owned Sites owned by Declarant and (b) Community Association Properties, provided that such easements do not create a permanent, unreasonable interference with the rights of the Owners. Declarant's right to grant

or create easements in, on, under, over or across Community Association Properties shall be subject to the provisions of this Community Declaration.

**Section 7.7 Declarant's Rights to Convey Additional Property to Community Association.** Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Community Association at any time and from time to time in accordance with the Developmental Guide and this Community Declaration, so long as any conveyance does not directly result in an increase in the then current and applicable Common Assessments by more than twenty percent (20%).

**Section 7.8 Limitations Imposed by Government Mortgage Agencies.** The exercise of the rights of Declarant reserved herein shall be subject to such reasonable requirements and limitations as may be imposed by Government Mortgage Agencies or other governmental authorities having jurisdiction including any requirements for consent or approval by such Government Mortgage Agencies or Governmental authorities.

## ARTICLE VIII ASSESSMENTS, BUDGETS AND FUNDS

**Section 8.1 Assessment Funds to be Established and Maintained.** The Community Association shall establish and maintain at least the following separate types of general accounts/funds:

- (a) Common Assessment Funds – consisting of:
  1. General Operations Assessment Fund; and
  2. General Reserve Assessment Fund.
- (b) Exclusive Amenity Funds – consisting of:
  1. Amenity Operations Assessment; and
  2. Amenity Reserves Assessment.

**Section 8.2 Establishment of Other Funds.** The Community Association may establish other funds as determined necessary by the Board. Nothing herein shall limit, preclude or impair the authority of the Community Association to establish other funds for specified purposes authorized by this Community Declaration or by any Supplemental Declaration. If the Community Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Community Association.

**Section 8.3 Deposits of Common Assessments to Common Assessment Funds.** Monies received by the Community Association from Common Assessments shall be deposited in the Assessment Funds in accordance with the following provisions:

- (a) There shall be deposited to the General Operations Fund that portion of the assessments which, according to the Community Association Budget for the year, was budgeted for operating costs and expenses of the Association;
- (b) There shall be deposited to the General Reserve Fund that portion of the assessments which were budgeted for the reserve fund of the Association.

**Section 8.4 Deposits to Exclusive Amenity Funds.** The Community Association shall deposit monies received by certain and specific Community Association Members into the

Exclusive Amenity Fund as determined by the Board of Trustees for exclusive benefits provided to certain subdivisions or Sub-Associations within the Community Association to the exclusion of other members. Only those Community Association Members who received said benefits shall pay into the Exclusive Amenity Funds.

**Section 8.5 Disbursements from the Common Assessment Funds and Exclusive Amenity Funds.** All amounts deposited in the Common Assessment Funds shall be used solely for the common benefit of all the Members for purposes authorized by this Community Declaration. Exclusive Amenity Funds shall be used for the benefit of the subdivision or Sub-Association from which it was received..

**Section 8.6 No Commingling of Maintenance Funds.** The Community Association shall not commingle any amounts deposited into the Common Assessment Funds or the Exclusive Amenity Funds or any other funds created by the Association.

**Section 8.7 Authority for Disbursements.** The Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the Assessment and Exclusive Amenity Funds.

**Section 8.8 Funding the Common Assessment Funds.** For each calendar year, the Community Association shall levy a General Operations Assessment against Owners of the Privately Owned Sites with Improvements.

Each Owner shall be obligated to pay the General Operations Assessment levied against, and allocated to, such Owner and the Privately Owned Site with Improvements of such Owner as hereinafter more particularly set forth.

A Sub-Association may elect to levy its own assessments to satisfy all of its needs for landscaping and amenity maintenance, whereupon the individual Owners or Privately Owned Sites shall receive a thirty percent (30%) credit which shall be offset against the Common Assessment Fund levied against the Owners of Residential Sites in the Sub Association and shall not be assessed an Exclusive Amenity Assessment in such cases. To the extent that a Sub-Association is entitled to the 30% credit above and also carries out all necessary enforcement of the restrictions contained in this Declaration and in the Sub-Association declaration, the individual Owners or Privately Owned Sites shall receive an additional fifteen percent (15%) credit, for a total credit of forty-five percent (45%), which shall be offset against the Common Assessment Fund levied against the Owners of Residential Sites in the Sub Association.

Anything herein to the contrary notwithstanding, and subject to provisions elsewhere contained in this Community Declaration requiring the consent of Declarant or others, this Section 8.8 may only be amended or repealed upon approval of the Delegates of the Community Association representing at least seventy-five percent (75%) of the total votes of the Association.

**Section 8.9 Apportionment of Common Assessment Funds.** For purposes of the Common Assessment Fund, each Privately Owned Site shall constitute one (1) Assessment Unit regardless of the size, value, location or use of such Privately Owned Site. The amount of the assessment shall be based upon estimated expenses of the Association (including reserve estimates) divided by the number of Privately Owned Sites subject to assessment under this Article.

**Section 8.10 Obligation for Exclusive Amenity Fund. - How Established.** In the event that the Association maintains or provides a quantifiable benefit to a Sub-Association for the maintenance of an amenity, including the Common Areas, then the Association shall levy a Exclusive Amenity Assessment against that specific Sub-Association for the services,

materials, labor and cost so incurred in performing said maintenance. The Exclusive Amenity Assessment shall be the actual cost thereof.

**Section 8.11 Funding of Common Assessment Fund - General Reserve Assessment Fund.** The Board, in budgeting and levying assessments, shall endeavor, whenever possible, to fund the anticipated expenses of the Association by regularly scheduled payments, included as part of the Common Assessments, rather than by large Special Assessments. Unless the Board finds and determines that it is not necessary, as to a particular Reserve Fund in a given year, the General Operations Assessment Fund shall include a component for funding of the General Reserve Funds.

**Section 8.12 Supplemental Common Assessments.** If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a supplemental Common Assessment for any of the Common Assessment Funds. Such supplemental Common Assessment shall be assessed against the Owner of each Privately Owned Site, in the same manner Common Assessments are originally assessed each year by the Board.

Written notice of any change in the amount of any annual General Operating Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

**Section 8.13 Annual Budgets.** The Board of Trustees shall cause to be prepared, at least thirty (30) days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies.

The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Assessment Fund, and shall reflect any expected income of the Community Association for the coming calendar year and any expected surplus from the prior year and any existing surplus in any Reserve Fund.

The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish or add to the proper Reserve Fund for major capital repairs, replacements and improvements for Association Properties.

The Board shall cause a copy of the Budget to be distributed to each Member promptly after the Budget is prepared and approved by the Board and shall make a copy of the Budget available for inspection at the principal office of the Community Association.

In the event the Community Association does not have an address for any Delegate, such posting shall be deemed delivered to any such Delegate.

At such time as the Community Association publishes a newsletter for members, the budget shall be published in such newsletter or via the Community's website. Copies of the Budget shall be made available by the Community Association to any Members requesting a copy of the same upon payment of the reasonable expense of copying the same.

**Section 8.14 No Disbursements to Abate Adjoining Nuisances.** Nothing in this Community Declaration shall be construed so as to permit the Community Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community Association area.

**Section 8.15 Assessment for Unsold Sites.** Declarant, for so long as Declarant retains title to a Privately Owned Site, whether improved or unimproved, and provided that no portion of the Site has been used or occupied for residential, commercial or industrial purposes, shall be exempt from the payment of any Assessment against such Privately Owned Site.

**Section 8.16 Delegate Approval of Increase in Common Assessment.** If the Board of

Trustees, by majority vote, determines that the important and essential functions of the Community Association will not be properly funded in any one (1) year by the amount of the Common Assessment, it may increase the Common Assessment each year not more than fifteen percent (15%) above the Common Assessment for the previous year without a vote of the Delegates. The Common Assessment may be increased above the foregoing fifteen percent (15%) by the affirmative vote of two-thirds of the votes represented by the Delegates voting at a meeting duly called for this purpose.

**Section 8.17 Commencement of Common Assessments.** Common Assessments shall be levied on annual basis but may be paid in monthly installments as authorized by the Board. Subject to the provisions of this Community Declaration, Common Assessments shall commence as to each Privately Owned Site on the first day following the date of Recordation of the deed conveying a Privately Owned Site. The Common Assessments for the then current calendar year shall be prorated on the basis of the number of days in such calendar year remaining from the date of commencement of such Common Assessments to the end of such calendar year.

**Section 8.18 Payment of Assessment.** Common Assessments shall be due and payable in advance to the Community Association by the assessed Member during the calendar year in yearly installments, on or before January 1 of each calendar year. However, Members have the option of paying in monthly installments. Notice of the amount of the Common Assessments shall be given to each Member prior to January 1 of each year.

**Section 8.19 Failure to Fix Assessment.** The failure by the Board of Trustees to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Community Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year.

In the event of such failure, the amount of the Common Assessment for that year shall be the amount of the previous year unless increased pursuant this Article VIII.

No abatement of the Common Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Community Association Properties or from any action taken to comply with any law or any determination of the Board of Trustees or for any other reason.

**Section 8.20 Special Assessment for Capital Expenditures.**

In addition to Common Assessments, the Board of Trustees may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds, not otherwise provided under the Budget from common Assessments, to construct or reconstruct, repair or replace capital Improvements upon Community Association Properties, including necessary personal property related thereto; to add to the Community Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Community Declaration; or to repay any loan made to the Community Association to enable it to perform the duties and functions authorized in this Community Declaration.

The Board of Trustees shall not levy Special Assessments without the approval of two-thirds (2/3) of the votes represented by the Delegates voting at a meeting duly called and representing the Owners of Privately Owned Sites subject to the Special Assessment.

Special Assessments for capital improvements which may be used by all Members of the Community Association shall be levied solely on the basis of, and in proportion to, the Assessment Units attributable to Privately Owned Site of the Members. Special Assessments for capital Improvements relating to Exclusive Amenities, which may not be used by all Members, shall be levied solely against the Member or group of Members who own Privately



Owned Sites entitled to use the benefits so provided.

The Community Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified. In the event that the Board shall levy a Special Assessment, the Board shall specify for what purposes the Special Assessment has been levied.

**Section 8.21 Reimbursement Assessments.** The Board of Trustees may, subject to the provisions hereof, levy an Assessment against any Member if the willful or negligent failure of the Member or a Person claiming through the Member to comply with this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations shall have resulted in the expenditure of the funds to be expended by the Community Association to cause such compliance.

The amount of the Reimbursement Assessment shall be due and payable to the Community Association thirty (30) days after notice to the Member of the decision of the Board of Trustees that the Assessment is owing.

**Section 8.22 Late Charges and Interest.** If any Common Assessment, Special Assessment or Reimbursement Assessment, or any installment thereof is not paid within thirty (30) days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board.

Any Assessment or installment of an Assessment which is not paid within thirty (30) days after the date of any Notice of Default and prior to the Recordation of a Notice of Lien shall bear interest from the date of Recordation of the Notice of Lien at the highest rate then established by statute in Utah for interest on damages for personal injury or on judgments in other actions, whichever is higher, but in no event less than eight percent (8%) per annum simple interest.

**Section 8.23 Attribution of Payments.** If any installment of a Common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority:

- (a) To the respective General Operations Assessment Fund until that portion of the fund has been satisfied;
- (b) To the General Reserve Assessment Fund until that portion of the fund has been satisfied;
- (c) As applicable, to the Exclusive Amenity and Reserve Fund until that portion of the fund has been satisfied;

In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

**Section 8.24 Notice of Default and Acceleration of Assessments.** If any Common Assessments, Supplemental Assessments, Special Assessments or Reimbursement Assessments or any installment thereof, or any fine is not paid within thirty (30) days after its due date, the Board of Trustees may mail a notice of default to the Owner and to each first Mortgagee of the Privately Owned Site who has requested copy of the notice.

The notice shall specify (a) the fact that the installment or fine is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the

notice is mailed to the Member, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year and the filing and foreclosure of the lien for the fine or Assessment against the Privately Owned Site of the Member.

The notice shall further inform the Member of any right to cure the default after acceleration and of any right to bring a court action to assert the nonexistence of a default or any other defense of the Member.

**Section 8.25 Acceleration.** If the delinquent fine, Assessment or installment and any late charges, interest, or attorney fees are not paid in full on or before the date specified in the notice, the Board, at its option, may declare the fine or all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the fine or full Assessment and all charges, interest, and attorney fees thereon in any manner authorized by law in this Community Declaration, subject to the protection afforded to Mortgagees under this Community Declaration.

**Section 8.26 Remedies to Enforce Assessments.** Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special or Reimbursement, the Board may, in addition to any other remedies provided under this Community Declaration or by law, enforce such obligation on behalf of the Community Association by suit or by filing and foreclosure of a lien as hereinafter provided.

**Section 8.27 Lawsuit to Enforce Assessments.** The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement, including reasonable attorney fees, against the defaulting Owner or Member.

**Section 8.28 Appointment of Trustee/Lien to Enforce Assessments.** Each Owner by acceptance of a deed to a property within the Community Association, hereby appoints the attorney of the Association, provided he or she is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as may be amended from time to time. Owner hereby transfers in trust to the Trustee all of his or her right, title and interest in and to the real property for the purpose of securing his or her performance of the obligations set forth herein.

Consequently, the Board or its agent may also elect to file a claim of lien against the Privately Owned Site of the delinquent Owner or Member by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Privately Owned Site against which the lien is claimed and (d) the name of the Record Owner thereof.

Such Notice of Lien shall be signed and acknowledged by an officer of the Community Association or other duly authorized agent of the Community Association, including its attorney. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied.

When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Community Association shall execute and record a notice releasing

the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the cost of preparing and Recording the release of the lien. Unless paid or otherwise satisfied, the lien may be foreclosed in the same manner for foreclosure of mortgages or non-judicial deed of trust foreclosures as permitted in the State of Utah.

**Section 8.29 Estoppel Certificates.** Upon the payment of such reasonable fee as may be determined from time to time by the Board of Trustees, and upon the written request of any Member and any Person with, or intending to acquire, any right, title or interest in the Privately Owned Site of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Privately Owned Site and the Owner thereof and setting forth the amount of any Assessment levied against such Site which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Community Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

**Section 8.30 No Offsets.** All Assessments shall be payable in the amounts specified in the levy thereof, and, unless expressly authorized by the Board, no offsets or reductions thereof shall be permitted for any reason including, without limitation, any claim that the Community Association or the Board of Trustees is not properly exercising its duties and powers under this Community Declaration.

## ARTICLE IX

### GENERAL RESTRICTIONS APPLICABLE TO PROPERTY

All real property within the Community Association Area shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions of Declarant set forth in this Community Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Design Review Committee.

**Section 9.1 Maintenance of Property.** No property within the Community Association Area shall be permitted to fall into disrepair, and all property within the Community Association Area, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair.

Maintenance, repair and upkeep of each Privately Owned Site shall be the responsibility of the Owner of the Privately Owned Site. Maintenance, repair and upkeep of Community Association Properties shall be the responsibility of the Community Association.

Violation of this provision by an Owner shall permit the Community Association, after Notice and Hearing, to enter on the Privately Owned Site of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

**Section 9.2 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any property within the Community Association Area nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable

embarrassment, disturbance or annoyance to others.

**Section 9.3 Annoying Sounds or Odors.** No sound or odor shall be emitted from any property within the Community Association Area which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Design Review Committee.

**Section 9.4 No Hazardous Activities.** No Activity shall be conducted on and no Improvement shall be constructed on any property within the Community Association Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

**Section 9.5 No Unsightliness.** No unsightly article shall be permitted to remain on any Lot or on streets and drives within the Community Association Area but must be stored in a garage on the Lot or an off-site storage area in compliance with the Eagle Mountain City Development Code. Without limiting the generality of the foregoing: trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups used solely for the private and non-business use of the residents of a Lot), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, garden and maintenance equipment, and all commercial, farming and business vehicles, except when in actual use, shall be kept at all times in a garage, an off-site storage facility, or appropriately screened from view by an architecturally approved fence. With the only exception that unsightly articles stored on a Lot which is adjacent to an alleyway, such that the access to the storage site is directly off the alleyway, do not need to be screened from view from the alleyway (i.e., no gate or fencing facing the alleyway is required). However, the unsightly articles stored on an alley loading storage site must be appropriately screened on three sides and not visible from the street.

No repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure, or appropriately screened from view. Family vehicles, which are kept in good repair and driven regularly, may be parked in the driveway.

Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No materials or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or if appropriately screened from view. Liquid propane gas, oil and other exterior tanks shall be kept within an enclosed structure or permanently screened from view.

**Section 9.6 Restrictions on Garbage and Trash.** No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Privately Owned Site except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pickup.

**Section 9.7 No Temporary Structures.** No tent, shack, temporary structure or temporary building shall be placed upon any property within the Community Association Area except with the prior written consent of the Design Review Committee obtained in each instance.

**Section 9.8 Restriction on Antennae, Pipes and Utility Lines.** Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antennae of any type shall be erected or maintained in the Community Association Area, except that on Commercial Sites or Industrial Sites an Owner may erect an antenna if such antenna is necessary to carry on the business conducted by Owner on the Site if the Design Review Committee gives its consent to the erection of such antenna in accordance with the provisions of Article X hereof. With the approval of the Design Review Committee, a master antenna or cable television antenna or antennae may, but need not, be provided for use of all Owners or a group of Owners, and Declarant may grant easements for such purposes subject to the provisions of Article XI of this Community Declaration.

**Section 9.9 Restrictions on Signs and Advertising Devices.** No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community Association Area so as to be evident to public view except signs as may be approved in writing by the Design Review Committee. A sign advertising a Privately Owned Site for sale or for lease may be placed on such Privately Owned Site; provided, however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Design Committee.

**Section 9.10 Maintenance of Drainage.** There shall be no interference with the established drainage pattern over any property within the Community Association Area except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Design Review Committee. The established drainage pattern may include the drainage pattern from Community Association Properties over any Privately Owned Site from any Privately Owned Site over the Community Association Properties, or from any Privately Owned Site over another Privately Owned Site.

**Section 9.11 Compliance with Insurance Requirements.** Except as may be approved in writing by the Board of Trustees nothing shall be done or kept on property within the Community Association Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Community Association.

**Section 9.12 Compliance with Laws.** Nothing shall be done or kept on any property within the Community Association Area in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

**Section 9.13 Restrictions on Sewage Disposal Systems.** No cesspool, septic tank or other sewage disposal system shall be installed within the Community Association Area without the prior written consent of the Design Review Committee, except a central sewage disposal system installed and maintained by a water and sanitation district or other sanitation agency providing sewage disposal services to a significant portion of the Community Association Area. Any sewage disposal system installed for property within the Community Association Area shall be subject to applicable laws, rules and regulations of any governmental authority

having jurisdiction.

**Section 9.14 Restoration in the Event of Damage or Destruction.** In the event of damage or destruction of any Improvement on any Privately Owned Site, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Privately Owned Site to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

## ARTICLE X ARCHITECTURAL APPROVAL

**Section 10.1 Approval of Improvements Required.** The approval of the Design Review Committee shall be required for any Improvement to Property on any Residential Site and, if so provided in the Supplemental Declaration covering any Commercial Site or Industrial Site, for any Improvement to Property on any such Commercial Site or Industrial Site, except for any Improvement to Property made by Declarant and except as prior approval may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Community Declaration.

**Section 10.2 Improvement to Property Defined.** "Improvement to Property," requiring approval of the Design Review Committee, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building structure or other Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and (e) any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture.

**Section 10.3 Membership of Committee.** The Design Review Committee (DRC) shall initially consist of at least five (5) members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint the DRC so long as Declarant owns any property within the Project Area. Thereafter, there shall be at least three (3) but no more than five (5) Design Review Committee Members all of whom are appointed by the Board of Trustees.

Members of the Design Review Committee may, but shall not necessarily be Members of the Community Association. Members of the Design Review Committee to be appointed by the Community Association shall be appointed at the organization meeting of the Board of Trustees.

Members of the Design Review Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Design Review Committee appointed by the Board of Trustees may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

**Section 10.4 Address of Committee.** The address of the Design Review Committee shall be

at the principal office of the Community Association.

**Section 10.5 Required Approval by Any Sub-Association Design Review Committee.** In addition to the approval of an Improvement to Property by the Design Review Committee of the Community Association, approval of Improvement to Property shall also be required by the Design Review Committee of any Sub-Association if and to the extent set forth in the Supplemental Declaration that created such Sub-Association.

**Section 10.6 Submission of Plans.** Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, landscaping plans, drawings, construction plans, specifications and samples of materials and colors as the Design Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property.

All Persons proposing to make Improvements must also comply with any applicable subdivision development requirements including the payment of review fees.

The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent.

The Design Review Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property.

Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval.

**Section 10.7 Criteria for Approval.** The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will comply with the Design Guidelines; will not be detrimental to the appearance of the surrounding areas of the Community Association Area as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Community Association Area; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Community Association Area or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Community Association. The Design Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Review Committee may deem appropriate.

**Section 10.8 Committee Guidelines or Rules.** The Design Review Committee shall follow the guidelines or rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property as stated in The Ranches Design Guidelines. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Community Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. Such guidelines or rules may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Community Declaration.

**Section 10.9 Design Review Fee.** The Design Review Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any

proposed Improvement to Property. The Design Review Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property.

**Section 10.10 Decision of Committee.** The decision of the Design Review Committee shall be made within thirty (30) days after receipt by the Design Review Committee of all materials required by the Design Review Committee unless such time period is extended by mutual agreement. The decision shall be in writing and if the decision is not to approve a proposed Improvement to Property, the reasons therefore shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee.

**Section 10.11 Appeal to Association Board.** If the Design Review Committee denies, imposes conditions on, or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Trustees by giving written notice of such appeal to the Community Association and the Design Review Committee within twenty (20) days after such denial or refusal. The Board of Trustees or a Tribunal appointed pursuant to the Bylaws shall hear the appeal in accordance with the provisions of the Bylaws for Notice and Hearing, and the Board shall decide whether or not the proposed Improvement to Property or the conditions imposed by the Design Review Committee shall be approved, disapproved or modified.

**Section 10.12 Failure of Committee to Act on Plans.** Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Design Review Committee within thirty (30) days after the date of receipt by the Design Review Committee of all required materials.

**Section 10.13 Prosecution of Work After Approval.** After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Design Review Committee in connection with the proposed Improvement to Property and any conditions imposed by the Design Review Committee.

Failure to complete the proposed Improvement to Property within one (1) year after the date of approval or to complete the Improvements to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Review Committee, shall constitute noncompliance with the requirements for approval of Improvements to Property.

**Section 10.14 Notice of Completion.** Upon completion of the Improvement to Property, the Applicant may give written Notice of Completion to the Design Review Committee. Until the Date of receipt of such a Notice of Completion, the Design Review Committee shall not be deemed to have notice of completion of such Improvement to Property.

**Section 10.15 Inspection of Work.** The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30) days after the Design Review Committee shall have received a Notice of Completion from the Applicant.

**Section 10.16 Notice of Noncompliance.** If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Design Review committee or was not done in substantial



compliance with the description and materials furnished to, and any conditions imposed by, the Design Review Committee or was not completed within one (1) year after the date of approval by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given in any event, within thirty (30) days after the Design Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

**Section 10.17 Failure of Committee to Act after Completion.** If, for any reason other than the Applicant's act or neglect the Design Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Design Review Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property was, in fact, completed as of the date of Notice of Completion.

**Section 10.18 Appeal to Association Board of Finding of Noncompliance.** If the Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Trustees by giving written notice of such appeal to the Board and the Design Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant.

If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Design Review Committee shall request a finding of noncompliance by the Board of Trustees by giving written notice of such request to the Community Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Design Review Committee. In either event, the Board of Trustees or a Tribunal appointed pursuant to the Bylaws shall hear the matter in accordance with the provisions of the Bylaws for Notice and Hearing, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

**Section 10.19 Correction of Noncompliance.** If the Board of Trustees determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Trustees.

If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may remove the non-complying Improvement to Property or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Community Association, upon demand, for all expenses incurred therewith.

If such expenses are not promptly repaid by the Applicant or Owner to the Community Association, the Board may levy a Reimbursement Assessment against the Owner of the Privately Owned Site for such costs and expenses.

The right of the Community Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Community Association may have at law, in equity, or under this Community Declaration.

**Section 10.20 No Implied Waiver or Estoppel.** No action or failure to act by the Design Review Committee or by the Board of Trustees shall constitute a waiver or estoppel with respect to future action by the Design Review Committee or the Board of Trustees with respect to any improvement to property. Specifically, the approval by the Design Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an

estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

**Section 10.21 Committee Power to Grant Variances.** The Design Review Committee may authorize variances from compliance with any of the provisions of this Community Declaration or any Supplemental Declaration or the Design Guidelines, including restrictions upon height, size, floor area or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective upon the affirmative vote of at least a majority of the members of the Design Review Committee.

If any such variance is granted, no violation of the provisions of this Community Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Community Declaration or any Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of any architectural controls of a Sub-Association or committee created by a Supplemental Declaration, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, the Development Guide and zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

**Section 10.22 Compensation of Members.** Members of the Design Review Committee may receive compensation for services rendered and reimbursement for out of pocket expenses incurred by them in the performance of their duties hereunder. Compensation is to be determined by the Board of Trustees.

**Section 10.23 Meetings of Committee.** The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may, from time to time, by resolution in writing adopted by a two-thirds majority of the members, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or upon the affirmative vote of at least a majority of the members of the Design Review Committee shall constitute action of the Design Review Committee.

**Section 10.24 Records of Actions.** The Design Review Committee shall report in writing to the Board of Trustees all final actions of the Design Review Committee and the Board shall keep a permanent record of such reported actions.

**Section 10.25 Estoppel Certificates.** The Board of Trustees shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

**Section 10.26 Non-liability for Committee Action.** There shall be no liability imposed on the Design Review Committee, any member of the Committee, any Committee

Representative, the Community Association, any member of the Board of Trustees or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

**Section 10.27 Construction Period Exception.** During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Design Review Committee may temporarily suspend the provisions contained in this Community Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided that, during the course of any such construction, nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## ARTICLE XI MISCELLANEOUS

**Section 11.1 Amendment of Community Declaration by Delegates.** Except as otherwise provided in this Community Declaration, and subject to provisions elsewhere contained in this Community Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration may be amended or repealed at any time and from time to time upon approval of the Delegates of the Community Association representing at least two-thirds (2/3) of the votes represented by the Delegates present in person at a duly constituted meeting of the Delegates.

The approval of any such amendment or repeal shall be evidenced by the certification by the Delegates to the Board of Trustees.

The amendment or repeal shall be effective upon the recordation in the office of the Recorder of Utah County, Utah, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Community Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved and certified by the appropriate number of Delegate votes as set forth above.

**Section 11.2 Amendment Required by Government Mortgage Agencies.** Notwithstanding the provisions of this Article, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration which any Government Mortgage Agency requires to be amended or repealed may be amended or repealed with the approval of two-third (2/3) of the votes represented by the Delegates voting in a meeting duly called.

Any such amendment or repeal shall be effective upon the Recordation in the office of the Recorder of Utah County Utah, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Community Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the vote of Delegates as herein provided.

**Section 11.3 Required Consent of Declarant to Amend.** Notwithstanding any other

provision in this Community Declaration to the contrary, any proposed amendment or repeal of any provision of this Community Declaration shall not be effective unless the Declarant has given its written consent to such amendment or repeal, which consent shall be evidenced by the execution by the Declarant of the amendment or by a certificate of amendment or repeal. The foregoing requirement for consent of the Declarant to any amendment or repeal shall terminate at such time as Declarant's rights as defined in this Community Declaration expire.

**Section 11.4 Amendment of Articles and Bylaws.** The Articles of Incorporation and Bylaws may be amended in accordance with the provision set forth in such instruments or, in the absence of such provisions, in accordance with the applicable provisions of the Utah Nonprofit Corporation Act.

**Section 11.5 Special Rights of First Mortgagees.** Any First Mortgagee (meaning a Mortgage with first priority over other Mortgages) of a Mortgage encumbering any Privately Owned Site in the Community Association Area, upon filing a written request therefor with the Community Association, shall be entitled to:

(a) Written notice from the Community Association of any default by the Mortgagor, of such Privately Owned Site in the performance of the Mortgagor's obligations under this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Community Association learns of such default;

(b) Examine the books and records of the Community Association during normal business hours;

(c) Receive a copy of financial statements of the Community Association including any annual audited financial statement within ninety (90) days following the end of any fiscal year of the Community Association;

(d) To receive written notice of all meetings of Delegates or of Delegate Districts:

(e) Designate a representative to attend any meeting of Delegates or of Delegate Districts;

(f) Receive written notice of abandonment or termination of the Community Association or of the plan contemplated under this Community Declaration;

(g) Receive thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Community Declaration, the Articles of Incorporation or the Bylaws;

(h) Receive thirty (30) days written notice prior to the effective date of termination of any agreement for professional management of the Community Association or the Community Association Properties following a decision of the community Association to assume self-management of the Community Association Properties; and

(i) Immediate written notice as soon as the Community Association receives notice or otherwise learns of any damage to the Community Association Properties if the cost of reconstruction exceeds Ten Thousand dollars (\$10,000) and as soon as the Community Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Community Association Properties.

**Section 11.6 First Mortgage Exemption from Rights of First Refusal.** Any such First Mortgagee who obtains title to any Privately Owned Site pursuant to the remedies provided in the Mortgage held by such First Mortgagee or pursuant to any foreclosure of the Mortgage

or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Community Declaration or any Supplemental Declaration.

**Section 11.7 Priority of First Mortgage Over Assessments.** Each First Mortgagee of a Mortgage encumbering a Privately Owned Site who obtains title to such Privately Owned Site pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Privately Owned Site free and clear of any claims for unpaid Assessments or charges against such Privately Owned Site which accrued prior to the time such holder acquires title to such Privately Owned Site, other than allocation of any deficiency prorated among all Members of the Community Association.

**Section 11.8 First Mortgagee Right to Pay Taxes and Insurance Premiums.** Any such First Mortgagee or any such First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a charge against any of the community Association Properties and may pay any overdue premiums on hazard insurance policies for any Community Association Properties, and the First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Community Association.

**Section 11.9 Agreements with Government Mortgage Agencies.** The Community Association may enter into such contracts or agreements on behalf of the Community Association as may be required in order to satisfy the requirements or guidelines of any Government Mortgage Agency so as to allow for the purchase, guarantee or insurance, as the case may be, by a Government Mortgage Agency of First Mortgages encumbering Privately Owned Sites. Each Owner hereby agrees that it will benefit the Community Association and the Members thereof, as a class of potential mortgage borrowers and potential sellers of Privately Owned Sites, if Government Mortgage Agencies approve the Community Association Area or parts thereof as a qualifying subdivision under their respective policies, rules and regulations as adopted from time to time.

**Section 11.10 Association Right to Mortgage Information.** Each owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Privately Owned Site to furnish information to the Community Association concerning the status of such First Mortgage and the loan which it secures.

**Section 11.11 Special Approvals by First Mortgagees.** Of those First Mortgagees who have requested written notice, at least seventy-five percent: (75%) of such First Mortgagees (based upon one vote for each Mortgage owned) of Privately Owned Sites in the Community Association must approve the following:

(a) An act or omission seek to abandon, partition, subdivide, encumber sell or transfer the Community Association Properties or the Improvements thereon which are owned, directly or indirectly, by the Community Association (except that the granting of Access Easements, Utilities Easements, Drainage Easements and Water Facilities Easements or easements for other public purposes consistent with the intended use of such property by the Community Association shall not be deemed within the meaning of this provision);

(b) Change the method of determining the obligations. Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards;

(c) By act or omission change, waive or abandon any scheme of regulation, or enforcement thereof, pertaining to architectural approval of Improvement of Property including the architectural design of the exterior appearance of dwelling units, the exterior

maintenance of dwelling units or the upkeep of lawns and plantings on the Community Association Properties;

(d) Fail to maintain the casualty, fire and extended coverage insurance on insurable Community Association Properties as elsewhere provided in this Declaration;

(e) Use hazard insurance proceeds for losses to any Community Association Properties for other than the repair replacement or reconstruction of the Improvements which were damaged or destroyed; and

(f) Amend any material provision of this Community Declaration, the Articles of Incorporation or Bylaws.

**Section 11.12 FHA/VA Approval.** As long as Declarant shall have the right to appoint a majority of the Members of the Design Review Committee as elsewhere provided in this Community Declaration, and provided further that the FHA or the VA is insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Community Association Area with respect to initial sales of Privately Owned Sites by Declarant, the following action shall require the prior approval of the FHA or the VA, in accordance with the procedure set forth herein:

(a) Dedication of any of the Community Association Properties;

(b) Granting of easements, rights of way or licenses by Declarant in the Community Association Properties;

(c) Granting of a Mortgage covering any portion of the Community Association Properties;

(d) Establishment of additional reservations by Declarant in the Community Association Properties;

(e) Amendment of this Community Declaration, the Articles of Incorporation or the Bylaws;

(f) Any merger or consolidation of the Community Association with any other entity; and

(g) Any exceptions to title to any Community Association Properties transferred to the Community Association by Declarant.

Prior to any such proposed action. Declarant shall give written notice of such proposed action to the FHA and VA and for sixty (60) days following the receipt of such notice, the FHA or VA shall have the power to prohibit such action by written notice to Declarant.

If no written notice of veto is received by Declarant within such sixty (60) day period, then such approval shall be deemed given and Declarant may proceed as if such approval was obtained with respect to the request contained in such notice. Any certificate of amendment or repeal shall state whether or not any such consent is required and, if required, shall state whether or not such consent has been obtained, and the statements in the certificate shall be binding and conclusive on all Persons.

**Section 11.13 Notices.** Any notice permitted or required to be given under this Community Declaration shall be in writing and may be given personally or by mail, telephone or fax. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Community Association for the purpose of service of such notice, or to the Privately Owned Site of such Person if no address has been given to the Community Association and shall be deemed given, if not actually received earlier, at 5:00

p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Community Association.

**Section 11.14 Persons Entitled to Enforce Declaration.** The Community Association, acting by authority of the Board and any Member of the Community Association shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Community Declaration against any property within the Community Association Area and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Community Declaration.

**Section 11.15 Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Community Declaration.

**Section 11.16 Enforcement by Self Help.** Declarant or the Community Association, or any authorized agent of either of them, may enforce, by self help, any of the provisions, covenants, conditions, restrictions or equitable servitudes contained in this Community Declaration, provided such self help is preceded by Notice and Hearing as set forth in the Bylaws.

**Section 11.17 Violations of Law.** Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Association Area is hereby declared to be a violation of this Community Declaration and shall be subject to any and all of the enforcement procedures set forth in this Community Declaration.

**Section 11.18 Remedies Cumulative.** Each Remedy provided under this Community Declaration is cumulative and not exclusive.

**Section 11.19 Costs and Attorneys' Fees.** In any action or proceeding under this Community Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorney's fees.

**Section 11.20 Limitation of Liability.** The Community Association, the Board of Trustees, the Design Review Committee, Declarant, any Delegate and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

**Section 11.21 No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project Area, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

**Section 11.22 Liberal Interpretation.** The provisions of this Community Declaration shall be liberally construed as a whole to effectuate the purpose of this Community Declaration.

**Section 11.23 Governing Law.** This Community Declaration shall be construed and governed under the laws of the State of Utah.

**Section 11.24 Severability.** Each of the provisions of this Community Declaration shall be

deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**Section 11.25 Number and Gender.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

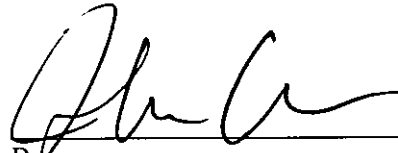
**Section 11.26 Captions for Convenience.** The titles, heading and captions used in this Community Declaration are intended solely for convenience of reference and shall not be construed as affecting any of the provisions of this Community Declaration.

**Section 11.27 Mergers or Consolidations.** Upon a merger or consolidation of the Community Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Community Association. As a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Community Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.



**CERTIFICATION**

This Second Amended Community Declaration for the Ranches at Eagle Mountain Master Homeowners Association has been approved by Members of the Community holding at least 75% of the voting power of the Community Association in accordance with Article XI, Section 11.3 of the Community Declaration.



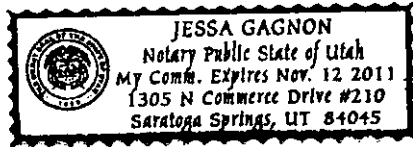
By: \_\_\_\_\_  
Its: President

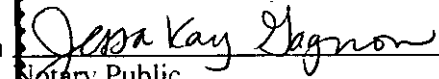


By: \_\_\_\_\_  
Its: Secretary

STATE OF UTAH                    )  
  :SS  
COUNTY OF Utah            )

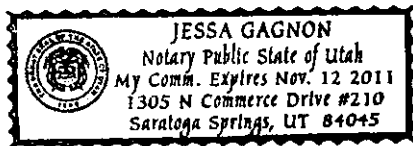
Jonathan Celaya personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same. Subscribed and sworn to before me on this 13<sup>th</sup> day of May, 2010.

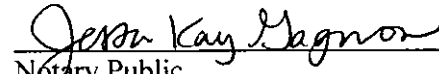


  
Notary Public

STATE OF UTAH                    )  
  :SS  
COUNTY OF Utah            )

Teresa Edwards personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same. Subscribed and sworn to before me on this 13<sup>th</sup> day of May, 2010.



  
Notary Public

**EXHIBIT A**  
**COMMUNITY DECLARATION LEGAL DESCRIPTION**  
**OVERALL BOUNDARY DESCRIPTION**

BEGINNING AT THE SOUTH 1/4 CORNER OF SECTION 25, TOWNSHIP 5 SOUTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN;

RUNNING THENCE N 00°50'24" E 2709.62 FEET; THENCE S 89°31'55" E 1168.94 FEET TO THE SW CORNER OF THE LONE TREE AT CIRCLE FIVE RANCH PLAT "C" SUBDIVISION; THENCE ALONG THE BOUNDARY OF LONE TREE PLAT "C" N 01°39'00" E 611.18 FEET TO THE SW CORNER OF THE LONE TREE AT CIRCLE FIVE RANCH PLAT "G" SUBDIVISION; THENCE ALONG THE BOUNDARY OF LONE TREE PLAT "G" N 01°39'00" E 366.00 FEET TO THE SW CORNER OF THE LONE TREE AT CIRCLE FIVE RANCH PLAT "D" SUBDIVISION; THENCE ALONG THE BOUNDARY OF LONE TREE PLAT "D" N 01°39'00" E 550.00 FEET TO THE SW CORNER OF THE LONE TREE AT CIRCLE FIVE RANCH PLAT "E" SUBDIVISION; THENCE ALONG THE BOUNDARY OF LONE TREE PLAT "E" N 01°39'00" E 240.00 FEET; THENCE N 01°39'00" E 837.69 FEET; THENCE S 89°15'07" E 1461.65 FEET TO THE NE CORNER OF SAID SECTION 25; THENCE S 89°43'21" E 1135.80 FEET; THENCE N 34°16'08" E 74.05 FEET; THENCE N 35°40'00" E 535.26 FEET; THENCE N 08°30'00" W 853.01 FEET; THENCE N 88°19'10" E 1135.46 FEET; THENCE S 00°31'41" W 1279.09 FEET TO THE NW CORNER OF THE RUBY VALLEY AT SADDLE ROCK RANCH PLAT "B" SUBDIVISION, SAID POINT BEING THE N 1/4 CORNER OF SECTION 30, T5S, R1W, SLB&M; THENCE ALONG THE BOUNDARY OF RUBY VALLEY PLAT "B" S 89°18'39" E 1724.80 FEET TO THE NW CORNER OF THE RUBY VALLEY AT SADDLE ROCK RANCH PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF RUBY VALLEY PLAT "A" S 89°18'39" E 475.96 FEET; THENCE S 89°18'39" E 559.07 FEET TO THE NE CORNER OF SAID SECTION 30; THENCE N 00°18'58" W 118.44 FEET TO THE SW CORNER OF THE SIMPSON SPRINGS AT RED HAWK RANCH PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF SIMPSON SPRINGS PLAT "A" N 00°18'58" W 1621.54 FEET TO THE SW CORNER OF THE KENNEKUK AT RED HAWK RANCH PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF KENNEKUK PLAT "A" N 00°18'58" W 678.94 FEET TO THE SW CORNER OF THE STONEBRIDGE SUBDIVISION; THENCE ALONG THE BOUNDARY OF STONEBRIDGE THE FOLLOWING 4 COURSES: (1) N 00°18'58" W 235.26 FEET TO THE W 1/4 CORNER OF SECTION 20, T5S, R1W, SLB&M, (2) N 00°54'13" W 1466.45 FEET, (3) N 89°05'47" E 1131.69 FEET, (4) N 00°14'17" E 1730.92 FEET; THENCE N 00°14'17" E 664.83 FEET TO THE SOUTH R.O.W. LINE OF S.R. 73; THENCE N 89°14'02" E 309.94 FEET; THENCE ALONG THE ARC OF A 5804.7 FOOT RADIUS CURVE TO THE LEFT 1114.39 FEET (CURVE HAS A CENTRAL ANGLE OF 10°59'59" AND A CHORD THAT BEARS N 83°44'03" E 1112.68 FEET); THENCE N 78°14'03" E 31.04 FEET TO THE NW CORNER OF THE EAGLE MOUNTAIN BUSINESS CAMPUS PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF EAGLE MOUNTAIN BUSINESS CAMPUS PLAT "A" N 78°14'03" E 1051.67 FEET; THENCE N 78°14'03" E 852.56 FEET TO THE NW CORNER OF THE SPRING VALLEY TOWNHOMES PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF SPRING VALLEY

TOWNHOMES PLAT "A" N 78°14'03" E 790.49 FEET; THENCE N 78°14'03" E 121.34 FEET; THENCE S 00°15'56" W 549.78 FEET; THENCE ALONG THE ARC OF A 325.00 FOOT RADIUS CURVE TO THE RIGHT 95.77 FEET (CURVE HAS A CENTRAL ANGLE OF 16°52'59" AND A CHORD THAT BEARS S 08°42'26" W 95.42 FEET) TO THE NW CORNER OF THE NORTHMOOR PHASE 1 SUBDIVISION; THENCE ALONG NORTHMOOR PHASE 1 THE FOLLOWING 4 COURSES: (1) ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE LEFT 119.89 FEET (CURVE HAS A CENTRAL ANGLE OF 13°44'20" AND A CHORD THAT BEARS S 82°08'38" E 119.61 FEET), (2) S 89°00'48" E 693.94 FEET, (3) S 00°15'56" W 1194.95 FEET, (4) S 33°58'24" W 270.39 FEET TO THE NE CORNER OF THE SOUTHMOOR PHASE 1 SUBDIVISION; THENCE ALONG THE BOUNDARY OF SOUTHMOOR PHASE 1 THE FOLLOWING 7 COURSES: (1) S 33°58'24" W 234.84 FEET, (2) S 56°04'42" E 69.92 FEET, (3) S 33°55'18" W 168.18 FEET, (4) S 03°33'27" E 77.24 FEET, (5) S 33°55'18" W 320.16 FEET, (6) N 56°04'42" W 123.00 FEET, (7) S 33°55'18" W 374.30 FEET; THENCE S 00°12'55" W 1602.18 FEET TO THE E 1/4 CORNER OF SAID SECTION 20; THENCE N 89°17'20" W 1434.55 FEET TO THE NE CORNER OF THE SHOWDOWN @ EAGLE'S GATE @ PRAIRIE GATE RANCH PLAT "B" SUBDIVISION; THENCE ALONG THE BOUNDARY OF SHOWDOWN PLAT "B" SOUTH 532.78 FEET; THENCE SOUTH 1566.86 FEET TO THE NE CORNER OF THE PLUM CREEK CONDOMINIUMS PLAT "A"; THENCE ALONG THE BOUNDARY OF PLUM CREEK CONDOMINIUMS PLAT "A" SOUTH 444.81 FEET; THENCE SOUTH 126.14 FEET; THENCE S 89°02'12" E 538.88 FEET; THENCE S 24°56'35" E 1.83 FEET; THENCE S 27°20'11" E 47.37 FEET; THENCE S 57°17'38" E 197.83 FEET; THENCE S 08°13'29" E 205.40 FEET; THENCE S 67°15'52" E 197.12 FEET; THENCE N 56°02'26" E 94.61 FEET; THENCE S 08°08'51" W 127.18 FEET; THENCE S 50°12'09" E 48.04 FEET; THENCE N 54°39'22" E 113.62 FEET; THENCE N 84°28'44" E 91.65 FEET; THENCE S 61°28'58" E 66.30 FEET; THENCE S 14°21'47" E 108.78 FEET; THENCE N 83°40'59" E 142.21 FEET; THENCE S 01°24'52" E 106.48 FEET; THENCE S 36°37'17" E 218.46 FEET; THENCE S 57°34'13" E 67.83 FEET; THENCE S 33°23'06" E 136.30 FEET; THENCE S 56°31'12" E 155.18 FEET; THENCE N 88°54'29" E 166.94 FEET; THENCE S 33°10'35" W 40.34 FEET; THENCE S 03°43'36" W 215.04 FEET; THENCE N 89°18'58" W 562.05 FEET TO THE EASTERN BOUNDARY OF THE SMITH ROAD RANCH CHURCH PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF SMITH ROAD RANCH CHURCH PLAT "A" S 00°37'28" W 186.96 FEET; THENCE S 00°37'28" W 75.00 FEET TO THE NE CORNER OF THE PORTER'S CROSSING PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF PORTER'S CROSSING PLAT "A" S 00°37'28" W 345.01 FEET TO THE NE CORNER OF THE PORTER'S CROSSING PLAT "B" SUBDIVISION; THENCE ALONG THE BOUNDARY OF PORTER'S CROSSING PLAT "B" S 00°37'28" W 460.00 FEET TO THE NE CORNER OF THE PORTER'S CROSSING PLAT "C" SUBDIVISION; THENCE ALONG THE BOUNDARY OF PORTER'S CROSSING PLAT "C" THE FOLLOWING 2 COURSES: (1) S 00°37'28" W 254.99 FEET TO THE E 1/4 CORNER OF SECTION 29, T5S, R1W, SLB&M, (2) N 89°22'40" W 90.00 FEET TO THE NE CORNER OF THE FREEMONT SPRINGS PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF FREEMONT SPRINGS PLAT "A" S 00°37'04" W 494.99 FEET TO THE NE CORNER OF THE FREEMONT SPRINGS PLAT "B" SUBDIVISION; THENCE ALONG THE BOUNDARY OF FREEMONT SPRINGS PLAT "B" S 00°37'04" W 305.00 FEET TO THE NE CORNER OF THE FREEMONT SPRINGS PLAT "D" SUBDIVISION; THENCE ALONG THE BOUNDARY OF FREEMONT SPRINGS PLAT "D" S

00°37'04" W 522.43 FEET TO THE NORTH BOUNDARY LINE OF THE KIOWA VALLEY PLAT "A" AMENDED SUBDIVISION; THENCE ALONG THE BOUNDARY OF KIOWA VALLEY PLAT "A" THE FOLLOWING 2 COURSES: (1) S 89°23'00" E 90.00 FEET, (2) S 00°37'04" W 645.68 FEET TO THE NE CORNER OF THE KIOWA VALLEY PLAT "C" SUBDIVISION; THENCE ALONG THE BOUNDARY OF KIOWA VALLEY PLAT "C" S 00°37'04" W 268.83 FEET TO THE NE CORNER OF THE KIOWA VALLEY PLAT "B" SUBDIVISION; THENCE ALONG THE BOUNDARY OF KIOWA VALLEY PLAT "B" S 00°37'04" W 407.86 FEET TO THE NE CORNER OF THE KIOWA VALLEY PLAT "D" SUBDIVISION, SAID POINT BEING THE SE CORNER OF SAID SECTION 29; THENCE ALONG THE BOUNDARY OF KIOWA VALLEY PLAT "D" S 00°50'56" W 666.15 FEET TO THE NE CORNER OF THE SUNRISE AT KIOWA PLAT "A" SUBDIVISION; THENCE ALONG THE BOUNDARY OF SUNRISE AT KIOWA PLAT "A" THE FOLLOWING 2 COURSES: (1) S 00°50'56" W 666.15 FEET, (2) N 89°36'27" W 513.65 FEET TO THE SE CORNER OF THE SUNRISE AT KIOWA PLAT "B" SUBDIVISION; THENCE ALONG SUNRISE AT KIOWA PLAT "B" THE FOLLOWING 2 COURSES: (1) N 89°36'27" W 828.16 FEET, (2) N 01°07'06" E 668.76 FEET TO THE SE CORNER OF THE SKYLINE RIDGE PHASE 1A SUBDIVISION; THENCE ALONG THE BOUNDARY OF SKYLINE RIDGE PHASE 1A THE FOLLOWING 3 COURSES: (1) WEST 964.37 FEET, (2) N 08°19'32" E 188.28 FEET, (3) N 21°20'13" W 307.90 FEET; THENCE N 75°37'07" W 360.84 FEET; THENCE N 50°33'36" W 359.75 FEET; THENCE N 87°55'48" W 372.18 FEET; THENCE N 68°11'55" W 217.19 FEET; THENCE N 49°57'01" W 403.93 FEET; THENCE N 27°19'57" W 448.95 FEET; THENCE N 01°06'45" E 461.65 FEET; THENCE N 43°40'04" E 136.29 FEET; THENCE N 59°44'37" W 62.25 FEET; THENCE S 37°46'33" W 453.55 FEET; THENCE S 70°53'37" W 724.58 FEET; THENCE S 15°08'19" W 888.57 FEET; THENCE S 89°59'15" W 68.88 FEET TO THE SW CORNER OF SAID SECTION 29; THENCE N 89°19'31" W 2657.40 FEET TO THE S 1/4 CORNER OF SAID SECTION 30; THENCE S 89°57'05" W 1473.80 FEET; THENCE S 21°53'28" W 42.73 FEET; THENCE N 89°57'33" W 1063.39 FEET TO THE SW CORNER OF SAID SECTION 30; THENCE N 89°36'51" W 2673.83 FEET TO THE POINT OF BEGINNING.

CONTAINS 2,308.63 ACRES

## EXHIBIT B

### BYLAWS OF THE RANCHES AT EAGLE MOUNTAIN MASTER HOMEOWNER'S ASSOCIATION, INC.

#### I. GENERAL

**1.1 Purpose of Bylaws.** These Bylaws are adopted for the regulation and management of the affairs of THE RANCHES AT EAGLE MOUNTAIN MASTER HOMEOWNER'S ASSOCIATION, INC. ("Community Association "). The Community Association has been organized as a Utah Corporation under the Utah Revised Nonprofit Corporation Act to be and constitute the Community Association under the Community Declaration for The Ranches at Eagle Mountain Master Homeowners Association. The Community Declaration relates to real property in Eagle Mountain, Utah, which may become annexed and subject to the Community Declaration ("Community Association Area").

**1.2 Terms Defined in Community Declaration.** Terms used in these Bylaws which are defined in the community Declaration shall have the same meaning and definition as in the Community Declaration.

**1.3 Controlling Laws and Instruments.** These Bylaws are controlled by and shall always be consistent with the provisions of the Utah Nonprofit Corporation Act, the Community Declaration and the Articles of Incorporation of the Community Association filed with the Division of Corporations and Commercial Code, State of Utah, as any of the foregoing may be amended from time to time.

#### II. OFFICES

**2.1 Principal Office.** The Board of Trustees, in its discretion, may fix and may change, from time to time, the location of the principal office of the Community Association provided that, at such time as suitable quarters can reasonably be obtained within the Community Association Area in Eagle Mountain, Utah, the principal office of the corporation shall be located within the Community Association Area.

**2.2 Registered Office and Agent.** The Utah Nonprofit Corporation Act requires that the Community Association have and continuously maintain in the State of Utah a registered office and a registered agent whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Community Association. The initial registered office and the initial registered agent are specified in the Articles of Incorporation of the Community Association but may be changed by the Community Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the Office of the Secretary of State of Utah.

#### III. MEMBERS

**3.1 Members.** A "Member", as defined in the Community Declaration, is the Person, or if more than one, all Persons collectively, who constitute the Owner of a Privately Owned Site within the Community Association Area with Improvements on it.

**3.2 Memberships Appurtenant to Sites.** Each Membership shall be appurtenant to the fee simple title to a Privately Owned Site. The Person or Persons who constitute the Owner of fee simple title to a Privately Owned Site shall automatically be the holder of the Membership appurtenant to that Privately Owned Site and the Membership shall automatically pass with fee simple title to the Privately Owned Site.

**3.3 Establishment of Delegate Districts/Voting for Delegates.** Each Member shall have the right to cast votes for the election of a Delegate to the Community Association to exercise the voting power of the Delegate District in which the Member's Privately Owned Site is located.

**Section 3.4 General Voting Rights of Members.** Each Member in good standing shall have the right to cast votes for the election of the Delegate to the Community Association in order to exercise the voting power of the Delegate District in which the Member's Privately Owned Site is located.

If such Delegate District is within the Jurisdiction of a Sub-Association, then the Member shall have the same voting rights for the election of the Delegate from that Delegate District as are provided for in the election of the Board of Trustees of the Sub-Association.

If such Delegate District is not subject to the jurisdiction of a Sub-Association, then the Member shall be entitled to one (1) vote for each Privately Owned Site which he or it owns within the Delegate District

The Bylaws of the Community Association shall provide for the manner, time, place, conduct, and voting procedures for Member meetings for the purpose of electing a Delegate in any such Delegate District.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, a Member must be in good standing with the Community Association to be eligible to vote. For purposes of this provision, good standing shall mean that the Member has no violation(s) pending on their Privately Owned Site and is not more than thirty (30) days past due on payment of all Community Association assessments including without limitation, Common Assessments, Supplemental Common Assessments, Special Assessments, Reimbursement Assessments, Fines, and any late charges and/or interest on any of the assessments or fines, and is in no other way in violation of the Community Association's governing provisions.

**3.5 Voting by Joint Owners.** If there is more than one person who constitutes the Owner of a Privately Owned Site, each such Person shall be entitled to attend any meeting of Members of a Delegate district but the voting power attributable to the Privately Owned Site shall not be increased.

In all cases in which more than one person constitutes the Owner of a Privately Owned Site, including instances in which a Privately Owned Site is owned by a husband and wife, then unless written notice to the contrary, signed by any one of such Persons, is given to the Board of Trustees of the Community Association prior to the meeting, any one such Person shall be entitled to cast, in person or by proxy, the vote attributable to the Privately Owned Site.

If, however, more than one Person constituting such Owner attends a meeting in person or by proxy, and seeks to cast the vote attributable to the Site, then the act of those Persons owning a majority in interest in such a Privately Owned Site shall be entitled to cast the vote attributable to such Privately Owned Site.

**3.6 Resolution of Voting Disputes** In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting of a Delegate

District, the Board of Trustees of the Community Association shall act as arbitrators and the decision of a disinterested majority of the Board of Trustees shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon, provided however, that the Board of Trustees shall have no authority or jurisdiction to determine matters relating to the manner of exercise by Declarant of its voting rights.

**3.7 Suspension of Voting Rights.** The Board of Trustees, by majority vote, may suspend, after Notice and Hearing, the voting rights of a Member during and for up to 60 days following any breach by such Member or a Related User of such Member of any provision of the Community Declaration or of any Rule or Regulation adopted by the Community Association.

**3.8 Transfer of Memberships on Association Books.** Transfers of Memberships shall be made on the books of the Community Association only upon presentation of evidence, satisfactory to the Community Association, of the transfer of ownership of the Privately Owned Site to which the Membership is appurtenant. Prior to presentation of such evidence, the Community Association may treat the previous owner of the membership as the owner of the Membership entitled to all rights in connection therewith, including the rights to vote and to receive notice.

#### IV. MEETINGS OF MEMBERS OF A DELEGATE DISTRICT

(Note that Sections 4.1 through 4.18 govern the meeting of members within a Delegate District. Article IV(A) below governs meetings of the entire membership.)

**4.1 Delegate Districts with Sub-Association.** Matters relating to meetings of Members within a Delegate District which is governed by a Sub-Association may be governed by the Bylaws of the Sub-Association. Except to the extent contrary to or inconsistent with the Bylaws of the Sub-Association, the following sections of these Bylaws shall be applicable to meetings of Members within a Delegate District which is governed by a Sub-Association. The Bylaws of the Sub-Association shall in any event, provide for an annual meeting of Members to elect a Delegate to the Community Association and for the holding of such annual meeting within the time periods specified hereinafter for annual meetings of Members in Delegate Districts.

**4.2 Delegate Districts Without a Sub-Association.** The following sections of these Bylaws shall govern matters relating to meetings of Members in Delegate Districts not governed by a Sub-Association.

**4.3 Place of Member's Meetings.** Meetings of Members in a Delegate District shall be held at the principal office of the Community Association or at such other place, within or convenient to the Community Association Area, as may be fixed by the Board of Trustees and specified in the notice of the meeting.

**4.4 Annual Meetings of Members.** Annual meetings of the Members shall be held in March of each year beginning in March of 1999 on such day in March and at such time of day as is fixed by the Board of Trustees and specified in the notice of meeting. The annual meetings in each Delegate District shall be held to elect a Delegate from that Delegate District and to transact such other business as may properly come before the meeting.

**4.5 Special Meetings of Members.** Special meetings of the Members in any Delegate District may be called by the Delegate representing the Delegate District, the Board of Trustees of the Community Association or by Members holding not less than 5% of the total votes of all Members in the Delegate District, including votes of Declarant. No business shall

be transacted at a special meeting of Members except as indicated in the notice thereof.

**4.6 Record Date** For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members in any Delegate district or in order to make a determination of such Members for any other proper purpose, the Board of Trustees of the Community Association may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than 50 days prior to the meeting of Members or the event requiring a determination of Members.

**4.7 Notice of Member's Meetings** Written notice stating the place, day and hour of any meeting in any Delegate District shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the President or the Secretary of the Community Association or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. The notice of an annual meeting shall include the names of any known candidate for Delegate and shall identify any other matter which it is known may come before the meeting.

The notice of a special meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Community Association, with postage thereon prepaid.

Such notice may be posted in a conspicuous place in the Community Association Area, such as on a notice board outside the principal office of the Community Association, and such notice shall be deemed to be delivered to any Member upon such posting if such Member has not furnished an address for mailing of notice to the Community Association.

**4.8 Proxies.** A Member entitled to vote in any Delegate District may vote in person or by Proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Chairman of the meeting prior to the time the proxy is exercised. Any proxy may be revocable by attendance of a Member in person at a meeting or by revocation in writing filed with the Chairman of the meeting prior to the time the proxy is exercised.

A proxy shall automatically cease upon the conveyance by a Member of the Privately Owned site of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy and no proxy shall be valid in any event for more than three years after its date of execution.

Any form of proxy furnished or solicited by the Community Association and any form of written ballot furnished by the Community Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related matters which is known at the time the form of proxy or written ballot is prepared may come before the meeting, and shall provide, subject to reasonably specified conditions, that if a Member specifies a choice with respect to any such matter, the vote shall be cast in accordance therewith.

**4.9 Quorum at Members' Meetings.** Except as may be otherwise provided in the Community Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least a majority of the votes of all Members in any Delegate District shall constitute a quorum at any meeting of such Members. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.



**4.10 Adjournments of Members Meetings.** Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum shall be present in person or by proxy, without notice other than announcement at the meeting, for a total period or periods of not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

**4.11 Vote Required at Members' Meetings.** At any meeting of a Delegate District, if a quorum is present, a two-thirds majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the community Declaration, the Articles of Incorporation or these Bylaws.

Notwithstanding anything to the contrary in the Community Declaration, the Articles of Incorporation or these Bylaws, at any meeting of a Delegate District called for the purpose of electing Delegates or Trustees, a quorum shall constitute a majority of the Members entitled to cast votes, in person or by proxy, and, if a quorum is present, a majority of the votes present in person or by proxy and entitled to be cast shall be necessary for the election of a Delegate or Trustee.

**4.12 Cumulative Voting Not Pertinent.** Since only one Delegate is to be elected from any Delegate District, cumulative voting in an election for a Delegate is not pertinent and is therefore not applicable.

**4.13 Order of Business.** The order of business at any meeting of Members of a Delegate District shall be as follows:

- (a) Roll call to determine the voting power represented at the meeting;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Report of the Delegate of the Delegate District;
- (e) Election of inspectors of election (at annual meetings or special meetings held for the election of a Delegate); and
- (f) Election of a Delegate (at annual meetings or special meetings held for such purpose).

**4.14 Officers of Meetings.** At any meeting of a Delegate District, the Members present shall select a Chairman and Secretary of the meeting.

**4.15 Certification of Election After Meeting.** Promptly after any meeting of Members to elect a Delegate, the Chairman of the meeting shall certify in writing to the Community Association the name and address of the Delegate elected, the Delegate District which the Delegate represents and the time and place of the meeting at which the Delegate was elected.

**4.16 Expenses of Meetings.** The Community Association shall pay the expenses of all meetings of Members in Delegate Districts without a Sub-Association and of special meetings of Members in Delegate Districts governed by a Sub-Association which are held to elect a Delegate or to instruct a Delegate as to the manner in which he is to vote on any issue.

**4.17 Waiver of Notice.** A waiver of notice of any meeting of Members of a Delegate District, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Member. Attendance of a Member at a meeting, either

in person, or by proxy, shall constitute waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**4.18 Action of Members Without a Meeting.** Any action required to be taken or which may be taken at a meeting of Members in a Delegate District may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

#### IV(A). COMMUNITY ASSOCIATION MEMBERS' MEETINGS

**Section 4A.1 Place of Community Association Member's Meetings.** Community Association Member's Meeting shall be held at the principal office of the Ranches at Eagle Mountain Master Homeowner's Association or at such other place, within or convenient to the Community Association Area, as may be fixed by the Board of Trustees and specified in the notice of the meeting.

**Section 4A.2 Annual Community Association Members' Meeting.** Annual meeting of the Community Association Members shall be held each year on such day and at such time of day as is fixed by the Board of Trustees and specified in the notice of meeting. The annual Community Association meetings shall be held to elect Trustees for the Community Association or for such other business as authorized by the Declaration or these Bylaws.

**Section 4A.3 Special Meeting of Community Association Members.** Special Meetings of Community Association Members may be called by a majority of Trustees or Delegates or by Members holding not less than five percent (5%) of the total votes of all members in the Community Association, including votes of Declarant. No business shall be transacted at a Special Meeting of Community Association Members except as indicated in the notice thereof.

**Section 4A.4 Record Date.** For the purpose of determining Members entitled to notice of, or to vote at any Community Association Member's Meeting or in order to make a determination of such Members for any other proper purpose, the Board of Trustees may fix, in advance, a date as the record date for any such determination of Members. The record date shall not be more than fifty (50) days prior to the Community Association Member's Meeting or the event requiring a determination of Members.

**Section 4A.5 Notice of Community Association Member's Meetings.** Written notice stating the place, day and hour of any Master Association meeting shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President or Secretary of the Community Association or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. The notice of an annual meeting shall include the names of any known candidates for Trustee and shall identify any other matter which will be voted on at the meeting. The notice of an annual meeting shall also include the notice of the Annual Delegates Meeting and shall state that the Annual Delegates Meeting will take place immediately following the Annual Community Association Member's Meeting. The notice of a Special Meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Community Association, with postage thereon prepaid. Such notice may be posted in a conspicuous place within the Community

Association Area, such as on a notice board outside the principal office of the Community Association, and such notice will be deemed to be delivered to any Member who has not furnished a mailing address for notice to the Community Association.

**Section 4A.6 Proxies.** A Member entitled to vote in the Community Association may vote in person or by Proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the Community Association prior to the time the proxy is exercised. Any proxy may be revocable by attendance of a Member in person at a meeting or by a revocation in writing filed with the Secretary of the Community Association prior to the time the proxy is exercised. A proxy shall automatically cease upon the conveyance by a Member of the Privately Owner Site of the Member and a transfer of the Membership on the books of the Community Association. No proxy shall be valid for more than eleven (11) months from the date of its execution unless otherwise provided in the proxy and no proxy shall be valid, in any event, for more than three (3) years after its date of execution. Any form of proxy furnished or solicited by the Community Association and any form of written ballot furnished by the Community Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related matters which is known at the time the form of proxy or written ballot is prepared may come before the meeting, and shall provide that if a Member makes a choice the vote shall be cast in accordance therewith.

**Section 4A.7 Quorum at Community Association Member's Meeting.** At any Community Association Member's Meeting a quorum shall constitute a majority of the Members entitled to cast votes present in person or by proxy. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum. In the event that the quorum requirement is not met at a Community Association Member's Meeting, the meeting shall be adjourned and the Trustees shall be elected by the affirmative vote of two-thirds (2/3) of the votes represented by the Delegates, which election of Trustees shall take place at the Annual Meeting of the Delegates.

**Section 4A.8 Adjournments of Community Association Member's Meetings.** Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum is present without notice other than announcement at the meeting, for a total period not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting the quorum requirement shall remain the same, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 4A.9 Vote Required at Community Association Member's Meetings.** At any Community Association Member's Meeting where a quorum is present, called for the purpose of electing Trustees, a majority of the votes present in person or by proxy and entitled to be cast shall be necessary for the election of a Trustee.

**Section 4A.10 Order of Business.** The order of business at any Community Association Member's Meeting shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) report of the Trustees; (e) election of inspectors; (f) election of Trustees; (g) transaction of other business.

**Section 4A.11 Officers of Meetings.** The President of the Community Association shall preside over all Community Association Member's Meetings. The Secretary of the Community Association shall be the secretary of all Community Association Member's Meetings.

**Section 4A.12 Certification of Election after Meeting.** Promptly after each Community Association Member's Meeting to elect Trustees, the President shall certify in writing to the Community Association the name and addresses of the Trustees elected and the time and place of the meeting at which the Trustees were elected.

**Section 4A.13 Waiver of Notice.** A waiver of notice of any Community Association Member's Meeting, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice to such Member. Attendance of a Member at a meeting, either in person or by proxy, shall constitute a waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**Section 4A.14 Action by Members Without a Community Association Member's Meeting.** Any action required to be taken or which may be taken at a Community Association Member's Meeting may be taken without a meeting in any manner prescribed in the Utah Revised Nonprofit Corporation Act, Utah Code Ann. 16-6a-101 et seq., as amended.

## V. DELEGATES

**5.1 Delegates** A "Delegate", as defined in the Community Declaration, is the natural person selected by Members within a Delegate District to represent such Delegate District and to cast votes on behalf of Members within such Delegate District. The Delegates so selected constitute the "members" of the Community Association, as that term is used in the Utah Nonprofit Corporation Act, notwithstanding the fact that, in the Community Declaration and these Bylaws, the Owners of Privately Owned Sites are referred to and designated as Members.

**5.2 Voting Rights of Delegates.** Each Delegate shall have one vote for each Privately Owned Site, including residential apartments, if any, which is subject to the Community Declaration and is located in the Delegate District represented by such Delegate.

The Delegate may cast votes with respect to each Privately Owned Site except for any Privately Owned Site as to which the voting right of the Member owning the Privately Owned Site has been suspended.

Each Delegate may cast the votes which he represents in such manner as he may, in his sole discretion, deem appropriate, acting on behalf of all of the Members owning Privately Owned Sites in the Delegate District provided, however, that, in the event that the Members in any Delegate District shall determine, at any duly constituted meeting of the Members of such Delegate District, to instruct their Delegate as to the manner in which he is to vote on any issue to be voted on by the Delegates, then the Delegate representing such Delegate District shall cast only as many votes as the Members in such Delegate District cast in person or by proxy in the exact proportion "for" and "against" such issue.

If no quorum of the Members is present in person or by proxy to vote on any issue to be voted on by the Delegates, then the Delegate representing such Delegate District shall not cast any votes regarding such issue.

When a Delegate is voting in his own discretion, without instruction from the Members whom he represents, then such Delegate may cast all of the votes which he represents as a unit or such Delegate may apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It shall be conclusively presumed for all purposes that any Delegate casting votes on behalf of Members owning Privately Owned Sites in his Delegate District will have acted with the authority and consent of all such Members.

**5.3 Qualifications of Delegates.** A Delegate must be an Owner of a Privately Owned Site within the Community Association Area or, if the Owner of any such Site is a partnership or corporation, must be an authorized agent of such partnership or corporation. If a Delegate conveys or transfers title to his Privately Owned Site, or if a Delegate who is an authorized agent of a partnership or corporation ceases to be such authorized agent, or if the partnership or corporation of which a Delegate is an agent transfers title to its Privately Owned Site, such Delegate's term as Delegate shall immediately terminate and a new Delegate shall be elected as promptly as possible to take such Delegate's place. A Delegate may be re-elected and there shall be no limit on the number of terms a Delegate may serve. Delegates may only represent one (1) Delegate District at a time.

**5.4 Term of Office of Delegates.** Each Delegate elected at an annual meeting of Members in a Delegate District shall continue in office until the next annual meeting of the Delegate District or until his successor is elected, whichever is later, unless such Delegate resigns, is removed or his term of office terminates because he is no longer qualified to be a Delegate.

**5.5 Removal of Delegates.** At any meeting of Members of a Delegate District, the notice of which indicates such purpose, the Delegate representing that Delegate District may be removed, with or without cause, by a vote of the majority of the votes of Members present at such meeting in person or by proxy and a successor may be then and there elected to fill the vacancy thus created.

**5.6 Resignation of Delegates.** Any Delegate may resign at any time by giving written notice to the President, to the Secretary or to the Board of Trustees of the Community Association stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

**5.7 Vacancies in Delegates.** Any vacancy occurring in the office of a Delegate shall, unless filled in accordance with Section 5.5, be filled at a special meeting, called for such purpose, of Members of the Delegate District represented by such Delegate. A Delegate elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. In the event that a vacancy occurs because a Delegate District did not meet quorum requirements at an annual meeting of the Members to elect a Delegate, the Board of Trustees, by unanimous vote, can appoint a Delegate for said Delegate District.

## VI. MEETINGS OF DELEGATES

**6.1 Place of Delegate Meetings.** Meetings of Delegates shall be held at the principal office of the Community Association or at such other place, within or convenient to the Community association Area, as may be fixed by the Board of Trustees and specified in the notice of the meeting.

**6.2 Annual Meetings of Delegates.** Annual meetings of Delegates shall be held immediately following the Annual Community Association Member's Meeting.

**6.3 Special Meetings of Delegates.** Special Meetings of Delegates may be called by the

Board of Trustees or by Delegates representing at least 15% of the total votes represented by the Delegates. No business shall be transacted at a special meeting of Delegates except as indicated in the notice thereof.

**6.4 Record Date** For the purpose of determining Delegates entitled to notice of, or to vote at, any meeting of Delegates, or in order to make a determination of such Delegates for any other proper purpose, the Board of Trustees of the Community Association may fix, in advance, a date as the record date for any such determination of Delegates. The record date shall not be more than 50 days prior to the meeting of Delegates or the event requiring a determination of Delegates.

**6.5 Notice of Annual Meetings of Delegates' Meetings.** Written notice of the Annual Meeting of Delegates shall be included in the notice of the Annual Community Association Member's Meeting and shall be delivered in accordance with the provisions governing notice of the Annual Community Association Member's Meeting.

**Section 6.5a Notice of Special Meetings of Delegates.** Written notice stating the place, day and hour of any special meeting of Delegates shall be delivered not less than 10 or more than 50 days before the date of the special meeting, either personally or by mail, by or at the direction of the President or the Secretary of the Community Association or the officers or persons calling the meeting to each Delegate entitled to vote at such meeting. The notice of a special meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Delegate at his or her address as it appears on the records of the Community Association, with postage thereon paid. Such notice may be posted in a conspicuous place in the Community Association Area, such as on the notice board outside of the principal office of the Community Association, and such notice shall be deemed to be delivered to any Delegate upon such posting if such Delegate has not furnished an address for mailing of notice to the Community Association.

**6.6 Proxies.** A Delegate shall not be entitled to vote by proxy at any meeting of Delegates.

**6.7 Quorum at Delegates' Meetings.** Except as may be otherwise provided in the Community Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting of Delegates, the presence of Delegates entitled to cast at least two-thirds (2/3) of the votes represented by all Delegates shall constitute a quorum at any meeting of the Delegates. Delegates votes represented at a duly organized meeting of Delegates may continue to transact business until adjournment, notwithstanding the withdrawal of Delegates so as to leave less than a quorum.

**6.8 Adjournments of Delegates' Meetings.** Delegates present at any meeting of Delegates may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods of not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**6.9 Vote Required at Delegates' Meetings.** At any meeting of Delegates, if a quorum is present, two-thirds (2/3) of the votes represented by the Delegates present in person and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Community Declaration, the Articles of Incorporation or these Bylaws.

**6.10 Order of Business.** The order of business at all meetings of Delegates shall be as follows:

- (a) Roll call to determine the voting power represented at the meeting;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of inspectors of election (at annual meetings or special meetings held for the election of Trustees);
- (g) Election of Trustees (at annual meetings or special meetings held for such purpose);
- (h) Unfinished business; and
- (i) New business.

**6.11 Officers of Meetings.** The President of the Community Association shall act as chairman and the Secretary of the Community Association shall act as secretary of any meetings of Delegates. In the absence of the President, the Vice President, the Secretary or the Treasurer, in that order, shall act as chairman of the meeting. In the absence of the Secretary, any Assistant Secretary, the Treasurer, or any Assistant Treasurer, in that order, shall act as secretary of the meeting.

**6.12 Waiver of Notice.** A waiver of notice of any meeting of Delegates, signed by a Delegate, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Delegate. Attendance of a Delegate at a meeting of Delegates shall constitute waiver of Notice of Such meeting except when the Delegate attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**6.13 Action of Delegates Without a Meeting.** Any action required to be taken or which may be taken at a meeting of Delegates, may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Delegates.

**6.14 Members Right to Attend.** Any Member of a Delegate District shall be entitled to attend any Meeting of Delegates.

## **VII. BOARD OF TRUSTEES**

**7.1 General Powers and Duties of Board.** The Board of Trustees shall have the duty to manage and supervise the affairs of the Community Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Trustees shall have the power to exercise or cause to be exercised for the Association, all of the powers, rights and authority of the Community Association not reserved to Members in the Community Declaration, the Articles of Incorporation, these Bylaws or the Utah Non-Profit Corporation Act.

**7.2 Special Powers and Duties of Board.** Without limiting the foregoing statement of general powers and duties of the Board of Trustees or the powers and duties of the Board of Trustees as set forth in the Community Declaration, the Board of Trustees of the Community Association shall be vested with and responsible for the following specific powers and duties.

(a) **Assessments.** The duty to fix and levy from time to time Common Assessments, Special Assessments, and Reimbursement Assessments upon the Members of the Community Association as provided in the Community Declaration; to determine and fix the due date for the payment of such Assessments and the date upon which the same shall become delinquent; and to enforce the payment of such delinquent assessments as provided in the Community Declaration.

(b) **Insurance.** The duty to contract and pay premiums for fire and casualty and blanket liability and other insurance in accordance with the provisions of the Community Declaration.

(c) **Community Association Property.** The duty to contract for and pay bills for maintenance, legal service, accounting service, gardening, common utilities and other materials, supplies and services relating to the Community Association Properties, and to employ personnel necessary for the care and operation of the Community Association Properties, and to contract and pay for necessary improvements on the Community Association Properties.

(d) **Agents and Employees.** The power to select, appoint, and remove all officers, agents, and employees of the Community Association and to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Community Declaration and these bylaws; and to fix their compensation and to require from them security for faithful service as deemed advisable by the Board.

(e) **Borrowing.** The power to borrow money as provided in the Community Declaration.

(f) **Enforcement.** The power to enforce the provisions of the Community Declaration, the Rules and Regulations, these Bylaws or other agreements of the Community Association.

(g) **Delegation of Powers.** The power to delegate its powers according to law.

(h) **Easements.** The power to grant easements where necessary for utilities and other facilities over the Community Association Properties to serve the Community Association Area.

(i) **Rules and Regulations.** The power to adopt such rules and Regulation as the Board may deem necessary for the management of the Community Association Area. Such Rules and Regulations may concern, without limitation, use of the Community Association Properties, signs, parking restrictions; common collection and disposal of refuse; minimum standards of property maintenance consistent with the Community Declaration and the provisions of the Design Review Committee; and any other matters within the jurisdiction of the Community Association as provided in the Community Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Community Declaration, the Articles and these Bylaws.

**7.3 Qualifications of Trustees.** A Trustee must be an Owner of a Privately Owned Site within the Community Association Area or, if the Owner of any such Site is a partnership or corporation, must be an authorized agent of such partnership or corporation. If a Trustee conveys or transfers title to his Privately Owned Site, or if a Trustee who is an authorized agent of a partnership or corporation ceases to be such authorized agent, or if the partnership or corporation of which a Trustee is an agent transfers title to its Privately Owned Site, such Trustee's term as Trustee shall immediately terminate and a new Trustee shall be selected as promptly as possible to take such Trustee's place. A Trustee may be re-elected and there shall



be no limit on the number of terms a Trustee may serve.

**7.4 Number of Trustees.** The number of Trustees shall be seven. The number of Trustees may be increased or decreased from time to time by amendment to these bylaws provided that the number of Trustees shall not be less than three and no decrease in number shall have the effect of shortening the term of any incumbent trustee. Declarant shall have the following power to appoint Trustees: Declarant shall appoint three (3) Trustees until such time as fifty percent (50%) of all Sites within the Project Area have Improvements constructed thereon. During this time, one (1) of the three (3) Trustees appointed by Declarant shall be a non-employee of the Declarant or its subsidiaries and shall be a Member of the Association. Thereafter, Declarant shall appoint two (2) Trustees until such time as seventy-five percent (75%) of all Sites within the Project Areas have Improvements constructed thereon. Thereafter, Declarant shall appoint one (1) Trustee until such time as all Sites within the Project Area have Improvements constructed thereon.

**7.5 Term of Office of Trustees.** The initial Trustees named in the Articles of Incorporation shall hold office until the first annual meeting of Delegates, new trustees shall be elected and at each annual meeting thereafter, up to four new trustees shall be elected. Trustees shall continue in office for two consecutive years until their second annual meeting of Delegates or until their successors have been elected, whichever is later, unless a Trustee resigns, is removed, or his term of office terminates because he is no longer qualified to be a Trustee.

**7.6 Removal of Trustees.** At any meeting of the Delegates, the notice of which indicates such purposes, any Trustee may be removed, with or without cause, by vote of two-thirds (2/3) of the Delegates and a successor may then and there be elected by two-thirds (2/3) of the votes represented by the Delegates to fill the vacancy. If any Trustee misses three (3) consecutive meetings they may be removed by a vote of a majority of the Trustees. Notwithstanding the above, Declarant shall control the removal of its appointed Trustees.

**7.7 Resignation of Trustees.** Any Trustee may resign at any time by giving written notice to the President, to the Secretary or to the board of Trustees stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

**7.8 Vacancies in Trustees.** Any vacancy occurring in the Board of Trustees shall, unless filled in accordance with Section 7.6 or by election at a special meeting of Delegates, be filled by the affirmative vote of a majority of the remaining trustees, though less than a quorum of the Board of Trustees. A Trustee elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A Trusteeship to be filled by reason of an increase in the number of Trustees shall be filled only upon the approval of two-thirds (2/3) of the votes represented by the Delegates. Declarant shall fill any vacancy caused by a Trustee originally appointed by Declarant pursuant to Section 7.4.

**7.9 Executive Committee.** The Board of Trustees, by resolution adopted by a majority of the Trustees in office, may designate and appoint an Executive Committee, which shall consist of three or more Trustees and which, unless otherwise provided in such resolution, shall have and exercise all the authority of the Board of Trustees except authority with respect to those matters specified in Utah Nonprofit corporation Act as matters which such committee may not have and exercise the authority of the Board of Trustees.

**7.10 Other Committees of Association.** The Board of Trustees, by resolution adopted by a majority of the Trustees in office, may designate and appoint one or more other committees, which may consist of or include Members or Delegates who are not Trustees. Any such committee shall have and exercise such authority as shall be specified in the resolution

creating such committee except such authority as can only be exercised by the Board of Trustees.

**7.11 General Provisions Applicable to Committee.** The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the board of Trustees, or any individual Trustee, of any responsibility imposed upon it or him by law. The provisions of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of Trustees shall be applicable to meetings of committees of the Board of Trustees.

**7.12 Manager or Managing Agent.** The Board of Trustees, by resolution adopted by a majority of the Trustees in office, shall, at or as reasonably possible after the first annual meeting of the Board of Trustees, designate and appoint a manager or a managing agent, or both, which manager or managing agent shall have and exercise those powers and shall fulfill those duties of the Board of Trustees as shall be specified in any such resolution. Any such resolution may delegate all or substantially all of the powers and duties of the Board of Trustees to any such manager or managing agent, however, the Board shall not be relieved of its responsibilities under the Declaration in case of such delegation.

## VIII. MEETING OF TRUSTEES

**8.1 Place of Trustees Meetings.** Meetings of the Board of Trustees shall be held at the principal office of the Community Association or at such other place, within or convenient to the Community Association Area, as may be fixed by the Board of Trustees and specified in the notice of the meeting.

**8.2 Annual Meeting of Trustees.** Annual meetings of the Board of Trustees shall be held on the same date as, or within 10 days following, the annual meeting of Delegates. The business to be conducted at the annual meeting of Trustees shall consist of the appointment of officers of the Community Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board of Trustees shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Delegates at which the Board of Trustees is elected or if the time and place of the annual meeting of the Board of Trustees is elected or if the time and place of the annual meeting of the Board of Trustees is announced at the annual meeting of such Delegates.

**8.3 Other Regular Meetings of Trustees.** The Board of Trustees shall hold regular meetings at least quarterly and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meetings need be given after establishment of the times and places thereof by such resolution.

**8.4 Special Meetings of Trustees.** Special meetings of the Board of Trustees may be called by the President or any two members of the Board of Trustees.

**8.5 Notice of Trustees Meetings** In the case of all meetings of Trustees for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than three nor more than 50 days before the date of the meeting, by mail, telegraph, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Trustees.

If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail addressed to the Trustee at his home or business address as either appears on the records of the Association, with postage thereon prepaid.

If telegraphed, such notice shall be deemed delivered at 5:00 p.m. on the next calendar day after it is deposited in a telegraph office addressed to the Trustee at either such address, with all charges thereon prepaid.

If by telephone, such notice shall be deemed to be delivered when given by telephone to the Trustee or to any person answering the phone who sounds competent and mature at his home or business phone number as either appears on the records of the Community Association.

If given personally, such options shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Trustee or some person who appears competent and mature at his home or business address as either appears on the records of the Community Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Trustees need be specified in the notice or waiver of such meeting.

**8.6 Proxies.** A Trustee shall not be entitled to vote by proxy at any meeting of Trustees.

**8.7 Quorum of Trustees.** A majority of the number of Trustees fixed in these Bylaws shall constitute a quorum for the transaction of business.

**8.8 Adjournment of Trustee's Meetings.** Trustees present at any meeting of Trustees may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting.

At any adjourned meeting which is held without notice other than announcement at the meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meeting as originally called.

**8.9 Vote Required at Trustee's Meeting.** At any meeting of Trustees, if a quorum is present, a majority of the votes present in person and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Community Declaration, the Articles of Incorporation or these Bylaws.

**8.10 Order of Business.** The order of business at all meetings of Trustees shall be as follows: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of Committees; (f) unfinished business; and (g) new business.

**8.11 Officers at Meetings.** The Officers of the Association shall be elected amongst the Board of Trustees, as they determine. The President shall act as Chairman and the Board of Trustees and shall elect a Trustee to act as Secretary at all meetings of Trustees.

**8.12 Waiver of Notice.** A waiver of notice of any meeting of the Board of Trustees, signed by a Trustee, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Trustees. Attendance of a Trustee at a meeting in person shall constitute waiver of notice of such meeting except when the Trustee attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**8.13 Action of Trustees Without a Meeting.** Any action required to be taken or which may be taken at a meeting of Trustees, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

## IX. OFFICERS

**9.1 Officers, Employees, and Agents.** The officers of the Community Association shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, assistant officers, employees and agents as may be deemed necessary by the Board of Trustees. Officers other than the president need not be Trustees. No person shall simultaneously hold more than one office except the offices of Secretary and Treasurer.

**9.2 Appointment and Terms of Office of Officers.** The officers shall be appointed by the Board of Trustees at the annual meeting of the Board of Trustees and shall hold office, subject to the pleasure of the Board of Trustees until the annual meeting of the Board of Trustees or until their successors are appointed, whichever is later, unless the officer resigns, or is removed earlier.

**9.3 Removal of Officers.** Any officer, employee or agent may be removed by the Board of Trustees, with or without cause, whenever in the Board's judgment the best interests of the Community Association will be served thereby. The removal of an officer, employee, employee or agent shall be without prejudice to the contract rights, if any, of the officer, employee or agent so removed. Election or appointment of an officer, employee or agent shall not of itself create contract rights.

**9.4 Resignation of Officers.** Any officer may resign at any time by giving written notice to the President, to the Secretary or to the Board of Trustees of the Community Association stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

**9.5 Vacancies in Officers.** Any vacancy occurring in any position as an Officer may be filled by the Board of Trustees. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

**9.6 President.** The President shall be a member of the Board of Trustees and shall be the principal executive officer of the Community association and, subject to the control of the Board of Trustees, shall direct, supervise, coordinate and have general control over the affairs of the Community Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Trustees and of Delegates of the Community Association.

**9.7 Vice President.** The Vice President may act in place of the President in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Trustees or by the President.

**9.8 Secretary.** The Secretary shall be the custodian of the records and the seal of the Community Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Community Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Delegates, of the Board of Trustees and of committees of the Board; shall keep at the principal office of the Community Association a record of the names and addresses of the Delegates and Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Trustees or by the President. The Board may appoint one or

more Assistant Secretaries who may act in place of the Secretary in case of his death, absence or inability to act.

**9.9 Treasurer.** The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Community Association; shall deposit all such funds in the name of the Community Association in such depositories as shall be designated by the *Board of Trustees*; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Community Association and shall submit such reports thereof as the Board of Trustees may, from time to time, require; shall arrange for the annual audited report required pursuant to these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Trustees or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his death, absence or inability to act.

**9.10 Bonds.** The Community Association shall require fidelity bonds covering officers or other persons handling funds of the Community Association as required in the Community Declaration. The Community Association shall pay the premiums for such bonds.

## X. INDEMNIFICATION OF OFFICIALS AND AGENTS

**10.1 Certain Definitions** A "Corporate Official" shall mean any Delegate, Trustee or Officer and any former Delegate, Trustee or officer of the Community Association. A "Corporate Employee" shall mean any employee and any former employee of the Association. "Corporate Official" and "Corporate Employee" shall not include any officer, trustee, agent or employee of Declarant or of any managing agent employed by the Community Association and no such persons shall have rights of indemnification hereunder. "Expenses" shall mean all costs and expenses including attorneys' fees, liabilities, obligations, judgments and any amounts paid in reasonable settlement of a Proceeding. "Proceeding" shall mean any claim, action, suit or proceeding, whether threatened, pending or completed, and shall include appeals.

**10.2 Right of Indemnification** The Community Association shall indemnify any Corporate Official and may, at the discretion of the Board of Trustees, indemnify any Corporate Employee against any and all Expenses actually and necessarily incurred by or imposed upon him in connection with, arising out of, or resulting from, any Proceeding in which he may be involved or to which he is or may be made a party by reason of:

(a) Actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty while acting in his official capacity as a Corporate Office or Corporate employee, or

(b) Any matter claimed against him solely by reason of his being a Corporate Official or Corporate Employee.

The right of indemnification shall extend to all matters as to which a majority of disinterested trustees of the Community Association by resolution, or independent legal counsel in a written opinion, shall determine that the Corporate Official or Employee acted in good faith and had no reasonable cause to believe that his conduct was improper or unlawful.

The right of indemnification shall not extent to matters as to which the Corporate Official or Employee is finally adjudged in an action, suit or proceeding to have been liable for gross negligence or willful misconduct in the performance of his duty except to the extent that a court may determine, upon application, that despite such adjudication of liability, but in

view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity.

The right of indemnification shall not extend to any matter as to which said indemnification would not be lawful under the laws of the State of Utah.

**10.3 Advances of Expenses and Defense** The Community Association may advance expenses to, or where appropriate, may undertake the defense of, any Corporate Official or employee in a Proceeding provided that the Corporate Official or Employee shall undertake, in writing, to reimburse the Community Association for the expenses advanced or for the costs and expenses of such defense if it should ultimately be determined that the Corporate Official or Employee is not entitled to indemnification under this Article.

**10.4 Rights Not Exclusive** The right of indemnification herein provided shall not be exclusive of other rights to which such Corporate Official or Employee may be entitled as a matter of law.

**10.5 Authority to Insure** The Community Association may purchase and maintain liability insurance on behalf of any Corporate Official or Employee against any liability asserted against him and incurred by him as a Corporate Official or Employee or arising out of his status as such, including liabilities for which a Corporate Official or Employee might not be entitled to indemnification hereunder.

## XI. MISCELLANEOUS

**11.1 Amendment of Bylaws.** The Board of Trustees shall not have the power to alter, amend or repeal these Bylaws or to adopt new Bylaws. Subject to any approval of the FHA or VA or of First Mortgages required under the Community Declaration, the Delegates, at a meeting called for that purpose, shall have the sole power to alter, amend or repeal the Bylaws and to adopt new Bylaws with the approval of two-thirds (2/3) of the votes represented by the Delegates present at the meeting, if a quorum, is present. The Bylaws may contain any provision for the regulation or management of the affairs of the Community Association not inconsistent with law, the Community Declaration or the Articles of Incorporation.

**11.2 Compensation of Officers, Trustees and Delegates.** No Trustee or Delegate shall have the right to receive any compensation from the Community association for serving as such Trustee or Delegate except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board of Trustees. Officers, agents and employees shall receive such reasonable compensation as may be approved by the Board of Trustees except that no officer, trustee or employee of Declarant or of any affiliate of Declarant may receive compensation as an officer, agent, employee, Trustee or Delegate. Appointment of a person as an officer, agent or employee shall not, of itself, create any right to compensation. Notwithstanding the provisions of this section, a Trustee shall be entitled to a waiver of his Common Assessment provided that the Trustee attends at least 75% of the duly called meetings which he is required to attend.

**11.3 Books and Records.** The Community Association shall keep correct and complete books and records of account and shall keep, at its principal office in Utah, a record of the names and addresses of its Delegates and Members, and copies of the Community Declaration, the Articles of Incorporation and these Bylaws which may be purchased by any Member at reasonable cost.

All books and records of the Association including the Articles of Incorporation;

Bylaws as amended; and minutes of meetings of members, Delegates and Trustees may be inspected by any Delegate or Member, or his agent or attorney, and any First Mortgagee of a Member for any proper purpose.

The right of inspection shall be subject to any reasonable rules adopted by the Board of Trustees requiring advance notice of inspection, specifying hours and days of the week when inspection will be permitted, and establishing reasonable fees for any copies to be made or furnished.

**11.4 Annual Report.** The Board of Trustees shall cause to be prepared and distributed to each Member and to each First Mortgagee who has filed a written request therefore, not later than 90 days after the close of each fiscal year of the Community Association an annual report of the Community Association containing (a) an income statement reflecting income and expenditures of the Community Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Community Association where the books and records of the Association, including a list of names and addresses of current Members, may be found. The financial statements of the Community Association may be audited by an independent public accountant and a report based upon such audit shall be included in the annual Report.

**11.5 Statement of Account.** Upon payment of a reasonable fee to be determined by the Community Association and upon written request of an Owner of a Privately Owned Site or any person with any right, title or interest in a Privately Owned Site or intending to acquire any right, title or interest in a Privately Owned Site, the Community Association shall furnish a written statement of account setting forth the amount of any unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Privately Owned Site, the Owner of the Privately Owned Site, and Related Users of such Owner, and the amount of the assessments for the current fiscal period of the Community Association payable with respect to the Privately Owned Site. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Community Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have then been levied.

**11.6 Biennial Corporate Reports.** The Community Association shall file with the Secretary of State of Utah within the time prescribed by law, biennial Corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law and shall pay the fee for such filing as prescribed by law.

**11.7 Fiscal Year.** The fiscal year of the Community Association shall begin on January 1 and end the succeeding December 31 except that the first fiscal year shall begin on the date of incorporation. The fiscal year may be changed by the Board of Trustees without amending these Bylaws.

**11.8 Seal.** The Board of Trustees may adopt a seal which shall have inscribed thereon the name of the Community Association and the words "SEAL" and Eagle Mountain, Utah.

**11.9 Shares of Stock and Dividends Prohibited.** The Community Association shall not have or issue shares of stock and no dividend shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Trustees or Officers.

Notwithstanding the foregoing paragraph, the Community Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be

deemed to be a dividend or distribution of income or profit.

**11.10 Loans to Trustees, Officers and Delegates Prohibited.** No loan shall be made by the Community Association to its Delegates, Trustees or officers and any Trustee, officer or Delegate who assents to or participates in the making of any such loan shall be liable to the Community Association for the amount of such loan until; the repayment thereof.

**11.11 Limited Liability.** As provided in the Community Declaration, the Community Association, the Board of Trustees, the Architectural Control Committee, Declarant, any Delegate and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action taken or failure to act was in good faith and without malice.

**11.12 Special Rights of First Mortgagees.** Any First Mortgagee of a Mortgage encumbering any Privately Owned Site in the Community Association Area, upon filing a written request therefore with the Community Association, shall be entitled to (a) receive written notice from the Community Association of any default by the Mortgagor of such Privately Owned Site in the performance of the Mortgagor's obligations under this Community Declaration, the Articles of Incorporation, the Bylaws or Rules and Regulations, which default is not cured within 60 days after the Community Association learns of such default; (b) examine the books and records of the Community Association during normal business hours; (c) receive a copy of financial statements of the Community Association including any annual audited financial statement within 90 days following the end of any fiscal year of the Community Association; (d) receive written notice of all meetings of Delegates or Delegate Districts; (e) designate a representative to attend any meeting of Delegates or Delegate Districts, (f) receive written notice of abandonment or termination of the Community Declaration; (g) receive 30 days written notice prior to the effective date of any proposed, material amendment to the Community Declaration, the Articles of Incorporation or the Bylaws; (h) receive 30 days written notice prior to the effective date of termination of any agreement for professional management of the Community Association or the Community Association Properties following a decision of the Community Association to assume self-management of the Community Association Properties; and (i) receive immediate written notice as soon as the Community Association receives notice or otherwise learns of any damage to the Community Association Properties if the cost of reconstruction exceeds \$10,000 and as soon as the Community Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Community Association Properties.

**11.13 Minutes and Presumptions.** Minutes or any similar record of the meetings of Members in a Delegate District, of Delegates, or of the Board of Trustees, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

**11.14 Record of Mortgagees.** Under the Community Declaration, First Mortgagees have rights, under certain circumstances to approve amendments to the Community Declaration. Therefore, any such First Mortgagee or, upon the failure of such First Mortgagee, any Member who has created or granted a First Mortgage, shall give written notice to the Community Association, through its Manager, or through the Secretary in the event there is no Manager, which notice shall give the name and address of the first Mortgagee and describe the Privately Owned Site encumbered by the First Mortgage. The Community Association shall maintain such information in a book entitled "Record of First Mortgages on Privately Owned Sites." Any such first Mortgagee or such Member shall likewise give written notice to the



Community Association at the time of release or discharge of any such First Mortgage.

**11.15 Checks, Drafts, and Documents.** All checks drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Community Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Trustees.

**11.16 Execution of Documents.** The Board of Trustees, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Community Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Trustees, no officer, agent or employee shall have any power or authority to bind the Community Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

## **XII. NOTICE AND HEARING PROCEDURE**

**12.1 Association's Enforcement Rights.** In the event of an alleged violation by a Member ("Respondent") of the Community Declaration, these Bylaws or the Rules and Regulations, the Board of Trustees shall have the right, after notice and hearing as hereinafter provided, and upon an affirmative vote of a majority of all Trustees on the Board, to take any one or more of the following actions:

- (a) Levy a Reimbursement Assessment as provided in the Community Declaration;
- (b) Suspend or condition the right of said Member and anyone claiming through such Member to the use and enjoyment of any recreational facilities operated or maintained by the Community Association (to the extent any such Person is otherwise entitled to such use);
- (c) Suspend said Member's voting privileges as a Member, as provided in the Community Declaration; or
- (d) Record a Notice of Noncompliance against the Privately Owned Site of the Respondent.

Any such suspension shall be for a period of not more than 30 days for any non-continuing infraction, but in the case of a continuing infraction (such as nonpayment of any Assessment after the same becomes delinquent) such suspension may be imposed for so long as the violation continues.

The failure of the Board or the Design Review Committee to enforce the Rules and Regulations, these Bylaws, or the Community Declaration shall not constitute a waiver of the right to enforce the same thereafter.

The remedies set forth above and otherwise provided in the Community Declaration or these Bylaws shall be cumulative and none shall be exclusive.

However, any individual Member must exhaust all available internal remedies of the Community Association prescribed by these Bylaws and the Rules and Regulations, before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Community Declaration, these Bylaws or the Rules and Regulations, provided that the foregoing limitations pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of Common Assessments, Special Assessments, or Reimbursement Assessments.

**12.2 Written Complaint.** A hearing to determine whether enforcement action under the

Community Declaration or these bylaws should be taken shall be initiated by the filing of a written complaint by any Member or by any officer or member of the Board of Trustees or the Design Review Committee with the President of the Community Association or other presiding member of the board.

The Complaint shall contain a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged and a reference to the specific provisions of the Community Declaration, these Bylaws or the Rules and Regulations which the Respondent is alleged to have violated.

**12.3 Notice of Complaint and Notice of Defense.** A copy of the complaint shall be delivered to the Respondent in accordance with the notice provisions set forth in the Community Declaration, together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying Complaint is delivered or mailed to the Board of Trustees within 15 days after the Complaint was served upon you, the Board of Trustees may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled 'Notice of Defense' to the Board of Trustees at the following address:

3688 East Campus Drive Suite 101  
Eagle Mountain, UT 84005

You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Trustees, you may contact the property manager, or if directed to do so, the Association's legal counsel.

The respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board of Trustees. The Respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

**12.4 Tribunal.** The President shall appoint a Hearing Committee ("Tribunal") of three natural Persons upon receipt of a written Complaint as provided in this Article XII of these Bylaws. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing next-door neighbors of the Respondent or any Members of the Community Association who are essential witnesses to the alleged violation giving rise to the Complaint.

The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to taking of evidence at the hearing.

In the event of such a challenge, the Board of Trustees shall meet to determine the sufficiency of the challenge, without the President voting. If such a challenge is sustained, the President shall appoint another member to replace the challenged member of the Tribunal. All decisions of the Board of Trustees in this regard shall be final. The Tribunal shall elect a Chairman and appoint a hearing officer who shall take evidence and ensure that a proper record of all proceedings is maintained.

**12.5 Notice of Hearing.** The Tribunal shall serve a Notice of Hearing, as provided herein,

on all parties at least 14 days prior to the hearing, if such hearing is requested by the Respondent. The hearing shall be held no sooner than 30 days after the Complaint is mailed or delivered to the Respondent as provided in these Bylaws. The Notice of Hearing to the Respondent shall be substantially in the following form (but may include other information):

"You are hereby notified that a hearing will be held before a Tribunal appointed by the President of The Ranches at Eagle Mountain Master Homeowner's Association, Inc., at 3688 East Campus Drive Suite 140, Eagle Mountain, UT 84043. On the \_\_\_\_ Day of \_\_\_\_\_, 20\_\_ at the hour of \_\_\_\_ a.m./p.m., upon the charges made in the Complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of Trustees of the Community Association."

#### **12.6 Hearing.**

- (a) Oral evidence shall be taken only on oath or affirmation administered by an officer of the Community Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal.
- (b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues; to impeach any witness; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible Persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitive evidence shall be excluded.
- (d) Neither the accusing Member or the Respondent must be in attendance at the hearing. The hearing shall be open to attendance by all Members of the Community Association to the extent of the Permissible capacity of the hearing room.
- (e) In rendering a decision, official notice may be taken at any time of any generally accepted matter within the Community Declaration, these Bylaws, the Rules and Regulations, or the working of the Community Association. Persons present at the hearing shall be informed of the matters to be noticed by the Tribunal, and these matters shall be made a part of the record of proceedings.
- (f) The Tribunal may grant continuances on a showing of good cause.
- (g) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear the case and the hearing officer shall replace the withdrawing member.

**12.7 Decision.** If the Respondent fails to file a Notice of Defense, or fails to appear at a hearing, the Tribunal may take action based upon the evidence presented to it without notice

to the Respondent. However, the Respondent may make any showing by way of mitigation.

The Tribunal will prepare written findings of fact and recommendations for consideration by the Board of Trustees. The Tribunal shall make its determination only in accordance with these Bylaws. After all testimony and documentary evidence has been presented by the Tribunal, the Tribunal shall vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling.

A copy of the findings and recommendation of the Tribunal shall be posted by the Board of Trustees at a conspicuous place in the Community Association Area, and a copy shall be served by the President on each Person involved in the matter and his attorney, if any. Disciplinary action and levy of a Reimbursement Assessment under the Community Declaration, these Bylaws or Rules and the Regulations shall be imposed only by the Board of Trustees and in accordance with the findings and recommendations of the Tribunal.

The Board of Trustees may adopt the recommendations of the Tribunal in their entirety or the Board may reduce the proposed penalty and adopt the balance of the recommendations.

In no event shall the Board impose more stringent enforcement action than recommended by the Tribunal.

The decision of the Board shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board shall become effective 10 days after it is served upon the Respondent, unless otherwise ordered in writing by the Board of Trustees.

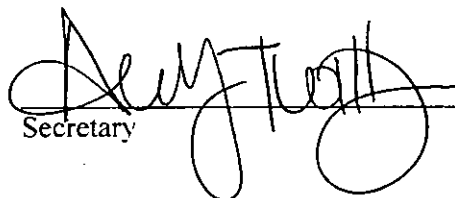
The Board may order a reconsideration at any time within 15 days following service of its decision on the involved persons, on its own motion or on petition by any party. However, no action against the Member arising from the alleged violation shall take effect prior to the expiration of the later of (a) 15 days after the Member's receipt of the Notice of Hearing; or (b) five days after the hearing required herein.

#### CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

- (1) I am the duly elected and acting Secretary of THE RANCHES AT EAGLE MOUNTAIN MASTER HOMEOWNER'S ASSOCIATION, INC., a Utah Non-profit Corporation ("Community Association"); and
- (2) The foregoing Bylaws constitute the Bylaws of the Community Association duly adopted at the meeting of the Board of Trustees of the Community Association duly held on December 15, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 13 day of May, 2010.

  
Secretary

**EXHIBIT C**  
**ARTICLES OF INCORPORATION OF THE RANCHES AT EAGLE MOUNTAIN**  
**MASTER HOMEOWNER'S ASSOCIATION, INC.**