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RODNEY D. CAMPBELL  
UTAH COUNTY RECORDER  
2009 Sep 24 3:50 pm FEE 202.00 BY SW  
RECORDED FOR TRANS TERRA FINANCIAL WEST,

**CONDITIONS, COVENANTS, RESTRICTIONS**  
**and**  
**EASEMENTS**

**TRAILHEAD AT SPANISH TRAILS MUTLTI-FAMILY**  
**SUBDIVISION RESIDENTIAL DISTRICT**

**TRANS TERRA FINANCIAL WEST, INC.**

**Spanish Fork, Utah**

**SEPTEMBER 17, 2009**

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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS,  
RESERVATIONS AND RESTRICTIONS  
FOR TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY SUBDIVISION  
A RESIDENTIAL DISTRICT**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, RESERVATIONS AND RESTRICTIONS FOR TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY SUBDIVISION, A RESIDENTIAL DISTRICT (the "Declaration") is made this 17 day of September, 2009 (the "Effective Date"), by TRANS TERRA FINANCIAL WEST, INC., a Utah corporation ("Trans Terra")(referred to as the "Declarant").

**WITNESSETH:**

**WHEREAS**, Trans Terra is the owner of that certain real property located in Utah County, State of Utah, being all of the property described in "Exhibit A," attached hereto and made a part hereof (hereinafter referred to as the "Multifamily Property");

**WHEREAS**, the Declaration anticipates the development of multifamily homes, parks, landscaping, roadways, sidewalks, common areas, or other use areas subject to this Declaration within the District Property, as provided for herein;

**WHEREAS**, the Declarant intends that this Declaration shall designate: (i) mutually beneficial restrictions under a general plan of improvements for the benefit of all owners of real property with the District Property; (ii) a flexible and reasonable procedure for the maintenance of the District Property; and (iii) a method for the administration, preservation, use and enjoyment of the District Property;

**WHEREAS**, Trans Terra desires to consent to the imposition of this Declaration upon the Multifamily Property;

**WHEREAS**, the District Property is an area of unique natural beauty, featuring distinctive terrain and features;

**WHEREAS**, by subjecting the District Property to this Declaration, it is the desire, intent and purpose of the Declarant to create a community in which such attractiveness, quality and value shall be substantially preserved, which will enhance the desirability of living on those portions of the District Property, subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein; and

**WHEREAS**, the Declarant intends to impose on the District Property mutually beneficial restrictions under a general plan of improvement.

**NOW, THEREFORE**, the Declarant hereby declares that the above recitals are true and correct, and that the District Property shall be held, sold and conveyed subject to the following

covenants, conditions, easement, reservations and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the real property subjected to this Declaration or any part thereof, their heirs, successors, successors in title and assigns.

## ARTICLE I Definitions

Unless the context otherwise specifies or requires, the following words and phrases when used in the Declaration shall have the meanings hereinafter specified. Such words, terms and phrases shall be applied and interpreted in a uniform and consistent manner. If a particular defined term is stated in the singular or plural, masculine, feminine, or neuter, the defined term shall be inclusive of all the foregoing if the particular usage or context so requires. Other words and terms shall have their usual and customary definitions and interpretations. Such defined terms shall be applied and interpreted in a uniform and consistent manner.

Section 1.1. "Area of Common Responsibility" and "Common Area" shall both mean and refer to the following:

- (a) the common areas contained in the Multifamily Property, as may be the case, including but not limited to the roads, public lighting, signage, sidewalks, points of ingress and egress to and from the District Property, medians and curbs, traffic control devices, pedestrian systems, landscaping, parks, and all other common areas, together with those parcels, tracts, or areas, if any, which by the terms of this Declaration or by contract or agreement become the responsibility of the Association to maintain, administer or operate; and
- (b) all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, if any, which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners and related improvements. The Association may or may not own any Common Area in fee simple; provided however, before the U.S. Department of Housing and Urban Development insures the first mortgage on a Unit in the District Property, Declarant shall convey by deed, license or easement the Common Area, if any, to the Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by Declarant, and from all other encumbrances then of record, but subject however to all other matters of record, including without limitation easements, the Declaration and ad valorem real property taxes for the year of conveyance. The Common Area shall not be mortgaged or conveyed (except to the Association) without the consent of at least two-thirds (2/3) of the Owners of Units located in the portion of the District Property governed by the association, excluding the Declarant. The Association shall accept title to any real estate or personal property offered to the Association by

Declarant, conditioned and subject to the same being free and clear of all liens and encumbrances. If ingress or egress to any Unit is through the Common Area, any conveyance or encumbrance of such Common Area shall be subject to the Unit Owner's reasonable and non-exclusive easement for ingress and egress.

Section 1.2. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, (as the context of this Declaration requires), collectively attached hereto as "Exhibit B" and incorporated herein by reference, which will be or have been filed (or which simultaneously herewith are being filed) with the Division of Corporations of the State of Utah, as same may be amended from time to time.

Section 1.3. "Assessment" shall be an inclusive term referring to both Regular Assessments, Special Assessments, fees, and any other costs, fees, or charges levied by the Association.

Section 1.4. "Association" shall mean and refer to the TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC., a Utah not-for-profit corporation, its successors or assigns, which will be or have been established (or is being simultaneously established herewith), which shall manage the District Property, including any Common Areas contained therein, subject to the terms of this Declaration. All Owners of Units shall be considered a Voting Member of the Association, as provided for herein. The Association shall be comprised of the aforementioned Trailhead at Spanish Trails Multi-family Association. When referring generally to the governance of the real property contained in the District Property, as the context of this Declaration requires, the Association, may be referred to as the "Association."

Section 1.5. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, as the context of this Declaration requires.

Section 1.6. "Bylaws" shall mean and refer to the Bylaws of the Association, (as the context of this Declaration requires), attached hereto as "Exhibit C" and incorporated herein by reference, which will be or have been adopted (or which simultaneously herewith will be adopted), as amended from time to time.

Section 1.7. "City" shall mean and refer to Spanish Fork, Utah, a Utah municipal corporation in which the property is located, or its successor, including all boards, departments, and officers thereof. The City is an additional Declarant for the purpose only of enforcing the architectural guidelines under the provisions of this Declaration.

Section 1.8. "Class B Control Period" shall mean and refer to that period which shall continuously exist until the first of the following events occur:

- (a) when one hundred percent (100%) of the Units permitted by the Development Order and other Development Approvals for the District Property, have certificates



of occupancy issued thereon and have been conveyed to persons other than the Declarant and Owners holding title solely for the purpose of development and sale;

- (b) December 31, 2012 at 11:59 P.M.; or
- (c) when, in its discretion, the Declarant elects to terminate the Class B Control Period.

Section 1.9. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the maintenance, repair and operation of the Area of Common Responsibility and Common Areas or for the general benefit of all Owners or for the benefit of Owners within a specific portion of the District Property, including reasonable reserves for the maintenance, repair and replacement of replaceable assets or for such other purposes as the Board of Directors may determine, as may be found to be necessary and appropriate by the Association pursuant to this Declaration, the Bylaws and the Articles of Incorporation.

Section 1.10. "Declarant" shall collectively mean and refer to Trans Terra, or their successors, successors-in-title or assigns who are designated as the Declarant hereunder in a recorded instrument collectively executed by the immediately preceding Declarant. In the event that this Declaration or other Governing Documents calls for a decision or action to be made by Declarant, no such decision or action shall be deemed valid or binding unless it is unanimously agreed to by Trans Terra.

Section 1.11. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Trailhead at Spanish Trails Multi-family Subdivision, a Residential District, as supplemented and amended from time to time.

Section 1.12. "Development Approvals" shall mean and refer to the Development Order and any and all subdivision and other governmental permits and approvals obtained with respect to the District Property or any part thereof, and the relevant zoning and comprehensive plan designation for the District Property.

Section 1.13. "Development Order" shall mean and refer to that certain Development Order obtained by the Declarant pertaining to the District Property and other property as set forth therein, as same may be amended from time to time.

Section 1.14. "District" shall mean and refer to Trailhead at Spanish Trails Multi-family Subdivision, a Residential District, as the same is subjected to this Declaration..

Section 1.15. "District Drainage System" shall mean and refer to all land, easements, structures and other facilities and appurtenances which together constitute and comprise the surface and sub-surface storm water management and drainage system of the District Property (or portions thereof) and which serve more than one Unit, as reflected on plans therefore now or

hereafter on file with and approved by City. The drainage system may be owned by the District or may be dedicated to the City as a public system to be maintained by the City.

Section 1.16. "District Property" shall mean and refer to that certain parcel of real property located in Utah County, State of Utah, being all of the property described in "Exhibit A," and any other adjacent property that may be subsequently annexed therein by the Declarant, pursuant to the terms of this Declaration;

Section 1.17. "Governing Documents" shall mean and refer to all applicable Articles of Incorporation, Bylaws, Development Approvals, Development Orders, Plat, this Declaration, and any supplements or amendments thereto.

Section 1.18. "Limited Common Area" and "Limited Common Elements" are those areas, features, facilities, improvements, or portions of the Common Area which are designated as Limited Common Area or Limited Common Elements and assigned for the exclusive use or primary benefit of a particular Unit, or less than all Units or Units in specified portions of the community. Limited Common Areas and Limited Common Elements, by way of example but not limitation, may include such things as Neighborhood entry features, landscaped areas, private and semi-private alleys and driveways, parking facilities, private and semi-private courtyards, and recreational facilities, among other things, that benefit only one Unit, a group of Units, or a portion of the community. Limited Common Areas and Limited Common Elements may be assigned to a particular Unit or a group of Units as defined in this Declaration, in the Subdivision Plat, by a Supplement to this Declaration, by decision of the Association, or in the deed conveying such property to the Association.

Section 1.19. "Master Architectural Review Committee" or "ARC" or "Master ARC" shall mean and refer to the Master Architectural Review Committee established pursuant to the Declaration.

Section 1.20. "Mortgage" shall mean and refer to a mortgage, deed of trust, deed to secure debt, or other form of security deed duly and properly recorded in the public records of Utah County, Utah.

Section 1.21. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 1.22. "Neighborhood Restriction" shall mean and refer to a covenant, restriction or provision of this Declaration which specifically applies only to one or more portion of the District Property, and which does not apply uniformly throughout the entire District Property.

Section 1.23. "Neighborhood" shall mean and refer to a portion or phase of the District Property which may be identified as such by Declarant when, in Declarant's sole discretion, such portion or phase may be comprised of or contain Units, Common Areas, facilities or properties which are adjacent, contiguous, similar, compatible in character, size, scope, number, Common Expenses, appearance, intended use or maintenance requirements.

Section 1.24. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit which is part of the District Property, and the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be deemed the Owner.

Section 1.25. "Person" shall mean and refer to a natural person, a corporation, a partnership, an estate, a trust, a trustee or other legal entity.

Section 1.26. "Plat" shall mean and refer to the plat, or any phase a said plat, of Trailhead at Spanish Trails Multi-family Subdivision, filed in the Recorder's Office of Utah County, State of Utah, on Plat A July 31, 2008, as Entry Number 2008-85654, Map Book 606, Page 261, and the plat of any portion of the District Property. Plat B recorded Sept. 16, 2009 Entry No. 2009-99787 Book 66 P. 298

Section 1.27. "Regular Assessment" shall mean and refer to the Assessments levied against all Units in the District Property to fund Common Expenses in accordance with Section 7.1 of Article VII of this Declaration.

Section 1.28. "Special Assessments" shall mean and refer to the Assessments levied in accordance with Section 7.3 of Article VII of this Declaration.

Section 1.29. "Supplemental Declaration" shall mean and refer to an amendment or supplement to this Declaration which imposes expressly or by reference, additional restrictions and obligations on the land described therein.

Section 1.30. "Unit" shall mean and refer to any lot, unplatted parcel, or residential unit on the District Property, and any structure thereon, intended for current or future development, use and occupancy as an attached or detached residence. Those areas shown on the Plat designated as "lots" and intended to be used for the construction of residences are deemed to be Units immediately upon the recording of the subdivision plat containing such lot. Areas on the Plat designated as tracts, roads, alleys, parks, Common Areas, or open spaces shall not constitute Units. The Declarant may in its sole discretion amend this Declaration for the purpose of more specifically designating Units in the District Property without the necessity of joinder of any other Person to said amendment.

Section 1.31. "Voting Member" shall mean and refer to: (a) the Declarant, during the Class B Control Period; and (b) at all other times, the representative, or such representative's alternate if he is unable to attend a meeting, of the Association (as the case may be) to be responsible for casting all votes of the membership of the Association attributable to Units in the District for all matters requiring the vote of the membership of the Association, unless otherwise expressly specified in the Declaration or Bylaws of the Association.

## **ARTICLE II**

### **Property Rights**

Section 2.1. Rights of Owners. Every Owner of a Unit shall have a non-exclusive right and easement of access, use and enjoyment in and to the Unit and to the Common Area, if any, for the purpose for which it is intended, subject to this Declaration as it may be amended from time to time, any easements reserved therein or granted by Declarant, any terms and conditions of the Declaration as it may be amended from time to time, and to any restrictions or limitations contained in any plat and in any deed conveying such property to the Association or subjecting such property as Common Area to the Declaration. Each Unit may have assigned to it certain areas as Limited Common Areas, which such areas are affixed and appurtenant to the Units as shown and are for the exclusive use of such Unit. Such non-exclusive right or easement is subject to:

- (i) the right of the Association to limit the number of guests of Owners or Owners who may use the Common Area from time to time;
- (ii) the right of the Association to promulgate, establish and enforce reasonable rules and regulations pertaining to the use of the Common Area;
- (iii) the exclusive rights associated with Limited Common Areas granted or assigned to particular Units, and
- (iv) the right of the Association to take such steps as reasonably necessary to maintain, preserve and protect the Limited Common Area.

Any owner may delegate his or her right of enjoyment in and to the Common Area to the members his family, his tenants, guests or invitees, as applicable, subject to reasonable regulation by the Board of the Association and in accordance with procedures that it may adopt. An Owner of a Unit who leases his Unit shall not be deemed to have delegated such rights to the Unit's lessee, except to the extent provided in the lease. No Owner may exempt himself from personal liability for or exempt his Unit from any Assessments duly levied by the Association, or release the Unit owned by the Owner from liens, charges, encumbrances and other regulations of this Declaration or the rules and regulations of the Association by: (a) the voluntary waiver of the right, privilege and easement for the use and enjoyment of the Common Area; or (b) the abandonment of his Unit.

Section 2.2. Leasing. An Owner shall be allowed to lease his Unit, provided that any such lease shall require the tenant thereunder to comply with the terms and conditions of the Declaration, Bylaws, Articles of Incorporation, bylaws and articles of incorporation of the Association, and provided further that such lease and tenancy is otherwise in compliance with any rules and regulations promulgated by the Association. No lease of a Unit shall be for a term of less than three (3) months, and any such lease will be in writing and compliance by the Owner and tenant of the provisions of this Declaration, and the Declaration shall be enforceable by the

Association, whether or not so stated in its terms. No Owner may lease his Unit more than twice during any calendar year unless approved by the Association. During the term of the lease, the Owner shall not be relieved of any obligations under the terms of the Declaration, and the Owner and tenant shall be jointly and severally liable for the actions of the Owner and the tenant which may be in violation of the terms and conditions of this Declaration, and any rules and regulations thereunder and any other documents set forth above, notwithstanding the fact that the tenants are also fully liable for any violation of the documents and regulations. In the event that a tenant, occupant, or person living with the tenant violates the Declaration, Articles of Incorporation, Bylaws, the bylaws or articles of incorporation of the Association, or the rules and regulations of the Association, such Association shall have the power to bring an action or suit against the tenant or occupant and the Owner jointly and severally, or any combination of the foregoing, to recover sums due for damages or injunctive relief, or for any other remedy available at law or in equity. The restrictions contained in this section shall not apply to Units owned by or leased to Declarant, or by any Mortgagee of a first mortgage acquiring title by foreclosure or deed in lieu of foreclosure.

Section 2.3. Time-share Prohibition. No time sharing plan, as the term is defined in all applicable Utah Statutes, as amended, or any similar plan of fragmented or interval ownership of property of Units shall be permitted on the District Property, and no attempt to create same by lease or otherwise shall be permitted.

Section 2.4. Board of Director's Rights. The Board of Directors, in its sole discretion, by its written consent may extend permission to selected non-owners of any interest in the District Property, to use portions of the Common Area subject to such terms and conditions as the Board of Directors may impose.

Section 2.5. Withdrawal. Declarant reserves the right to amend this Declaration unilaterally at any time so long as the Declarant owns any land which is subject to this Declaration, for the purpose of removing certain portions of the District Property then owned by the Declarant from the purview, operation and effect of this Declaration. For such an amendment to have effect, both SF West and Trans Terra must consent in writing thereto, and such amendment setting forth the withdrawal must be filed in the public Records of Utah County, State of Utah, with copies of the aforementioned written consent attached.

Section 2.6. Amendment. This Declaration shall not be amended without the prior written consent of the Declarant, to and until the District Declarant no longer owns any Units which are subject to the Declaration. After the Declarant no longer owns any Units which are subject to the Declaration, this District Declaration may be amended as provided for herein.

Section 2.7. Common or Party Walls. The rights and duties of Owners with respect to common walls, party walls, or common fences shall be as follows:

2.7.1. Each wall, structural element, fence, foundation, roof, or utility line which is constructed as a part of the original construction of a Unit, or any portion of such

element which is subsequently constructed as part of a repair or restoration, any part of which is placed on, adjacent to, contiguous, or over the dividing line between separate Units, shall constitute a common wall or party wall. Each Owner hereby consents to the use, repair, maintenance, restoration, and construction of such party wall and acknowledges that portions of the District Property may contain party walls. With respect to any such party wall each adjoining Unit Owner shall assume the burden of and be entitled to the benefits recited in this Section and to the extent not inconsistent herewith, the general rules of law regarding common or party walls shall be applied herein.

- 2.7.2. The Owners of contiguous Units who have a party wall shall have reciprocal easements for encroachment, support and an equal right to use such party wall provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other adjoining Owner.
- 2.7.3. Unless other provisions of this Section are applicable, the costs of reasonable repair, maintenance, and restoration of a party wall shall be shared equally by the Owners of the adjoining Units in proportion to the use of such party wall by each respective Owner. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title. An Owner may make emergency repairs to a party wall without the prior consent of the adjoining Owner, without waiving any rights herein for recovery or contribution from the other Owner.
- 2.7.4. In the event any party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, members of his family, agents, employees, or contractors so as to deprive the other Owner of the required use and enjoyment of such party wall, then the first of such Owners, shall be liable for the full costs of repairing and restoring such party wall and shall promptly rebuild, repair and restore such party wall to its original condition without cost or expense to the other Owner.
- 2.7.5. In the event any party wall is damaged or destroyed by some cause other than as described in Section 2.7.4 above, including ordinary wear, tear and deterioration from the passage of time and the effect of environmental causes, then in such event, both adjoining Owners shall be jointly and mutually responsible and liable to promptly rebuild, repair and restore such party wall to its original condition at their joint and equal expense.
- 2.7.6. Notwithstanding anything to contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior written consent of both adjoining Unit Owners and the Board, which such consent maybe withheld. In addition to meeting the other requirements of this Declarations and of any applicable building codes and standards, any Owner proposing to modify,

make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of adjoining Owner and the Board shall consider, in its decision, the adjoining Owner's preferences concerning the proposed modification, extension or alteration of the party wall.

- 2.7.7. In the event of a dispute between Owners with respect to the maintenance, repair, or restoration of a party wall or with respect to the allocation and sharing of costs thereof, then the provisions of this Declaration concerning Dispute Resolutions shall apply.

### **ARTICLE III** Association

#### Section 3.3. The Association.

- 3.3.1. Objects, Purposes, and Function. Unless otherwise specifically set forth in the terms of this Declaration, the Association has been created and established for the objects and purposes of and shall have jurisdiction over and the responsibility for the administration, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the District Property and the Common Area contained therein, and to the extent provided by agreement or otherwise of that portion of the Area of Common Responsibility which is not a part of the Common Area; the establishment, levy, imposition, enforcement and collection of all fines, charges and assessments for which provision is made herein for the Units in the District Property; the payment of all Common Expenses; and the promotion and advancement of the general welfare of the members of the Association; all as more particularly provided in this Declaration and in the Articles of incorporation, Bylaws and rules and regulations of the Association.
- 3.3.2. Duties and Powers. In addition to those duties and powers conferred by law and those specified and enumerated in the appropriate Articles of Incorporation and the Bylaws, the Association shall have such duties and powers as are, respectively, imposed and conferred upon it pursuant to this Declaration, including, without limitation, such duties and powers as may reasonably be implied from, necessary for or incidental to the accomplishment of the objects and purposes for which the Association has been created and established. All duties and powers of the Association shall be exercised by the Board of Directors of the Association unless otherwise provided in this Declaration, the Articles of Incorporation and the Bylaws.
- 3.3.2.1. Specific Duties. The Association shall specifically have a duty and responsibility over the landscaping, operation, care, maintenance, repair,

restoration, replacement, and preservation of the roadways, sidewalks, medians and curbs, traffic control devices, pedestrian systems, points of ingress and egress, public lighting, or signage located in or on the District Property.

- 3.3.3. Membership. Except as otherwise provided herein, every Owner of a Unit contained in the District Property shall be deemed to have a membership in the Association, and no Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. The membership shall not be refused, waived or surrendered, but voting rights and use and enjoyment of the Common Area may be regulated or suspended as provided in this Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations adopted by the Association.
- 3.3.4. Transfer of Membership Membership in the Association shall be appurtenant to and may not be separated from the ownership interest of an Owner in a Unit located in the District Property. The membership of an Owner in the Association shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred and assigned upon the transfer of the ownership interest required of the Unit to a third party. Every Owner of a Unit located in the District Property agrees to immediately notify the Association upon such transfer and to deliver to the Association the address of the new owner, and a copy of the deed conveying the Unit Parcel to the new owner.
- 3.3.5. Voting Rights. The Association shall have two (2) classes of membership, "Class A" and "Class B," as follows:
- 3.3.5.1. "Class A" members shall be all Owners of Units in the District Property with the exception of the Class B member, if any. One (1) vote per Unit shall be allocated among Class A members. Each Class A member shall have one (1) vote per Unit owned.
- 3.3.5.2. The Class "B" Member shall be the Declarant. The Class B Member shall have one hundred fifty (150) votes per Unit owned by Declarant located in the District Property until the Class B Control Period terminates, and such Class B membership becomes a Class A membership. The rights of the Class B Member, including the right to approve actions taken under this Declaration and the Bylaws, are specified elsewhere in this Declaration and the Bylaws. During the Class B Control Period: (a) the Class B Member shall be entitled to appoint the members of the Board of Directors of the Association, as provided in the Bylaws; and (b) shall have the right to override any decision or action of the Board (including those decisions or actions which may have been agreed to by the appropriate Owners, as set forth in this Declaration) and to direct the Board in any manner that the



Class B Member chooses (and the Board shall be obligated to comply with such direction from the Class B Member). The Class B membership shall terminate and proportionately be converted to the Class A membership upon the earlier of:

- (a) Upon the expiration of the Class "B" Control Period; or
- (b) When, in its discretion, the Declarant so determines; or,
- (c) As each District Property Unit is sold to an Owner other than the Declarant.

3.3.6. Cumulative Voting. No cumulative voting shall be permitted.

3.3.7. Governance. As set forth in the appropriate Bylaws, the Board of the Association shall be comprised of seven (7) elected members. One member shall be elected from an at large election of all members to serve as the President and senior officer of the Board (and shall preside over meetings called by the Board) for an initial term of three (3) years. The seven (7) members of the Board of the Association shall choose a Treasurer, Secretary, and Vice President from amongst themselves. Except for the term of the President of the Board of the Association, each Board member shall continue to serve on the Board of the Association so long as they are re-elected and qualified as Board members of their respective Boards. The Board of the Association shall: (a) conduct regular meetings of the Board and the Association no less than on a quarterly basis; and (b) be responsible for carrying out the specific Duties and Powers set forth herein. During the Class B Control Period, the Board may be established and act for the benefit of the Association, but at all times shall be subordinate to the decisions and directions of the Class B Member.

## ARTICLE IV

### Maintenance

Section 4.1. Responsibility. Unless otherwise specifically set forth in this Declaration, the Association shall maintain and keep in good repair that portion of the Common Area, if any, of the portion of the District Property for which each such Association bears responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, restoration, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon or under the Common Area and the Area of Common Responsibility, including, but not limited to, recreational amenities, if any, drainage and irrigation systems, parks, recreation and open space, utilities, points of ingress and egress to and from the District Property, streets and roads, medians and curbs, street lights, entry features and signage, traffic control devices and pedestrian systems, and such other actions as may be required pursuant to the terms and conditions of any agreement

of the Association and the Declaration. The Association shall also maintain and keep in good repair such portions of any additional property not included within the Common Areas and the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association or by a governmental entity or agency. In the discharge of its responsibilities, the Association shall comply fully with the Development Order and other Development Approvals to the extent relevant and applicable to the Common Area or the Association's duties and responsibilities. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area or the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Assessments.

The Association may maintain property which it does not own (in addition to those portions of the Common Area or the Area of Common Responsibility which it does not own), including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Master Standards (as defined herein).

Section 4.2. Owner's Responsibility. Each Owner of a Unit shall maintain his or her Unit and all structures, parking areas, landscaping, retention and other storm water control areas not a part of the Master Drainage System or the District Drainage System, and other improvements comprising the Unit in good repair and in a manner consistent with this Declaration and any standard established by the Board, and in any District planning and design criteria, as well as the Master Standards, and all applicable covenants, including those contained within the Declaration, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner of a Unit which has an adjoining Unit sharing a common wall or a party wall shall have joint and mutual cross easements of access and support from such common wall or party wall and shall joint and mutual obligations to insure, maintain, repair and restore such common wall or party wall. If any Owner fails properly to perform his or her maintenance responsibility, the Association, in its sole discretion, shall have a right of entry upon such Unit and may perform such maintenance and assess all costs incurred by the Association (together with an overhead expense to the Association of fifteen percent (15%) of the total amount thereof) against the Unit and the Owner thereof in accordance with Section 7.3 of Article VII of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. The Association shall have no obligation to perform any such maintenance, unless required to do so under the Declaration. The determination as to whether a Unit and all structures, parking areas, landscaping and other improvements are being maintained in good repair and in a manner consistent with the foregoing shall be made by the Board of the Association, except to the extent the District ARC may otherwise determine as to the Master Standards.

Section 4.3. Determination of District Standard. The Declarant or Association may establish a standard for the portion of the District Property for which each such Association bears responsibility as to conduct, maintenance or other activity generally prevailing throughout the District Property, which standard, if established, shall at least meet that of the standards adapted

by the Declarant. In the event such a standard is established, it may be amended by the Declarant or Association and may be enforced by the Declarant or Association. Notwithstanding the foregoing: (a) the District ARC shall determine whether the District or any portion thereof, and all structures, parking areas, landscaping and other improvements located thereon are being maintained in a manner consistent with the District Standards. It is intended that the District Standards shall be uniform and consistent for the existing District Properties and any Additional Properties annexed herein; and (b) under no circumstances shall any standards established and enforced by the Declarant or Association be contradictory to law, or otherwise directly or indirectly discriminate against any Unit Owner (or groups thereof) based on that Owner's (or those Owners') purchase, occupancy, or any other use of a single-family or multifamily Unit.

Section 4.4. Association Insurance. The Association shall obtain and maintain in effect insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage which is reasonably available, as follows:

4.4.1. Blanket property insurance covering "all risks of direct physical loss" on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on:

- (a) the Common Area (including Limited Common Area), if any;
- (b) property within any Service Area, if any, to the extent specified in any applicable Supplement; and
- (c) other portions of the Areas of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty.

If such coverage is not generally at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances, costs and codes.

4.4.2. Commercial general liability insurance on the Area of Common Responsibility, if any, insuring the Association and its Members for property damage or personal injury caused by the negligence of the Association or any its Members, employees, agents, officers, directors, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least one million and 00/100 dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonable prudent person would obtain, the Association shall obtain such additional coverage or limits;

- 4.4.3 Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- 4.4.4. Directors and officers liability coverage with a limit of at least one million and 00/100 dollars (\$1,000,000.00); and
- 4.4.5. Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling the funds of the Association in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth (1/4) of the annual Base Assessments on all Units such Board governs over, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the City of Spanish Fork, Utah area. In the exercise of its business judgment, the Association may obtain additional coverage and higher limits than this Section requires.

- 4.4.6. Deductibles. The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 4.5 hereof. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage under Section 4.5.8. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, contractors, agents, or lessees, then the Association may assess the full amount of such deductible against such Owner(s) and their Units as a Special Assessment.
- 4.4.7. Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner. To the extent available at reasonable cost and terms, all Association insurance shall:
  - (a) be written with a company authorized to do business in the State of Utah that satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
  - (b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its

members, except that policies on Limited Common Areas shall be for the benefit of the Owners of Units with the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interest may appear;

- (c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (d) contain an inflation guard endorsement;
- (e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;
- (f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;
- (g) provide a waiver of subrogation against any Owner or household member of an Owner; and
- (h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Association shall use reasonable efforts but shall not be required, to secure insurance policies that provide:

- (a) a waiver of subrogation as to any claims against the Association's directors, officers, employees and manager;
- (b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;
- (c) an endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;
- (d) an endorsement requiring at least thirty (30) days prior written notice to the Association of any proposed cancellation, substantial modification, reduction of coverage, increase in premiums, or non-renewal;
- (e) a cross liability provision; and

- (f) a provision vesting in the Board exclusive authority to adjust losses and claims. However, Mortgagees having an interest in such losses and claims may not be precluded from participating in the settlement negotiations, if any, related to the loss and claim.

4.4.8. Insurance Premiums. Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to a particular Service Area shall be a Service Area Expense, unless the Association reasonably determines that other treatment of the premiums is more appropriate.

Section 4.5. Restoring Damaged Improvements. In the event of damage to or destruction of portions of the Common Area, Limited Common Area and Area of Common Responsibility for which the Association has the responsibility to maintain, the Association shall repair or reconstruct the damaged Common Area improvements.

- 4.5.1. The Association shall not be required to repair or reconstruct such damaged improvements if: (1) this Declaration is terminated or the property has been withdrawn from the District Property pursuant to Section 2.5; (2) the repair or restoration would be illegal under any applicable state or local statute or ordinance; or (3) the Declarant and at least seventy percent (70%) of the Unit Owners entitled to cast votes affirmative vote not to repair or restore the damaged improvements within sixty (60) days after the loss, and in the case of any Limited Common Areas, at least one hundred percent (100%) of the Unit Owners of the damaged Limited Common Area.
- 4.5.2. The Board or its duly authorized agent shall have the sole and exclusive authority, standing responsibility to file and adjust all insurance claims and obtain all settlements therefrom.
- 4.5.3. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.
- 4.5.4. If a decision is made not to repair to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community Wide Standard.
- 4.5.5. The insurance proceeds attributable to any common walls, party walls, Units or Limited Common Areas that are not repaired or restored shall be distributed to the

Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or to their respective Mortgagee, as their interests may appear, in proportion to their respective liability for Association expenses. The Association shall retain and place in a capital improvement account for the benefit of all Owners, the Owners within the affected Service Area, or the Owners or Units to which such Limited Common Areas were assigned, as appropriate, any insurance proceeds remaining after paying the costs of the repair or restoration of after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

- 4.5.6. If insurance proceeds are insufficient to cover the costs of repair or restoration, the Board may, without a vote of the Unit Owners, levy Special Assessments to cover the shortfall against those Owners and Units responsible for the premiums for the applicable insurance coverage under Section 4.5.

## **ARTICLE V**

### Use Restrictions

#### Section 5.1. General Provisions.

- 5.1.1. The District Property shall be used only for such purposes as are permitted in this Declaration (or supplements hereto), or other covenants or deed restrictions pertaining thereto, subject to such further restrictions as may be set forth in any Development Order or applicable Development Approvals. No changes in the uses and intensities of uses permitted in the District Declaration or any Development Order (and other applicable Development Approvals) pertaining to the District Property may be made, nor may any application for approval therefore be made to any governmental authority, without the prior written approval of the Declarant, as long as Declarant owns any land within the District Property or which may be annexed thereto.
- 5.1.2. The District Property shall also be subject to such further restrictions as Declarant may impose under and by virtue of deeds to Owners. Restrictions identified in any such deed as being enforceable by the Association shall be enforceable as such, acting through the Board of the Association, in the same manner as if such restrictions were set forth in this Declaration. In addition, the Association, acting through its Board, shall have standing and power to enforce restrictions and standards imposed under the Declaration and to enforce deed restrictions on the District Property which may be enforced by the Association.
- 5.1.3. The Association, acting through its Board, shall have the authority to make, enforce, grant exceptions, amend and delete standards and restrictions governing use of the District Property in addition to those contained herein, and to impose reasonable user fees for use of the Common Areas, provided however, should

such standards and restrictions be in conflict with or less stringent than those contained in the Declaration, then the terms and conditions of the Declaration shall control. Sanctions may include reasonable monetary fines which may be secured by a lien upon an Owner's Unit in the same manner as delinquent Assessments, all as more particularly set forth in the Bylaws. During such time as Declarant owns any land which is subject to the Declaration, any standards and restrictions governing the use of the District Property made, amended or deleted, shall not apply to the Declarant and that portion of the District Property owned by it unless Declarant consents in writing thereto.

- 5.1.4. The Board of the Association may delegate its power and authority to enforce restrictions pursuant to this Article V to a Covenants Committee or third party as provided in the Bylaws.

Section 5.2. Use of Property. Each Unit in the District Property shall be used solely for one (1) single-family attached dwelling unit in those areas of the Multifamily Property, as the Plat designates such use, and any approved out-buildings. Units are designed and allowed to be attached to the adjoining Unit by use of a common wall or party wall with zero (0) side-yard setbacks between adjoining units and/or buildings.

Section 5.3. Architectural Review Committee Approval. The Plans and Specifications, including the location of all improvements must be approved in writing by the District Architectural Review Committee (the "ARC" or "District ARC") prior to the commencement of any construction in accordance with and subject to the provisions of Article V hereof. No person commencing construction prior to receipt of such written approval shall acquire any vested rights in any such improvement.

Section 5.4. Design and Development Guidelines. The District ARC shall prepare and promulgate on behalf of the Declarant design and development guidelines, and application and review procedures, which shall include provisions of the Planning and Design Criteria applicable to the District Property or any portion thereof. The guidelines and procedures shall be those of the Declarant, and the District ARC shall have the sole and full authority to prepare and to amend the same, subject to approval of the City (if applicable) and the Declarant. The Association shall make copies of the guidelines and procedures available, upon request, to Owners, builders and developers who seek to engage in development of or construction upon any portion of the District Property, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. Until the date the design and development guidelines are adopted and approved by the District ARC and the City (if applicable), the architectural guidelines set forth herein shall be the architectural guidelines and requirements for property improvement within the District Property. It is intended that the District Standards shall be uniform and consistent for the existing and future areas.

Section 5.5. Appointment of District Review Committee. Until Declarant no longer owns any portion of the District Property, Declarant retains the right to appoint and replace from



time to time all members of the District ARC. The District ARC shall consist of at least three (3), but no more than five (5), persons who need not be Owners or members of the Association. There shall be no surrender of such right of appointment prior to that time except in the Declarant's sole discretion, in and by a written instrument in recordable form executed by Declarant. Upon the expiration of such right of appointment, the Board of the Association shall appoint the members of the District ARC. The term of office for a member of the District ARC shall be as determined by Declarant until it no longer has the power to appoint members to the District ARC, at which time the Board of the Association may determine the term of office for members of the District ARC.

Section 5.6. Property Line Setbacks.

5.6.1. Multifamily Setback Restrictions. Any structure to be constructed on a Unit located on the Multifamily Property shall comply with the property line minimum setbacks as set forth within the recorded plat.

Section 5.7. Building Sizes. The minimum size of each single story dwelling unit shall be one thousand two hundred (1200) square feet of interior floor space. The minimum size of each two-story or split-level dwelling unit shall be one thousand four hundred (1400) square feet of interior floor space. Interior floor space does not include unfinished basements, garages, porches, patios, decks, balconies, overhangs, or other unfinished living areas. Service structures, club and pool houses shall have no minimum required setbacks or building sizes.

Section 5.8. Exterior Surfaces. The exterior surfaces of any building may be vinyl siding, stucco or and such other materials and of colors approved by the District ARC. All exterior materials shall be fire retardant. Aluminum soffits and fascia are acceptable. On exterior front surface elevations which have decorative facing, such as brick or rock, the decorative facing is not required to wrap around the sides of the building.

Section 5.9. Roofing Materials. All roofs shall be shingled with a minimum of 3-tab 30 year (300 lb. minimum) architectural grade asphalt shingles, tile, or metal quality, with a pitch or slope of a minimum of 3:12 for all main dwelling units. The actual material is subject to prior approval of color and texture by the District ARC, but shall meet the preceding minimum specifications. The roofing material shall be fire retardant.

Section 5.10. Height. No building shall exceed the designated height measured from the highest natural ground elevation adjacent to such building to the highest point of the ridge line of such building as per the registered and approved building plans.

Section 5.11. Parking and Garages. Each Unit shall have an enclosed garage space capable of parking at least one (1) automobile with no mandatory minimum interior square footage. Said garage may be detached from or attached to the main residential structure. All commercial vehicles, recreational vehicles, buses, trucks, pick-up trucks, vans, tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and other water

craft, and boat trailers must be parked entirely within a garage or behind a fence unless otherwise permitted by the Association. Storage of any of the foregoing in the yard of a Unit shall not be permitted unless otherwise permitted by the Association. No garage may be altered in such a manner that the number of automobiles that could have reasonably been parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed. Garage doors shall be closed except when reasonably necessary for use of garage. (This section shall not apply to construction or similar vehicles or construction trailers which may be parked on a Unit, but only during such reasonable period of time within which construction of improvements thereon is occurring.)

Section 5.12. New Construction. All dwellings shall be of new construction. No used or existing buildings shall be moved onto or maintained on any Unit. No other building (including but not limited to playhouses and storage sheds) may be moved onto or maintained on the District Property without the prior written approval of the District ARC. No off-site built dwelling units, of whatever nomenclature or design, including but not limited to any mobile homes, manufactured homes, or modular homes, shall be allowed to be brought onto, installed or maintained on any portion of the District Property. No geodesic domes or A-frame structures may be constructed or maintained on any portion of the District Property. All outbuildings, sheds and accessory structures shall comply in all respects to the architectural guidelines and setbacks contained herein.

Section 5.13. Outbuildings. Each Unit shall be permitted to have one detached outbuilding or storage building, such as a utility shed. All such detached structures shall comply with all setback requirements, shall be constructed and painted in a style and color similar to the main residence, and shall not be used for human habitation. A Unit Owner must obtain written permission and consent from the Association, and any required City building permit, prior to construction of any outbuilding. Animal pens, stalls, and shelters, barns, stables, or similar structures are all prohibited.

Section 5.14. Storage of Building Material. No building material shall be stored on any Unit except temporarily during construction of an improvement on that Unit, or during its alteration, renovation, repair, remodeling, and then only during such time as an active and valid building permit is in force.

Section 5.15. Occupancy During Construction. No improvement structure shall be occupied in the course of the original construction until all required certificates of occupancy or completion have been issued by the appropriate governmental authorities. All work of construction shall be prosecuted diligently and continuously from the time of commencement until completed, which period shall not exceed nine (9) months from the date the site excavation was commenced.

Section 5.16. Temporary Structures. No temporary building, improvement or structure, including but not limited to any trailer, mobile home, RV, tent, or shack, shall be placed or maintained upon any portion of the District Property except that temporary structures necessary

for storage of tools and equipment or sales personnel, during actual construction may be maintained with the prior written approval of the District ARC, such approval to include the nature, size, location and duration of such temporary structure.

Section 5.17. Construction Activity. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction of improvements by any Owner, provided that when completed such improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that such construction is pursued to completion with reasonable diligence is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including by not limited to any provision prohibiting temporary structures, may be granted by the District ARC, provided that such waiver shall be only for the reasonable period of such initial construction. Notwithstanding the above, construction activities shall not be conducted at such hours as to constitute an unreasonable nuisance. All lots shall be kept clean of construction debris, waste and trash during construction and be placed in approved containers until off-site disposal. All construction debris, trash, and waste shall be regularly removed from each site. During construction, the builder shall have on site an approved trash and construction container. All building material, building trash or debris shall be placed in such container at least daily, and the container shall be emptied off site when full. No trash or construction debris shall be buried on site nor allowed on any adjoining Unit.

Section 5.18. Driveways. All driveways shall be constructed of hard surfaced materials such as concrete, asphalt, paving stones, brick or similar material. All driveways shall be properly maintained, replaced, restored and promptly repaired by the Owner of the Unit (or the Association for those driveways that are deemed to be portions of the Common Area, if any). All driveways shall be constructed, installed, repaired and replaced to extend from the edge of that portion of the dwelling foundation serving the garage to the edge of the street pavement.

Section 5.19. Mail Boxes. There shall be standard and uniform style and design of mailboxes for the District Property. All Owners shall be responsible to install, maintain, repair, and promptly restore or replace, the approved mailbox (unless such installation, maintenance, repair, restoration, or replacement is deemed to be a portion of the Common Area, if any). All mailboxes shall be constructed and maintained in accordance with the rules and regulations of the Postmaster.

Section 5.20. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any portion of the District Property, with the exception of dogs, cats, or other usual and common household pets, which may be kept or permitted in a reasonable number so as not to create a nuisance as determined by the Association, provided same are not bred for commercial use; and provided, however, those pets which are permitted shall be sheltered inside approved structures. All dogs, cats and other household pets allowed

hereunder must be leashed when outside and shall not be permitted to run loose. Those pets which, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of the District Property may be removed by the Board of the Association and handed over to the appropriate state or county authority. No farm or exotic animals, including but not limited to horses, cows, pigs, donkeys, mules, emus, game animals, buffalo, sheep, goats, and llama, shall be allowed to be kept, maintained or bred on or in any Unit. No animal shall be allowed to create any objectionable odor, pests, disease, or insects. Each Owner of any pet or animal shall be financially responsible and liable for any damage cause by such pet or animal. Each Owner shall be responsible to pickup and properly dispose of any excrement deposited by his pet or animal.

Section 5.21. Nuisance. No portion of the District Property shall be used, in whole or in part, for the storage of any property or thing that will cause such portion of the District Property to appear to be in an unclean, unsightly, unhealthy, or unkempt condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon, nor shall any use or practice be allowed upon any portion of the District Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the District Property, or which shall be a source of material and unreasonable annoyance or discomfort to Owners or their tenants or invitees, or which materially and unreasonably interferes with the peaceful possession and enjoyment of the District Property. No illegal, noxious, or offensive activity shall be carried on or conducted upon any portion of the District Property. The pursuit or hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall occur only within a garage or other similar walled interior area of the District Property and shall not be visible to view from the street curb.

Section 5.22. Water and Sewage Facilities. No individual water supply system or individual sewage disposal system shall be permitted for any portion of the District Property. All Units in the District Property are required to be connected to City's municipal utility systems, including, but not limited to, potable water, waste water, storm water drainage, gas, and electricity.

Section 5.23. Landscaping. Landscaping on any portion of the District Property and storm water drainage and retention features located on and serving only a particular Unit (and not a part of the District Drainage System or considered a portion of the Common Area) shall be continuously maintained in good, aesthetically pleasing condition by the Owner thereof consistent with the Landscape Design Criteria for the District as may be promulgated and amended by the District ARC from time to time. Each individual Unit shall comply, at a minimum, with the following:

- 5.23.1. No Unit shall be allowed to accumulate any growth of weeds, underbrush, collection of tumbleweeds, or other plant growth greater than twelve (12) inches high (other than trees, flowers, hedges, or similar ornamental plants). Upon the

violation of this provision, the District ARC shall notify the Owner in writing of the violation either by mail, personal delivery or posting of the notice on the property. If the violation is not corrected within thirty (30) days from the date of the notice, the District ARC shall have the right to enter unto any Unit in violation of this provision to correct the violation. Such Unit shall be assessed the costs incurred by the District ARC to correct the violation, which shall be deemed a Special Assessment against the individual Unit.

5.23.2. No Owner shall disturb, damage or alter the sidewalk or street curb. No Owner shall alter or damage any drainage structures. Each Owner shall be liable for any violation of this provision.

5.23.3. All front and side yards shall be landscaped (installed grass and an underground permanent irrigation system), as described hereinafter, from the top-back edge of the curb of the road adjoining the Unit (or from the edge of the pavement if no curb), extending back to a horizontal line created by extending the plane of the rear of the dwelling to the side lot lines. Such yard landscaping shall be installed and completed no later than: (a) within one hundred twenty (120) days after issuance of a building permit for the construction of a residence on a lot; or, (b) if the building permit for the construction of a residence on a lot was issued after September 1 and winter weather prevented the installation of the required landscaping within the time specified in preceding provision, the required landscaping shall be installed no later than April 1 of following year. In addition to the landscaping required for all Units, corner Units shall have landscaping (installed grass and underground permanent irrigation system) in the entire outside side yard area, which is defined as that area between the side of the dwelling and the side street by extending the foundation line of the side of the house facing the side street from the front of the Unit to the rear of the Unit, which yard landscaping shall be installed at the same time as the front yard landscaping is installed. Within one (1) year after issuance of the certification of occupancy, the improved irrigated lawn areas shall be installed and extended to the rear line of the dwelling.

5.23.4. All exterior utility lines and services shall be installed and maintained underground.

5.23.5. All areas designated as private parks or owned by the Association shall be regularly maintained in a safe, clean and tidy manner.

Section 5.24. Vehicles and Repair. No inoperative cars, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any portion of the District Property for a continuous period in excess of forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in an enclosure and not visible from the

street or any portion of the District Property. All vehicles within the District Property must have current state issued motor vehicle registration tags displayed on the vehicle.

Section 5.25. Storage. Unless specially approved by the District ARC, no materials, supplies, or equipment (except during the construction of improvements) shall be stored on any portion of the District Property, except inside a dwelling and the garage. The foregoing provisions shall not apply to the Declarant.

Section 5.26. Wells. Without the prior written consent of the District ARC, no well for the production of water, whether potable or for irrigation or other limited purposes, shall be dug, used or otherwise permitted on the District Property.

Section 5.27. Mining and Excavation. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any portion of the District Property, nor shall any oil, natural gas, petroleum, rock, gravel or other minerals or substances of any kind be produced or extracted therefrom. No clearing or excavation of any portion of the District Property shall occur except in connection with the construction approved by the District ARC, or maintenance or repair of improvements on the District Property.

Section 5.28. Signs. With the exception of one (1) "For Sale" sign per Unit not to exceed the size established by the District ARC, no sign of any kind shall be erected on any portion of the District Property without the prior written consent of the District ARC. Such restriction on signage shall not apply to the Declarant as long as the Declarant owns property within the District Property.

Section 5.29. Antennas; Satellite Dishes. No exterior television or radio antennas, aerials or satellite dishes of any kind shall be placed, allowed, or maintained upon any portion of the District Property, including any Unit, unless permitted by the District ARC and the Association. Notwithstanding the foregoing, each dwelling Unit shall be permitted to install and maintain one (1) exterior mounted dish satellite receiver dish not exceeding twenty (20) inches in diameter. As far as practical, each exterior antenna shall be placed on the rear or side wall of the dwelling.

Section 5.30. Clotheslines, Garbage Cans and Tanks, and External Equipment. All clotheslines, garbage cans, above-ground tanks, air-conditioning compressors, pool pumps and other similar items of external equipment shall be located or screened, by vegetation or shadow-box enclosures approved by the District ARC, so as to be concealed from view from neighboring Units or portions of the District Property.

Section 5.31. Swimming Pools. No above-ground swimming pools shall be erected, constructed or installed on any portion of the District Property. No in-ground swimming pools shall be constructed or installed on any portion of the District Property without the prior written approval of the Association. All swimming pools and spas shall be maintained within either the

structure, a screened enclosure, or within a fence, each of which shall have a self-locking gate or door, as required by all applicable laws.

Section 5.32. Tents, Trailers and Temporary Structures.**Error! Bookmark not defined.** Owners or occupants shall not place upon any portion of the District Property, any tent or trailer or any structure of a temporary nature, without obtaining the prior written approval from the Association and the District ARC.

Section 5.33. Drainage. All storm water from any portion of the District Property shall only drain into or onto contiguous or adjacent street rights-of-way, drainage easements, retention areas, Common Areas or Areas of Common Responsibility in the manner approved by the District ARC and the owner and operator of the District Drainage System. If such drainage is not part of the District Drainage System and is not required to be part of the District Drainage System, then the manner of its drainage shall be approved by the District ARC and the Declarant (and at such time as Declarant owns no portion of the District Property, or at such earlier time as Declarant in its sole discretion may determine, the approval of the Declarant will not be required, and the Association and the District ARC shall approve the manner of drainage). No Owner (other than the Declarant) shall be permitted to alter the grade of or original drainage plan for any portion of the District Property, or change the direction of, obstruct, alter or retard the flow of surface water drainage, nor to erect, place or maintain any structure which shall in any way obstruct drainage devices or facilities or impede their efficient operation unless approved by the District ARC and the owner and operator of the District Drainage System, if such drainage is part of the Master Drainage System or the District Drainage System, respectively, or unless approved by the District ARC and the Declarant (and at such time as the Declarant owns no portion of the District Property, or at such earlier time as Declarant in its sole discretion may determine, the approval of the Declarant will not be required, and the Association and the District ARC shall approve the manner of drainage), if such drainage is not part of the District Drainage System. The District and each Unit within the District shall have a specific drainage plan and site elevation established to collect and channel the storm water to the front of the lot and into the drainage collection system. No Owner shall change the lot elevations or drainage swale elevations and shall at all times, and under all circumstances, maintain, protect, preserve, repair and restore the drainage swale elevations and surface treatments. On those lots which have a basement and which receive storm water drain runoff from an adjacent lot into the back yard, such lots shall have additional storm water swales established and improved to channel the surface water away from the rear of the lots to the side yards and to the public streets.

Section 5.34. Stormwater Retention Areas. All stormwater collection infrastructure facilities and elements contained, shown and included on the Plat which are dedicated to Public shall be exclusively owned, maintained, and managed by the City. Neither the Owners nor the Association shall have any rights or obligations pertaining to any areas or facilities dedicated to the City.

Section 5.35. Walls and Fences. No fences or walls are permitted anywhere in the District Property unless approved in advance in writing by the District ARC. All fencing

material in the District (including any additional areas contained in additional phases which are subsequently annexed herein) shall be of a uniform material, design, and construction, consisting of tan vinyl material, except as allowed by the District ARC. No chain link or barbed wire fencing shall be allowed. All fences and walls shall be constructed and maintained to allow clear angles of vision from adjoining streets, alleys, and walking areas. The height, material, color, design, and configuration of all fencing, including side yard connecting fencing, shall be uniform within and throughout the entire District and shall be constructed of tan vinyl material. All fencing shall be constructed and maintained in accordance with the architectural standards for fencing established by the District ARC, and no fence may be erected or maintained without the prior written approval of the District ARC.

Section 5.36. Motorized Vehicles. Motorized vehicles shall not be used on sidewalks, pathways, the alleyways, or Common Areas (unless the Common Areas have been specifically designated for use by motorized vehicles by the Declarant). Golf Carts may use the foregoing if so determined by the Declarant, the intent that being such use, if any, shall be limited to reasonable and necessary use for transportation to and from any neighboring golf course. In no event shall any person operate a motorized vehicle or golf cart anywhere within the District Property who does not have a valid driver's license. At such time as the Declarant no longer owns any property which is subject to this Declaration, or at any such earlier time as Declarant in its sole discretion may determine, the rights reserved to Declarant in this section shall become rights of the Association, to be exercised by the respective Boards.

Section 5.37. Master Standards. The District Property shall comply with the Architectural Standards adapted by the Declarant, the terms and conditions of the Declaration, and the planning and Design Criteria of the Declarant.

Section 5.38. Development. Each Owner shall comply, at its expense, with the requirements of the Development Order as it relates to the Unit owned by it, and each Owner shall otherwise cooperate with the Declarant and Association in their efforts to comply with the provisions of the Development order.

Section 5.39. Occupants Bound. All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners, shall also apply to all occupants of any portion of the District Property.

Section 5.40. Subdivision of Portion of the District Property. As long as Declarant owns any land which is subject to this Declaration or which under the terms of this Declaration could be annexed to the District Property, if any, no portion of the District Property shall be platted, replatted, subdivided or its boundary lines changed, nor shall any portion of a Unit, less than the whole thereof, be sold, conveyed or transferred except with the prior written approval of the Declarant, which approval may be granted or withheld in the sole discretion of the Declarant. Thereafter, no portion of the District Property shall be platted, replatted, subdivided, or its boundary lines changed, nor shall any portion of a unit or unplatted parcel, less than the whole thereof, be sold, conveyed or transferred except with the prior written approval of the



Association. Any such subdivision, boundary line change, platting or replatting shall not be in violation of applicable subdivision and zoning regulations, the Development Order or the Development Approvals. Declarant, however, hereby expressly reserves the right to plat, replat, subdivide or change the boundary lines of any portion of the District Property owned by the Declarant and the right to sell, convey or transfer any portion of a Unit less than the whole thereof, without notice to or the approval or consent of any Person being required.

Section 5.41. Garage or Yard Sales. No garage or yard sales of any kind shall be conducted, nor shall any signage related to any garage or yard sales be erected, in any manner except as specifically provided by rules and regulations promulgated by the Declarant or the District ARC, which rules and regulations shall address the location, frequency, scope, hours, placement of signs and all other matters relating to garage or yard sales and signage or advertising thereof. Generally, such sales shall be limited to no more than one (1) event per each two (2) month period, per Unit.

Section 5.42. Enforcement. In the event of the violation of or the failure to comply with the requirements of this Article, and the failure of the owner of the affected portion of the District Property within ten (10) days following written notice by the Association of such violation or non-compliance and the nature thereof, to cure or remedy such violation, then the Association or its duly appointed employees, agents or contractors, shall have the right, but not the obligation, and an easement and license to enter upon the affected portion of the District Property, without being guilty of any trespass therefore, for the purpose of curing or eliminating such violation, all at the sole expense of the Owner thereof. Such costs and expenses, together with an overhead expense to the Association of fifteen percent (15%) of the total amount thereof shall be payable by the Owner of the affected portion of the District Property to the Association within ten (10) days after written notice to the Owner of the amount thereof, which amount shall become or be treated in the same manner as a Special Assessment levied against said portion of the District Property. The Association may place a lien upon such portion of the District Property to recover such costs and expenses, as provided in Article VII hereof, and the Association may seek all other legal and equitable remedies available to it. The Association shall also have the right to levy fines against an Owner for the violation of or the failure to comply with the requirements of this Article, or exercise any other remedy available at law, as more particularly set forth in the Bylaws. Any rights hereunder may also be exercised by the Association as further provided in this Declaration.

## ARTICLE VI

### Annexation of Additional Property

Section 6.1. Annexation. As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time to annex into the District Property any additional property: (i) which is either abutting the District Property (including additions thereto), which shall include properties which would abut the District Property but for the existence of a road right-of-way, easement or other similar property grant separating it from the District Property; or (ii) which is so situated that its addition will be consistent with a uniform scheme of development as determined in the sole discretion of Declarant. It is intended and planned that the additional properties shall be annexed herein upon the recording of the subdivision plat for each of the proposed future phases. This right of annexation by Declarant shall exist until Declarant no longer owns any property within the District Property or within the additional property described above which may be the subject of annexation into the District Property. Such annexation shall be accomplished by filing in the public records of Utah County, State of Utah the Covenants, Conditions and Restrictions in form and content substantially similar to the these Declarations for such future phases or by the filing of a separate Annexation Agreement annexing such property so as to become part of the District Property, thereby submitting same to the terms of the Declaration, which Annexation Agreement shall include the written consent of the Declarant thereto. Any such annexation shall be effective upon the filing for record of such Covenants, Conditions and Restrictions or the Annexation Agreement unless otherwise provided therein. The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property into the District, provided that such transferee or assignee shall be the owner of at least a portion of the District Property or the additional property which may be the subject of annexation to the District Property, and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing herein shall obligate Declarant to annex additional real property into the District Property, nor to continue with annexation, if and when it may be commenced.

Section 6.2. Residential District. The District Property designated or set forth in the current phase and in and any future phases annexed into the District as provided herein (thereby becoming part of the District Property), shall be a part of the Trailhead at Spanish Trails Multi-family Subdivision, a Residential District.

Section 6.3. Neighborhood Provisions. Declarant hereby reserves the right to declare that all or any portion of the District Property shall constitute one or more Neighborhoods. Each Neighborhood may, but shall not necessarily, be comprised of residential Units, Common Areas, facilities or properties which differ in size, character, scope, number, Common Expenses, appearance, intended use or maintenance requirements than other Neighborhoods within the District Property, and may, therefore, be subjected to certain covenants and restrictions which may not apply uniformly or at all throughout the balance of the District Property. Accordingly, Declarant hereby expressly reserves the unilateral right, privilege and option, from time to time at any time to modify, by amendment, supplement or Annexation Agreement to this Declaration,

the various covenants and restrictions set forth herein in a manner which may vary from one Neighborhood of the District Property to another, but which shall be applied and enforced consistently and uniformly in the respective Neighborhoods to which each modification, if any, may apply. The covenants, conditions, easements, reservations and restrictions set forth in this Declaration shall be presumed to apply uniformly throughout the District Property unless the relevant provision of the Declaration specifically provides that it shall only apply to a Neighborhood of the District Property as identified therein. In the event that a provision of this Declaration provides that it shall apply only to a specific Neighborhood of the District Property, then such specific provision, amendment or supplement shall control in the event of a conflict with any provision of the Declaration that would otherwise apply uniformly throughout the District Property. Notwithstanding anything to the contrary set forth elsewhere in this Declaration, the following provisions shall apply:

- (a) Neighborhood Restrictions shall identify the Neighborhood to which the provisions are intended to apply. Neighborhood Restrictions may be set forth in this Declaration, in the Annexation Agreement which submits additional property to the District, or in amendment or supplement to the Declaration.
- (b) Neighborhood Restrictions may modify, alter, delete, or expand the application of any one or more of the provisions of the Declaration in any manner which is materially different, in whole or in part, from the application of similar provisions to other Neighborhoods of the Property, including, but not limited to, provisions relating to calculation of Assessments, descriptions of Common Areas and Areas of Common Responsibility, calculation and apportionment of Common Expenses, rights of Owners, leasing, use restrictions, landscaping, storage, parking, improvement, structures, party facilities and maintenance responsibilities.
- (c) At the time of recording of the Declaration, the Declarant is not obligated to undertake or complete the annexation of any additional property or Neighborhood into the District Property, and nothing in this Declaration shall be construed to obligate the Declarant to commence or undertake, or, if and when commenced, to continue, any annexation of additional property or Neighborhoods into the District Property.
- (d) Common Expenses, Assessments (both regular and special) and all other costs and expenses of the Association may be allocated and apportioned by the respective Board among the varying Neighborhoods in the District Property in a manner that shall reflect, in the reasonable judgment of the Board, the operational and maintenance responsibilities of the District Property and of the

respective Neighborhoods thereof. The respective Board shall determine, in its reasonable discretion, which common expenses shall be applied in uniform fashion among all Owners in the portion of the District Property which that Board governs, and which Common Area expenses may be specific or unique to the operation and maintenance responsibilities of a particular Neighborhood therein, and which may be levied upon and paid by only the Owners in that particular Neighborhood without allocation among or contribution by other Owners in the District Property. Unless and until the respective Board shall make an affirmative determination that a different allocation of Common Area or Special Assessments shall apply, all Common Area and Special Assessments shall be uniform and consistent for all phases. Such allocations or apportionments of Common Expenses shall be reflected on the Association's budget for each fiscal year, but shall not require the preparation or adoption of separate budgets for any Neighborhood in the District Property. The Association may commingle funds collected and received from Owners in various Neighborhoods of the District Property, but shall maintain appropriate records and books for the Association which contain detailed accounts of the receipts and expenditures affecting each Neighborhood of the District Property and its respective administration, specifying the maintenance and repair expenses and any other expenses incurred.

- (e) The District ARC shall have the authority, on behalf of the Associations, to prepare and promulgate design and development guidelines and application and review procedures for all portions of the District Property in which such guidelines and procedures may differ from those promulgated generally for the District Property.

Section 6.4. Amendment. This Article shall not be amended without the written consent of the Declarant. The provisions of this Declaration establishing and regulating architectural guidelines for the District shall not be amended without the express written consent of the Declarant.

## ARTICLE VII

### Assessments and Fees

Section 7.1. Creation of Assessments. There are hereby created Regular Assessments for Common Expenses as may from time to time specifically be authorized by the Association to be commenced at the time and in the manner set forth herein, provided, however, that the Association may not levy Regular and Special Assessments against those Units located within the District Property unless the Board of the Association agrees to do so unanimously. The Association may only levy Regular and Special Assessments (and other appropriate fees and charges, as the case may be) against those Units located within the Multifamily Property, owned by Class A members. For purposes of this Declaration, the initial Regular Assessment shall be no less than seventy-five and 00/100 dollars (\$75.00) per month per Unit. Special Assessments shall be levied as provided in Section 7.3 of this Article VII. Each Owner by acceptance of a deed or recorded contract of sale to any Unit is deemed to covenant and agree to pay these Assessments. Except as may be otherwise provided in Article VII, Section 7.3, Assessments shall be levied on all Units according to the following formula:

- (a) Assignment of Points. For the real property located in the District Property and designated as a Unit, each such Unit shall be allocated one (1) point.

#### Section 7.2. Allocation of Assessments.

7.2.1. The percentage of the total Assessment to be levied on a particular Unit shall be computed by dividing the total points assigned to that Unit by the total points for all Units in that portion of the District Property subject to the Assessment. The percentage of the total Assessment for each Unit shall be computed annually by the Association. The Assessment value for a Unit shall be arrived at by multiplying the total budget amount or total Assessment adopted by the respective Board (as it may be amended from time to time) by the applicable percentage of the total Assessment computed for such Unit. In the event that additional property shall be annexed into the District Property, Assessments shall be recomputed under the above formula.

Section 7.3. Special Assessments. Special Assessments shall be levied as provided in Section 7.3 of this Article VII. In addition to the Regular Assessments authorized in Section 7.1 of this Article VII, the Association may levy a Special Assessment or Special Assessments from time to time on those Units located within the portions of the District Property governed by each such respective association. The obligation to pay Special Assessments shall generally be computed on the same basis as for Regular Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board of the Association; and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the respective Board so determines. The Association also may levy a Special Assessment against any Owner individually and against such Owner's Unit to reimburse the

Association for costs incurred in bringing an Owner and his Unit into compliance with the provisions of this Declaration, which Special Assessment may be levied by the Association after notice to an Owner and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units located within the District Property to reimburse the Association for costs incurred in bringing the District into compliance with the Provisions of this Declaration, which Special Assessment may be levied upon the vote of the Board of the Association after notice to the senior officer of the Association and an opportunity for a hearing.

Section 7.4. Lien for Assessments. Upon recording of a notice or claim of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except: (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (b) the lien or charge of any first mortgage or deed of trust of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

Section 7.5. Date of Commencement of Assessments. The Assessments provided for herein shall commence as to each Unit on the first day of the first month following: (i) the date of conveyance of the Unit by Declarant; or (ii) the effective date of the first budget, whichever is later. The first Regular Assessment shall be adjusted and otherwise prorated according to the number of days remaining in the fiscal year at the time Assessments commence as to the Unit Parcel.

Section 7.6. Collection and Enforcement. All Assessments, together with interest, penalties, late charges, processing and other fees, costs, expenses and reasonable attorneys' and paralegals' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each Assessment is made. All Assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to foreclosure of a first Mortgage, shall be liable for unpaid Assessments which accrued prior to such acquisition of title. The failure of the Association to send a bill to an Owner shall not relieve any Owner of his or her liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Owner on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the Ownership of a Unit changes during an Assessment Period; successor Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Owners.

Section 7.7. Foreclosure of Lien. The Association shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey at the same time.

During the period in which a Unit is Owned by the Association following foreclosure: (a) no Assessment shall be assessed or levied on it; and (b) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the Assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 7.8. Estoppel Letters. The Association shall, upon written demand at any reasonable time, furnish to any Owner liable for any type of Assessment a certificate in writing setting forth whether such Assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such Assessment therein stated to have been paid. The Association may require a reasonable time period and the advance payment of reasonable processing fee for the issuance of such certificate.

Section 7.9. Payment Dates; Installments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association which may include, without limitation, acceleration of the entire Assessment in the event of delinquent payments, including, without limitation in the case of the Regular Assessment, acceleration of payment of Regular Assessment for the entire fiscal year, and acceleration of payment of the full amount of any Special Assessment. The respective Board may in its sole discretion grant an option for the Regular Assessment to be paid in installments rather than annually in advance, subject to an additional processing fee and interest being due if such option is elected. Unless the respective Board otherwise provides, the Regular Assessment shall be paid by Unit Owners no less than in quarterly installments.

Section 7.10. Non-Waiver of Assessment. No Owner may waive or otherwise exempt himself from liability for the Assessments provided herein by non-use of the Common Area or by abandonment of the Unit against which the Assessments are made. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off against an Assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

Section 7.11. Declarant's Exemption. So long as Declarant owns one (1) Unit located within the District Property, Declarant shall not be obligated to pay any Regular or Special Assessments (or any other type of assessments, fees, or payments levied by the Association) for each of the unsold Units (that may be otherwise subject to Assessments) located within the District Property owned by the Declarant.

Section 7.12. Conveyance Fees. The Association may build up and maintain a reasonable reserve for operations, contingencies, and replacement. To establish such reserve, the

Association shall collect from each purchaser of a Unit of the District Property governed by that respective association, upon each conveyance, amounts equal to a one-time conveyance administrative fee of no less than two hundred fifty and 00/100 dollars (\$250.00)(subject to annual increases, at the discretion of the Board of the Association, provided, however, that any such annual increases may not exceed the national rate of inflation).

Section 7.13. Annual Budget. It shall be the duty of the Board of the Governing Association, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses during the coming fiscal year. The budget may include a capital contribution establishing or funding a reserve fund in accordance with a capital budget separately prepared. Such capital budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board shall set the capital contribution, if any, in an amount sufficient to permit the Governing Association to meet the projected capitals needs, as shown on the capital budget, the period of the budget. The Board shall cause a copy of the Common Expense budget and a notice of the amount of the Regular Assessment to be levied against each Unit for the following fiscal year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and Regular Assessment shall become effective upon distribution to the Owners as provided above.

Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

In the event that the Board shall determine during any fiscal year that the Regular Assessment established for such fiscal year is or will become inadequate or insufficient to meet all Common Expenses for such fiscal year, for whatever reason, the Board shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular Assessment for such fiscal year, issue a supplemental estimate of Common Expenses to all members of the Association and within thirty (30) days thereafter establish, make, levy, impose, enforce, and collect a supplemental or revised Regular Assessment for such fiscal year.

Section 7.14. Subordination of the Lien to First Mortgages. The lien of Assessments, including interest, costs and attorney's fees, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments thereafter becoming due. When a Mortgagee holding an institutional first Mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or Assessments by the Governing Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or Assessments shall be



deemed to be Common Expenses collectible from Owners of all the Units located within the District Property, including such acquirer, its successors and assigns.

Section 7.15. Exempt Property. Notwithstanding anything herein to the contrary, the following property shall be exempt from the payment of Assessments:

- (a) All Common Area under this Declaration;
- (b) All property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks, if any; and
- (c) All real property not within a Unit which is part of the Master Drainage System.

## **ARTICLE VIII**

### Provision of Services

Section 8.1. Provision of Services to Units. The Governing Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties. The Governing Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as nonpotable water for irrigation, cable television, other telecommunications services, community technology, high-speed internet information and/or data services, utilities, fire protection, security monitoring services, trash collection, landscape maintenance, pest control and caretaker services.

Any contract entered into by the Governing Association for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in the termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay Assessments for any portion of the charges for such services that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Article VII.

In its discretion, the Board of the Governing Association may discontinue offering particular services and may modify or cancel existing contracts for services, subject always to the specific contract terms which may prohibit unilateral action by the Board, and subject to any provision that may exist herein requiring the Association to provide such services.

Section 8.2. Provision of Services to Service Areas.

- 8.2.1. Service Areas Designated by Declarant. The Association shall provide or obtain services to Units within any respective portion of the District Property designated by the Declarant pursuant to Section 8.1 as required by the terms of a supplement agreement applicable to the service area. Service areas need not be contiguous or continuous within a geographic area.
- 8.2.2. Service Area Designated by Board. In addition to service areas the Declarant may designate pursuant to Section 8.1, any group of Owners may petition the Board to designate their Units as a service area for the purpose of receiving from the Governing Association: (i) special benefits or services which are not provided to all Units; or (ii) a higher level of service than the Governing Association otherwise provides. Any such petition shall be signed by Owners of a simple majority (fifty-one percent (51%) or greater) of the Units within the proposed service area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed service area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least sixty percent (60%) of the Units within the proposed service area approve the proposal in writing, the Board shall designate the Units as a service area and include the fees for such service as a line item in the service area budget.

Section 8.3. Community Technology.

- 8.3.1. Community Systems. The Declarant may provide, or may enter into and assign to the Governing Association or cause such association to enter into contracts with other Persons to provide, central telecommunications, receiving and distribution systems (e.g., cable television, high speed data/internet services, telephone, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the District Property ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Declarant determines appropriate.
- 8.3.2. The Governing Association may enter into a bulk service agreement providing access to any such Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner shall pay the service provider directly for such services, or the Governing Association may assess the charges as a Service Area Assessment or Special Assessment pursuant to Article VII and pay such charges to the provider on behalf of the Owners, as the respective Board deems appropriate.

- 8.3.3. Opportunities for Community Interaction. The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in community activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or internet home page, maintain an "on line" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in sponsored activities. To the extent Utah law permits, and unless otherwise specifically prohibited in the documents, the Association may send notices by electronic means, hold meetings and permit attendance and voting by electronic means, and send and collect Assessments and other invoices by electronic means.

## **ARTICLE IX**

### General Provisions

Section 9.1. Term. The covenants and restrictions of this Declaration shall run with and bind the District Property, and shall inure to the benefit of and shall be enforceable by Declarant or the Association, their respective successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ninety-nine (99) years, unless an instrument in writing, signed by two-thirds (2/3) of the then Owners, has been recorded within the year preceding the beginning of each successive period of ninety-nine (99) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 9.2. Enforcement. Every Owner and every occupant of a Unit shall comply strictly with the covenants, conditions, and restrictions set forth in the Declaration and in the deed to the Unit, if any. Failure to comply with this Declaration shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association or by Declarant. Failure to comply with the Declaration shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association, Declarant, or in a proper case, by the an aggrieved Owner.

Section 9.3. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as Declarant owns any property subject to this Declaration, and its assigns or designees for each of the following (which may include, without limitation, City, and any governmental entity or any utility service provider), blanket easements upon, across, over, and under all of the Common Area located in the District Property and, to the extent shown on any plat, over other portions of the District Property for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, fiber optics lines, security, and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with

the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units and the Common Area located in the District Property for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, waterlines, or other utilities may be installed or relocated on the District Property, except as may be approved by Declarant, so long as Declarant owns any property subject to this Declaration, and thereafter by the Board of the Association.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement over the District Property. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the District Property.

**Section 9.4. Future Easements.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, the right, power and privilege to, at any time hereafter, grant to itself, the Association, City or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and in the sole discretion of the Declarant, for the future orderly development of the District in accordance with the objects and purposes set forth in this Declaration. It is expressly provided, however, that no such further or additional easement shall be granted or created over and upon any unit pursuant to the provision of this Section if any such easement shall unreasonably interfere with the presently contemplated or shall unreasonably interfere with the presently contemplated or future use and development of that particular Unit. The easements contemplated by this Section may include, without limitation, such easements as may be required for utility, drainage, road right-of-way and other purposes reasonably related to the orderly development of the District in accordance with the objects and purposes specified in this Declaration. Such further or additional easements may be hereafter created, granted or reserved by Declarant without the necessary for the consent or joinder of the owner of the particular portion of the Properties over which such further or additional easement is granted or required.

**Section 9.5. Dispute Resolution and Limitation on Litigation.**

**9.5.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

**9.5.1.1. Parties Bound.** The Declarant, the Association and its officers, managers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in

any court with respect to a Claim described herein, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 9.5.2 in a good faith effort to resolve such Claim. Compliance with this Article is fundamental, material, jurisdictional and an express condition precedent to the initiation and continuation of any litigation or administrative action.

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

- (a) the interpretation, application or enforcement of the Governing Documents;
- (b) the rights, obligations, and duties of any Bound Party under the Governing Documents;
- (c) the design or construction of improvements within the community, other than matters of aesthetic judgment under Article V, which shall not be subject to review;

9.5.1.3. Notwithstanding the above, the following shall not be considered a Claim unless all parties to the matter otherwise agree in writing to submit the matter to the procedures set forth in Section 9.5.2:

- (a) any suit by the Association to collect assessments or other amounts due from any Owner;
- (b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration (relating to creation and maintenance of community standards);
- (c) any suit that does not include the Declarant, an affiliate or a related party of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (d) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving Notice required by Section 9.5.2.1, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and

- (e) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, and the violation or damages therefrom continue, prior to the filing of a suit by the Association.

#### 9.5.2. Dispute Resolution Procedures.

9.5.2.1. Notice. The Bound Party asserting a Claim (the "Claimant") against another Bound Party (the "Respondent") shall give written notice (the "Notice") by U.S. First Class postage prepaid mail or personal delivery to each Respondent and to the Board of the Association, stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim, the dates of occurrence of all relevant events, a listing or reference to all relevant documents, contracts, writing, or papers, all other facts, information or allegations necessary to provide all parties sufficient information to effectively participate in the Alternative Dispute Resolution process;
- (b) the full name(s) address and contact information for all Claimants, the name(s), address and contact information for any agent, representative or attorney appearing on behalf of the Claimant,
- (c) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises), including evidence that the Claimant has the legal standing to assert the Claim;
- (d) the Claimant's proposed resolution or relief; and
- (e) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim, and suggesting a meeting time, date and place.

9.5.2.2. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiations. The Parties shall exercise their good faith and due diligence to meet and negotiation within thirty (30) days of the date of the Claim. The parties can mutually agree in writing to extend the negotiation period. If requested in writing, accompanied by a copy of the

Notice, the respective Board may appoint a third party representative to assist the parties in negotiating a resolution of the Claim.

9.5.2.3. **Meditation.** If the parties have not resolved the Claim through negotiations within thirty (30) days of the date of the Notice (or such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the District Association (if an Association is not a party to the Claim) or to any independent agency providing dispute resolution services in the Spanish Fork, Utah area. Each Bound Party shall present the mediator with a written summary (containing at least the same information as required to be set forth in the Notice) of the Claim within ten (10) days after the date of termination of the negotiation period.

<b>DISPUTE RESOLUTION TIME LINE</b>			
Claim Between Bound Parties			
Day 1	Day 2 to day 30	Day 31 to Day 60	Day 61 to 90+
Written Notice of Claim	Negotiation Period	Request Mediation	Mediation Period
<ul style="list-style-type: none"> <li>*Factual Basis</li> <li>*Legal Basis</li> <li>*Propose a Resolution</li> <li>*Propose a Meeting</li> <li>*Send copy to Board</li> </ul>	<ul style="list-style-type: none"> <li>*Good faith effort</li> <li>*Parties meet in person</li> <li>*May request Board assistance</li> </ul>	<ul style="list-style-type: none"> <li>*Claimant must submit claim</li> <li>*Mediator assigned by Association or independent agency</li> <li>*If Claim is not submitted, it is waived</li> </ul>	<ul style="list-style-type: none"> <li>*Agency supplies rules</li> <li>*Fee split between parties</li> <li>*Written summary from each side</li> <li>*Supervised negotiations</li> <li>*Contractual settlement or</li> <li>*Termination of mediation</li> </ul>

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

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

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

Section 9.6. Settlement. Any settlement of the Claim achieved through negotiation or mediation shall be documented in writing, set forth the nature of the Claim and the agreed upon resolution or award, and signed by all parties, herein after referred to as the "Settlement Agreement." If any party thereafter fails to abide by the terms of such Settlement Agreement, then the other party may file suit or initiate administrative proceedings to enforce such Settlement Agreement without the need to comply again with the procedures set forth above in this Section. Neither party can use, make reference to, or introduce into evidence, any statements, admissions, agreement, concessions, or stipulations made during the negotiations or mediation process in any subsequent action, unless: (1) the foregoing was reduced to writing and signed by all parties, (2) is contained within the written Settlement Agreement, or (3) existed independently or outside the negotiation and mediation process. In such enforcement action, the prevailing party shall be entitled to recover all costs incurred in enforcing or defending such enforcement action, including, without limitation, attorney's fees and court costs.

Section 9.7. Indemnification. The Association shall indemnify every officer, director and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then respective Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9.8. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the respective Voting Members. This section and the restriction contained herein shall not apply, however, to an action brought by the Association: (1) to enforce the provisions of this Declaration (including, and without limitation, the collection, enforcement and foreclosure of assessments and liens); (2) for the imposition and collection of Assessments as provided in Article VII hereof; (3) for proceedings involving challenges to ad valorem taxation or



condemnation proceedings; (4) against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or (5) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant, or after the Class B Control period, is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 9.9. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any rules and regulations imposed by an Association, which may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions and provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Association shall be subject and subordinate to those provisions contained herein. The foregoing priorities shall apply, but not be limited to, the liens for Assessments.

Section 9.10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 9.11. Interpretation. In all matters of enforcement or interpretation of this Declaration, all ambiguities shall be resolved in the favor of the Declarant.

Section 9.12. Jurisdiction; Venue; Choice of Law. The exclusive jurisdiction of all actions or proceedings under or concerning this Declaration shall be in the appropriate court having subject matter jurisdiction in the State of Utah. The venue of all actions shall lie in Utah County, State of Utah. The Laws of the State of Utah shall apply to this Declaration, notwithstanding any provision of any conflict or choice of law provision to the contrary.

Section 9.13. Condemnation. If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under the threat of condemnation with such approval as may be required under Section 9.14, each Owner shall be entitled to a written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

FIRST: The Association shall be entitled to recover its fees and expenses, including any attorney's fees and expenses, incurred by the Association in defending such action.

SECOND: If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available and practical under current municipal codes, unless within

sixty (60) days after such taking the Declarant, during the Development and Sales Period, and Voting Members entitled to cast at least seventy percent (70%) of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and current municipal codes. The provisions of Section 4.6 regarding the use and disposition of funds for restoring damaged improvements shall apply.

THIRD: If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 4.6.5.

Section 9.14. Partition. Except as permitted in this Declaration, the Common Area and Limited Common Area shall remain undivided, and no Person shall have any right of partition and shall not bring any action to partition any portion of the Common Area or Limited Common Area without the prior written consent of all Owners, the Association and all Mortgagees. This Section shall not prohibit the respective Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 9.15.

Section 9.15. Transfer, Mortgaging, or Dedication of Common Area. The Association, with prior written consent of the Association, may transfer or dedicate portions of the Common Area to the City of Spanish Fork, Utah, or to any other local, state, or federal governmental or quasi-governmental entity, may subject the Common Area to a security interest, or may transfer or convey Common Area as set forth below. No conveyance or encumbrance of Common Area or Limited Common Area shall deprive any Unit or the rights of ingress, egress, access or support to such Unit.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the respective Board determines, unless otherwise directed by Voting Members at the same time such sale or mortgage is authorized upon the written direction of Voting Members entitled to cast at least seventy-five percent (75%) of the total votes in the Association and, during the Development and Sales Period, with the written consent of the Declarant.

The proceeds from the sale or mortgaging of Limited Common Areas shall be disbursed in the manner directed by the Owners of Units to which the Limited Common Area is assigned at such time such sale or mortgage is authorized upon the written approval of all Owners and Mortgagees of the Units to which such Limited Common Area is assigned.

**ARTICLE X**  
**Declarant's Rights**

Section 10.1. Assignment of Rights. Any or all of the general or special obligations of Declarant may be transferred to other Persons, including, without limitation, the Association, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Utah County, State of Utah.

Section 10.2. Development Activities. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of these Units, including, but not limited to, business offices, signs, model Units and sales offices, and Declarant shall have easement for access to and use of such facilities.

Section 10.3. Approval of Additional Covenants. So long as Declarant continues to have rights under this Article, no Person shall record any Declaration of covenants, conditions and restrictions, or declaration of condominium or similar instruments, affecting any portion of the properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration or condominium or similar instrument, being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

Section 10.4. Amendment. This Article may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of: (a) twenty-five (25) years from the date of this Declaration as recorded; or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## ARTICLE XI Amendment

Section 11.1. Declarant's Right to Amend. Declarant reserves the right to amend this Declaration unilaterally at anytime, without prior notice and without the consent of any Person for any purpose including, but without limitation to, withdrawal of certain portions of the District Property then owned by the Declarant or its affiliates from the provisions of this Declaration and a change in the uses permitted for the District Property under this Declaration and a change in the uses permitted for the District Property in this Declaration, by recordation of an amendment in the public records of Utah County, State of Utah. Any amendment of Declarant shall be consistent with the general development plan for the District Property set forth in this Declaration. It may also designate separate residential, commercial, industrial, office, governmental, educational or other districts, as approved by City. Other covenants and restrictions consistent with the general plan of development may include requirements for insurance and repair of the Common Area and Units, rights and obligations for the Association, including rules and regulations and enforcement powers, reservation of additional easements over the properties, and certain special mortgagee provisions required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration, and the Department of Housing and Urban Development. Notwithstanding the foregoing, the Declarant shall not amend any rights of the City under this Declaration, expressly including the City's rights and authority to enforce the architectural guidelines, without the prior written consent of the City.

Section 11.2. Members Right to Amend. Upon the termination of the Class B Control Period, this Declaration may also be amended by the affirmative vote or written consent, or any combination thereof, of voting Members representing seventy-five percent (75%) of the total votes of the Association, including seventy-five percent (75%) of the votes held by members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Section 11.3. Consent to Amend. If an Owner consents to the amendment of this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Section 11.4. Mortgagee's Rights. No amendment shall remove, revoke or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by any Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

Section 11.5. Acceptance of Deed. By acceptance of a deed of conveyance to a Unit each Owner thereby gives its full, irrevocable and unqualified consent on behalf of itself, its

mortgagees, and its successors-in-title to the amendment of this Declaration in the manner provided in this Article.

## **ARTICLE XII**

### **Special Provisions**

Section 12.1. House of Worship Allocation. Notwithstanding the terms and provisions of this Declaration, so long as Declarant owns one (1) Unit located within the District Property, Declarant may elect to sell a portion of the unsold District Property to a not-for-profit religious entity for the purposes of developing, building, and otherwise erecting a church, synagogue, mosque, or other form of house of worship (the "House of Worship") for use by the members of such House of Worship for religious and educational purposes. In the event of such a sale:

- 12.1.1. Except as provided for in this Article, that portion of the District Property sold to the House of Worship shall be removed and otherwise released from the terms of the covenants, conditions, restrictions, and easements set forth in this Declaration, as evidenced by a writing jointly executed by the Declarant and the authorized representative of the purchaser;
- 12.1.2. In the event that portions, if any, of the Multifamily Property is sold to the House of Worship, for the purposes of calculating and levying Assessments on each of the remaining Units therein, the number of Units located in each of the Multifamily Property shall be reduced in accordance with that portion of the District Property sold to the House of Worship, and this Declaration shall be amended to take into account this change in the number of Units;
- 12.1.3. The House of Worship shall not be considered a member (voting or otherwise) of the Association, and shall be exempt from all rules and regulations imposed by such organization (unless the House of Worship consents to be bound to any such rules and regulations by written agreement);
- 12.1.4. The governing body of the House of Worship shall have exclusive jurisdiction over and the sole responsibility for the administration, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the purchased property and all buildings, walkways, landscaping, roads, and parking facilities constructed thereon, and to the extent provided by written agreement with the Association, that portion of the Common Area adjacent to and shared with the remaining parcel of the District Property, if any;
- 12.1.5. Unless otherwise agreed to unanimously by the Association, the administration, landscaping, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the purchased property shall, at all times, be performed by the governing body of the House of Worship so that the condition and appearance of the buildings, walkways, landscaping,

roads, and parking facilities constructed thereon shall be kept to the standards that, at a minimum, meet or exceed those standards provided for in this Declaration for the construction, development, administration, landscaping, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the District Property;

- 12.1.6. Unless otherwise agreed to unanimously by the Association, the construction and development of the purchased property shall, at all times, be performed by the governing body of the House of Worship in such a manner so that the minimum (or maximum, as the case may be) building and construction parameters set forth in this Declaration in regard to square footage, height, setbacks, landscaping, and other construction provisions and requirements are not violated.

Section 12.2. This Article can not be amended, modified, or deleted without the prior written consent of the Declarant, which such consent maybe withheld or denied in the absolute discretion of the Declarant.

**\*\*\*\*\*THE SIGNATURE AND EXECUTION PAGE FOLLOWS\*\*\*\*\***

**\*\*\*\*\*THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK\*\*\*\*\***

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the Effective Date first written above.

**DECLARANT:**

TRANS TERRA FINANCIAL WEST, INC., a Utah Corporation

By: [Signature]

Name: James J. Padler

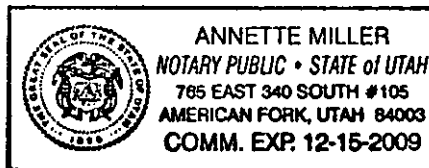
Its: President.

\*\*\*\*\*

STATE OF UTAH :  
COUNTY OF UTAH :

On the 17<sup>th</sup> day of September, 2009, personally appeared before me, a notary public in and for the State of Utah, JAMES J. PADLER, the PRESIDENT of TRANS TERRA FINANCIAL WEST, INC., the signer(s) of the above instrument, who duly acknowledged to me that he has the authority to execute the within and foregoing instrument on behalf said limited liability company, and that said limited liability company executed the same.

[Signature]  
Notary Public  
Residing in: AMERICAN FORK, UT  
My Commission Expires: Notarial Seal



**“EXHIBIT A”**

**MULTIFAMILY PROPERTY LEGAL DESCRIPTION**



LEGAL DESCRIPTION

Lots 1-4, Plat "A," Spanish Trails Townhomes Subdivision, Spanish Fork, Utah County, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Parcel Nos.:66-261-001 through and including 66-261-004

Lots 5-25, Plat "B" Spanish Trails Townhomes Subdivision, Spanish Fork, Utah County, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

**“EXHIBIT B”**

**ARTICLES OF INCORPORATION**

**1. ASSOCIATION**



Francine Giani  
Executive Director  
Department of Commerce

Gary Herbert  
Governor  
State of Utah

Kathy Berg  
Director  
Division of Corporations  
& Commercial Code

**STATE OF UTAH**  
**DEPARTMENT OF COMMERCE**  
***DIVISION OF CORPORATIONS & COMMERCIAL CODE***  
**CERTIFICATE OF REGISTRATION**

JAMES J PACKER  
**TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC.**  
15 N 100 E, STE 102  
PROVO UT 84606

Access Code  
Code: 4604579



State of Utah  
Department of Commerce  
Division of Corporations & Commercial Code

**CERTIFICATE OF REGISTRATION**

**Corporation - Domestic - Non-Profit**

This certifies that **TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC.** has been filed and approved on **September 21, 2009** and has been issued the registration number **7468805-0140** in the office of the Division and hereby issues this Certification thereof.

KATHY BERG  
Division Director

\*The Access Code is used for Online Applications used by this Division only.

This form must be type written or computer generated.

Date: 09/21/2009

Receipt Number: 2973624

Amount Paid: \$30.00



State of Utah  
DEPARTMENT OF COMMERCE  
Division of Corporations & Commercial Code  
Articles of Incorporation (Nonprofit)

EXPEDITE

STO

RECEIVED

SEP 21 2009

ENT 102541:2009 PG 60 of 85

Non-Refundable Processing Fee: \$30.00

A. Important: Read instructions before completing form Utah Div. of Corp. & Comm. Code

1. Name of Corporation:  
Trailhead at Spanish Trails Multi-Family Association, Inc.

2. Purpose: District Home Owners Association

3. Is the registered agent a commercial registered agent?  YES  NO What is a commercial registered agent?

Registered Agent Name: James J. Packer  
I hereby accept appointment as Registered Agent for the above named business entity.  
Signature of Registered Agent (Required): \_\_\_\_\_  
Address of the Registered Agent: 15 North 100 East, Suite 102  
Utah Street Address Required, PO Boxes can be listed after the Street Address  
City: Provo State UT Zip: 84606

4. Name, Signature and Address of Incorporator  
(attach additional page if there is more than 1 incorporator)  
James J. Packer  
Name  
15 North 100 East, Suite 102 Provo UT 84606  
Address City State Zip  
Signature: *James J. Packer* Date: 9/21/09

5. Voting Members:  
The nonprofit corporation  will  will not have voting members.

6. Shares:  
The nonprofit corporation  will  will not issue shares evidencing membership or interests in water or other property rights.  
The aggregate number of shares that the nonprofit corporation has authority to issue shall be \_\_\_\_\_  
The shares  will  will not be divided up in to classes.  
Type 1: \_\_\_\_\_ Number of Shares: \_\_\_\_\_  
Statement: \_\_\_\_\_  
Type 2: \_\_\_\_\_ Number of Shares: \_\_\_\_\_  
Statement: \_\_\_\_\_

7. Assets:  
Upon dissolution assets of the corporation will be distributed in a manner consistent with law.

09-21-09A11:33 RCVD

DATA: 09/21/2009  
Receipt Number: 2973635  
Amount Paid: \$75.00

B.

1. Principal Address:  
15 North 100 East, Suite 102 Provo UT 84606  
Address City State Zip

2. Name and Address of Directors:  
(attach an additional page if there are more than 3 directors)

1. James J. Packer	Director
Name 15 North 100 East, Suite 102 Provo UT 84606	Position City State Zip
2. Lillian M. Meredith	Director
Name 15 North 100 East, Suite 102 Provo UT 84606	Position City State Zip
3. Gordy Jones	Director
Name 15 North 100 East, Suite 102 Provo UT 84606	Position City State Zip

**“EXHIBIT C”**

**BYLAWS**

**1. ASSOCIATION**

**BY-LAWS  
OF  
TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC.**

ARTICLE I

GENERAL PROVISIONS

Section 1. Name and Location. The name of the corporation is TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC., a Utah not-for-profit corporation. The principal office of the Association shall be located at 15 North 100 East, Ste. 102, Provo, Utah, 84606, but meetings of members and directors may be held at such places within the State of Utah, County of Utah, as may be designated from time to time by the Board of Directors.

Section 2. Powers of the Association. The Association is responsible for the overall administration of the Property through its duly elected Board. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Act.

Section 3. Definitions.

- (a) "Act" shall mean and refer to the applicable act of the State of Utah, as amended.
- (b) "Association" shall mean and refer to TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC., a Utah not-for-profit corporation, and its successors and assigns.
- (c) "Board" or "Board of Directors" shall mean and refer to those individuals selected to manage the affairs of the Association, as set forth herein.
- (d) "Declaration" shall collectively mean and refer to the Conditions, Covenants, Restrictions, and Easements of record applicable to the Properties recorded in the Office of the Recorder of Utah County, State of Utah. As needed in these By-Laws, should the date of recording of each of the Conditions, Covenants, Restrictions, and Easements differ, the latter date of recording shall be selected for the purposes of determining the date of recording of the Declaration.
- (e) "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties.
- (f) "Member" shall mean and refer to those persons entitled to membership as provided herein.

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

(h) "Properties" shall collectively mean and refer to:

- (i) That certain real property containing seventy-one (71) town homes located in the Trailhead at Spanish Trails development in Spanish Fork, Utah, as legally described in the Conditions, Covenants, Restrictions, and Easements filed on \_\_\_\_\_ 2009 as Document Number \_\_\_\_\_ in the Office of the Recorder of Utah County, State of Utah; and

ARTICLE II

MEMBERS

Section 1. Classes of Members, Membership, and Termination Thereof. The Association shall have one class of members. The designation of such class and the qualifications of the members of such class shall be as follows:

- (a) Each Lot Owner shall be a member of the Association, which membership shall terminate upon the sale or other disposition of such member's Lot, at which time the new Lot Owner shall automatically become a member of the Association. Such termination shall not relieve or release any such former Lot Owner from any liability or obligation incurred under or in any way connected with the Lot or the Association, during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies which the Board or others may have against such former Lot Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

Section 2. Votes and Voting Rights.

- (a) Until the date of the first annual meeting of the members, as provided herein, no member of the Association shall have the right to elect the Board of Directors. All such members of the Board shall be appointed and shall hold office as provided in Article VI of these By-Laws.
- (b) Commencing with the date of the first annual meeting of the Members, the total number of votes of all Members shall be one hundred and one (101). Each Member shall be entitled to the number of votes equal to that Member's total aggregate percentage ownership interest in the Common Elements (as defined in

the Declaration) of the Properties at the time any matter is submitted to a vote of the Members.

(c) If a Lot is owned by more than one person, the voting rights with respect to such Lot shall not be divided, but shall be exercised as if the Lot Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Lot Owner. Any proxy must be executed in writing by the Lot Owner or the Lot Owner's duly authorized attorney-in-fact, must bear the date of execution, and shall be invalid after 11 months from the date of its execution. If only one of the multiple owners of a Lot is present at a meeting, that present Owner is entitled to cast all the votes allocated to that Lot. If more than one of the multiple owners are present, and if any one of the multiple owners cast the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot, there is deemed to be majority agreement for the purposes of the casting of that particular vote.

(d) Any specified percentage of the Members, whether majority or otherwise, for purposes of voting or for any other purpose, wherever provided in these By-Laws, shall mean such percentage of the total number of votes set forth set forth. Such percentage shall be computed in the same manner as is a specified percentage of the Lot Owners of the Properties as provided in the Declaration, provided, however, that when thirty percent (30%) or fewer of the Lots, by number, possess over fifty percent (50%) in the aggregate of the votes as provided herein, any percentage vote of the Members specified herein or in the Declaration shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

Section 3. Transfer of Membership. Membership in this Association is not transferable or assignable, except as provided herein.

Section 4. Installment Contracts. Anything herein to the contrary notwithstanding, in the event of a sale of a Lot, the purchaser of such Lot from a seller pursuant to an installment contract for purchase shall, during such times as such purchaser reside in a residence constructed on the Lot, be counted toward a quorum for purpose of election of members of the Board at any meeting of the Lot Owners called for the purposes of electing members of the Board, shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board unless the selling Lot Owner expressly retains in writing any or all of such rights. Should a purchaser of a Lot pursuant to an installment contract be counted, as provided for in this paragraph, the seller of such Lot may no longer be counted in the same manner—in no event may both the seller and purchaser of a Lot be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contract must be made available to the Association or its agents upon request in the event that rights provided for in this paragraph are exercised by a purchaser.



### ARTICLE III

#### MEETINGS OF MEMBERS

Section 1. Annual Meeting. The first annual meeting of the Members shall be held on the earlier of the following: (a) within three (3) years from the date of recording of the Declaration; or (b) within sixty (60) days from the date when eighty percent (80%) or more of the Lots, by percentage interest, have been sold. Thereafter, an annual meeting of the Members for the purpose of electing Board members and for the transaction of such other business as may come before the meeting shall be held on the third Tuesday of March of each year or such other date as is selected by the Board which date is within sixty (60) days before or after the third Tuesday of March, provided, however that no such meeting need be held less than one (1) year after the first annual meeting of the Members. If the election of members of the Board shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members called as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the Members may be called by the Board, the President, or not less than thirty-three percent (33%) of the Members. All matters to be considered at special meetings of the Members pursuant to this paragraph shall first be submitted in writing to the Board not less than fourteen (14) days prior to the date of the special meeting of the Members called to consider such matters.

Section 3. Place and Time of Meeting. All meetings of the Members shall take place at 6:00 P.M., in some section of the Properties designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting.

Section 4. Notice of Meetings. Written or printed notice stating the purpose, place, day and hour of any meeting of Members shall be mailed or delivered to each Member entitled to vote at such meeting (and copies of such notices shall be posted in entranceways or other conspicuous places in the Properties designated by the Board), not less than thirty (30) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, provided that notice of the first annual meeting of the Members shall be mailed or delivered not less than twenty-one (21) nor more than thirty (30) days before the date of such meeting. The notice of a meeting shall be deemed mailed when deposited in the United States mail addressed to the Member at the address provided by the Member as it appears on the records of the Association, with proper postage thereon prepaid.

Section 5. Quorum. The Members present at a meeting in person or by proxy, holding sixty (60%) of the votes which may be cast at any meeting, shall constitute a quorum at such meeting. If a quorum is not present at the commencement of any meeting of

Members, the meeting shall be adjourned and may only be called again in accordance with the provisions of these By-Laws.

Section 6. Proxies. At any meeting of Members, a Member entitled to vote may vote either in person or by proxy executed in writing by the Member or by that Member's duly authorized attorney-in-fact filed with the Secretary of the Association. All proxies shall be revocable, and shall automatically cease upon conveyance by the Member of that Member's Lot. No proxy shall be valid after eleven (11) months from the date of its execution. Any proxy distributed by the Board for election of members of the Board shall give Lot Owners the opportunity to designate any person as the proxy holder and shall give the Lot Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

Section 7. Manner of Acting. Except as set forth below and except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the Members at which a quorum is present shall be upon the affirmative vote of more than fifty percent (50%) of the Members represented at such meeting. The following matters shall require the affirmative vote of not less than sixty-seven percent (67%) of all the Members represented at a meeting duly called for that purpose:

- (a) Merger or consolidation of the Association;
- (b) Sale, lease, exchange or other disposition (other than a mortgage or pledge) of all, or substantially all, of the property and assets of the Association; or
- (c) The purchase and sale of Lots on behalf of the Lot Owners.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. In General. The affairs of the Association shall be managed by its Board of Directors.

Section 2. Number, Tenure, and Qualifications. For a period commencing on the date the Declaration is Recorded and ending upon the election of the Board at the first annual meeting of the members, the following three (3) individuals shall serve as members of the Board, and may be permitted to exercise the powers of the Board as provided for in the Act and in these By-Laws:

- (a) James J. Packer
- (b) Lillian Meredith
- (c) Gardy Jones

Such members of the Board shall hold office until the first annual meeting of the Members, at which time the Members shall elect a total of seven (7) members of the Board solely from and among the Members as set forth herein. All seven (7) members of the Board shall be elected from an at large election of all members of the Trailhead at Spanish Trails Multi-family Association, Inc., and one member shall be elected from an at large election of all members to serve as the President and senior officer of the Board (and shall preside over meetings called by the Board) for an initial term of three (3) years. All subsequent elections of members of the Board shall be for two (2) year terms, and until their respective successors shall have been elected and qualified. Board members may be re-elected to subsequent terms, without limitation, but may not simultaneously serve in more than one (1) office. The seven (7) members of the Board of the Association shall choose a Treasurer, Secretary, and Vice President from amongst themselves. The Board of the Association shall: (a) conduct regular meetings of the Board and the Association no less than on a quarterly basis; and (b) be responsible for carrying out the specific Duties and Powers set forth herein. In the event that a member of the Association is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any shareholder, officer or director of such corporation, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity, may be eligible to serve as a member of the Board. If there are multiple owners of a single Lot, no more than one (1) of the multiple owners shall be eligible to serve as a member of the Board at the same time.

Section 3. At each annual meeting of the Members, the Members shall be entitled to vote on a cumulative basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. The Association may, upon adoption of the appropriate rules by the Board, conduct elections by secret ballot whereby the voting ballot is marked only with the percentage interest for the Lot and the vote itself, provided that the Board further adopts rules to verify the status of the Lot Owner issuing a proxy or casting a ballot. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Lot Owners biographical and background information about candidates for election to the Board if: (a) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated; and (b) the Board does not express a preference in favor of any candidate.

Section 4. Regular Meetings. A regular annual meeting of the Board shall be held immediately after, and at the same place as, the annual meeting of Members. The Board shall, by regulations which the Board may, from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four (4) times per year.

Section 5. Special Meetings. Special meetings of the Board may be called by or at the request of the President or sixty percent (60%) of the members of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

**Section 6. Notice.** Written notice of any special meeting of the Board shall be mailed or delivered to all members of the Association and all members of the Board not calling the meeting at least forty-eight (48) hours prior to the date of such special meeting. All such notices shall be deemed to be mailed when deposited in the United States mail addressed to each Member at the address of the Member as it appears on the records of the Association, with proper postage thereon paid. The business to be transacted at, or the purpose of any regular or special meeting of the Board, shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. Copies of notices of meetings of the Board shall be posted in entranceways or other conspicuous places in the Properties designated by the Board at least forty-eight (48) hours prior to any meeting called by the Board.

**Section 7. Quorum.** A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of said meeting, the meeting shall be adjourned and may only be called again in accordance with the provisions of these By-Laws.

**Section 8. Manner of Acting.** The act of a majority of the members of the Board present at a meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except where otherwise provided by law or in the Declaration.

**Section 9. Vacancies.** Any vacancy occurring in the Board by reason of death, removal or resignation of a member of the Board shall be filled by the affirmative vote of at least sixty-seven percent (67%) of the remaining members of the Board. A Member elected to fill a vacancy shall be elected until the next annual meeting of the Members of the Association, provided that if a petition signed by Members of the Association holding twenty percent (20%) of the votes in the Association requesting a meeting of the Members to fill the vacancy for the balance of the unexpired term of the predecessor member of the Board, the term of the Member so elected by the Board shall terminate thirty (30) days after the filing of the petition and a meeting of the Members for the purpose of filling that vacancy for such unexpired term shall be called no later than thirty (30) days following the filing of such petition. Members of the Board, may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective upon receipt of said resignation. If, as the result of the death, removal or resignation of a member of the Board, no member of the Board remains in office, a special meeting of members of the Association may be called to fill all vacancies for the unexpired terms of the members of the Board.

**Section 10. Removal.** From and after the date of the first annual meeting of the Members, any member of the Board may be removed from office by the affirmative vote of at least sixty-seven percent (67%) of all the Members of the Association at a special meeting called for such purpose.

Section 11. Adoption of Rules and Regulations. All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the Members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations, which rules and regulations conform to the requirements of the Act, Declaration, and these By-Laws. No quorum is required at such meeting of the Members. No rules or regulations may impair any rights guaranteed by the Constitution of the United States or the Utah Constitution nor may any rules or regulations conflict with the provisions of the Act or the Declaration. Such rules and regulations shall be effective sixty (60) days after their adoption, provided that the Members may veto the rules or regulation at a special meeting of the Members called for such purpose, and held before the effective date of the rule or regulation, by a vote of at least sixty-seven percent (67%) of all the Members of the Association.

Section 12. Open Meetings. All meetings of the Board, whether regular or special, shall be open to the Members of the Association except for meetings:

- (a) To discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;
- (b) To consider information regarding appointment, employment or dismissal of an employee; or
- (c) To discuss violations of rules and regulations of the Association or a Lot Owner's unpaid share of expenses or assessments.

Any Member may record the proceedings at meetings required to be open by the Act or these By-Laws by tape, film, or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

Section 13. Contracts.

- (a) The Board may not enter into a contract with a current Board member or with a corporation or partnership in which a Board member or a member of the Board member's immediate family has a twenty-five percent (25%) or more interest, unless notice of intent to enter the contract is given to Lot Owners within twenty (20) days after a decision is made to enter into the contract and the Lot Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Lot Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition. For purposes of this Section, a "Board member's immediate family" means the Board member's spouse, and the parents, siblings, children, and grandchildren of either that Board member, or that Board member's spouse.

(b) Upon election of the first Lot Owner Board of Directors, any contract, lease or other agreement made prior to the election of the first Lot Owner Board of Directors by or on behalf of Lot Owners, the Association, the Board, or its affiliates, which extends for more than two (2) years from the date of the election shall be subject to cancellation by a majority of the votes of the Lot Owners cast at a special meeting of the Members held within one hundred eighty (180) days after the date of the election.

Section 14. Powers and Duties. Subject to the terms and conditions of the Declaration, the powers and duties of the Board shall include but not be limited to the operation, care, upkeep, maintenance, replacement and improvement of all portions of the Properties. However, nothing in the foregoing sentence shall be deemed to invalidate any provision in the Declaration placing limits on powers, duties, or expenditures for the Properties by the Board without the prior approval of the Lot Owners, provided, that such limits shall not be applicable to expenditures for repair, replacement or restoration of existing portions of the Properties. The term "repair, replacement or restoration" means expenditures for deteriorated or damaged portions of the Properties relating to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such areas. Replacement of the common portions of the Properties may result in an improvement over the original quality of such elements or facilities; provided that, if the improvement results in a proposed expenditure exceeding five percent (5%) of the annual budget, the Board, upon written petition by Lot Owners with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action to approve the expenditure, shall call a meeting of the Lot Owners within thirty (30) days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the Lot Owners are cast at the meeting to reject the expenditure, it is ratified.

## ARTICLE V

### OFFICERS

Section 1. Officers. The officers of the Association shall be a President, one or more Vice-Presidents (the number thereof to be determined by the Board), a Treasurer and a Secretary.

Section 2. Election and Term of Office. As set forth herein, the officers of the Association shall be elected by majority vote of the Board at a regular meeting of the Board, from among the members of the Board. If the election of officer shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until a successor shall have been duly elected and shall have qualified. An officer may be re-elected to subsequent terms, without limitation. Officers shall serve without compensation.

Section 3. Removal. Any officer elected by the Board may be removed by a majority vote of the members of the Board.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the members of the Board. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds, mortgages, contracts, or other instruments which the Board has authorized to be executed and any amendment to the Declaration as provided in the Act, and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice-President. In the absence of the President or in the event of the President's inability or refusal to act, the Vice-President (or in the event there be more than one Vice-President, the Vice-Presidents, in the order of their election) shall perform the duties of the President, and when so acting, shall have all the power of, and be subject to all the restrictions upon, the President. Any Vice-President shall perform such other duties as from time to time may be assigned by the President or by the Board.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these By-Laws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; receive all notices on behalf of the Association and, together with the President, execute on behalf of the Association amendments to the Declaration and other documents as required or permitted by the Declaration, these By-Laws, or the Act; be custodian of the records and, if incorporated, of the seal of the Association and, if the Association is incorporated, see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these By-Laws; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board.

ARTICLE VI

## POWERS AND DUTIES OF THE ASSOCIATION AND BOARD

Section 1. General Duties and Powers of the Board. Subject to the terms and conditions of the Declaration, the Board shall exercise for the Association all powers, duties and authority vested in the Association by the Act and the Declaration, including but not limited to the following:

- (a) Operation, care, upkeep, maintenance, replacement, and improvement of the Properties (except as otherwise provided herein);
- (b) Preparing, adopting and distributing the annual budget for the Properties;
- (c) Levying and spending of assessments;
- (d) Collecting assessments and fees from Lot Owners;
- (e) Employing and dismissing the personnel necessary or advisable for the maintenance and operation of the Properties;
- (f) Obtaining adequate and appropriate kinds of insurance;
- (g) Owning, conveying, encumbering, leasing, and other dealing with Lots conveyed to or purchased by it;
- (h) Adopting and amending rules and regulations covering the details of the operation and use of the Properties;
- (i) Keeping detailed, accurate records of the receipts and expenditures affecting the use and operation of the Properties;
- (j) Having access to each Lot, from time to time, as may be necessary for the maintenance, repair or replacement of any portion of the Properties therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Properties or other Lots;
- (k) Paying real property taxes, special assessments, any other special taxes or charges of the State of Utah or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the Properties;
- (l) Imposing charges for late payments of a Lot Owner's assessments, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, By-Laws, and rules and regulations of the Association;



- (m) Assigning its right to future income, including the right to receive assessments;
- (n) Recording the dedication of a portion of the Properties to a public body for use as, or in connection with, a street or utility where authorized by the Lot Owners under the provisions of the Declaration;
- (o) Recording the granting of an easement for the laying, maintenance, and repair of television cable or for construction, maintenance, and repair of a project for protection against water damage of erosion, where authorized by the Lot Owners under the provisions of the Declaration;
- (p) Borrowing money at such rates of interest as it may determine; to issue its notes, bonds and other obligations to evidence such borrowing; and to secure any of its obligations by assigning its right to future income including the right to receive assessments for common expenses, and/or by making a mortgage or giving a security interest in all or any of its property or income; and
- (q) Making reasonable accommodation of the needs of handicapped Lot Owners, as required by law, in the exercise of its powers with respect to the use of the Properties or approval of modification to an individual Lot.

In the performance of their duties, the officers and members of the Board shall exercise the care required of a fiduciary of the Members, and may appoint committees as deemed appropriate.

Section 2. Specific Powers and Duties. Anything herein contained to the contrary notwithstanding, the Association shall have the power:

- (a) To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than three (3) years (except as otherwise provided for herein) and must be terminable by either party to such agreement without cause and without payment of a termination fee, upon not more than thirty (30) days prior written notice;
- (b) To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance and management of the Properties, or in connection with any duty, responsibility or right of the Association and to remove, at any time, any such personnel;

- (c) To establish or maintain one or more bank accounts, or functionally similar accounts such as money market fund accounts, for the deposit of any funds paid to, or received by, the Association;
- (d) To invest any funds of the Association in certificates of deposits, money market funds, or comparable investments;
- (e) To establish and maintain a system of master metering of public utility services and collect payments in connection therewith; and
- (f) Upon authorization by the affirmative vote of sixty-seven percent (67%) of the members of the Board or by affirmative vote of not less than a majority of the Lot Owners at a meeting duly called for such purpose, the Board acting on behalf of all Lot Owners shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments or charges of the State of Utah or any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as common expenses.

Nothing herein shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Lot Owners or any of them.

Section 3. Authorized Expenditures. If necessary, the Association shall acquire and make arrangements for, and pay for out of the maintenance fund, in addition to the manager, managing agent or other personnel above provided for, the following:

- (a) Water, sewer, waste removal, heating, electricity, telephone and other necessary utility service for the common portions of the Properties and such services to the Lots as are not separately metered or charged to the owners thereof. The Association shall pay the bills for such common expenses in a timely manner (other than those bills in which reasonable grounds for protest exist) in order to avoid incurring a penalty or interruption in service;
- (b) Such insurance as the Association is required or permitted to obtain as provided in the Declaration;
- (c) Landscaping, gardening, snow removal, paving, asphaltting, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the common portions of the Properties and such furnishings, recreation facilities, and equipment for the Properties as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Properties;

Each Lot Owner shall own and be responsible for: (i) the maintenance, repairs, and replacements of construction and landscaping on that Owner's Lot, including, without limitation, all doors and outside windows and

frames and all door and window locks and hardware with respect thereto, all internal installations such as appliances, lighting fixtures and other electrical fixtures, furnaces, air conditioners, condensers and plumbing, and any portion of any other utility service facilities located on the Lot; provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water, gas and electricity to the Lot, shall be furnished by the Association as part of the common portion of the Properties; (ii) the landscaping of all portions of the Lot; and (iii) except to the extent as otherwise directed by the Board or as is otherwise provided herein, the maintenance, repair and replacement of common portions of the Properties benefitting the Lot, individually or collectively with other Lots, including, without limitation, the garage structures, if any (including, but not limited to, the roofs and foundations thereof).

At the discretion of the Board, the Board may perform, or cause to be performed, such maintenance, repairs, and replacements of the Properties for which the Lot Owner is responsible and the cost thereof shall be assessed, in whole or in part, to the Lot Owners benefitted thereby. Further, at the discretion of the Board, the Board may direct such Lot Owner, in the name and for the account of such Lot Owner, to arrange for such maintenance, repairs, and replacements, to pay the cost thereof with the funds of the Lot Owner, and to procure and deliver to the Board such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Properties from all mechanics' or materialmen's lien claims that may arise therefrom. Notwithstanding anything to the contrary contained herein, where the need for repair or replacement is due to the act or omission of a Lot Owner, guest, occupant, family member or pet, the Association shall charge the Lot Owner for the cost of such repair or replacement.

(d) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments which the Association deems necessary or proper for the maintenance and operation of the Properties or for the enforcement of any restrictions or provisions contained herein;

(e) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Properties or any part thereof which may in the opinion of the Association constitute a lien against the Properties, rather than merely against the interest therein of particular Lot Owners. Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens including but not limited to, any interest, late charges, reasonable attorneys' fees, costs of collections and the amount of any unpaid fine shall be specially assessed to said Lot Owners and shall, until paid by such Lot Owners, constitute a lien on the interest of such Lot Owners in the Properties; and

(f) Maintenance and repair of any Lot or any other portion of the Properties which a Lot Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Properties, or any portion of the Properties, and the owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Association to said Lot Owner; provided that the Association shall levy a special assessment against such Lot for the cost of said maintenance or repair and the amount of such special assessment shall constitute a lien on the interest of such Lot Owner in the Properties.

All expenses, charges and costs of the maintenance, repair, replacement or restoration of the common portions of the Properties, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board, and a written memorandum shall be prepared and signed, or invoice thereof shall be retained, by the Treasurer. There shall be no capital additions or alterations to the Properties requiring expenditure in excess of five thousand dollars (\$5,000.00) without the prior approval of at least sixty-seven percent (67%) of the total votes of the Lot Owners. The term "capital additions or alterations" means expenditures for Association projects which substantially change or add to the existing structure, function or appearance of the Properties and which are not deemed to be "repair, replacement or restoration" as defined herein.

#### Section 4. Annual Budget and Regular Assessments; Separate Assessments.

(a) Each year on or before the first business day in November (commencing in calendar year 2009), the Board shall estimate the annual budget of the Association (the "Annual Budget") including: the total amount required for the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements (as hereinafter specified), all anticipated assessments and income and each Lot Owner's proposed assessment, together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs of payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Lot Owner at least thirty (30) days prior to the adoption thereof. The Association shall give Lot Owners notice as provided in these By-Laws of the meeting of the Board at which the Board proposes to adopt the Annual Budget and regular assessments pursuant thereto.

(b) All expenses incurred or accrued prior to the first conveyance of a Lot shall be paid by the Association, and, during this period, no assessment shall be payable to the Association. Each Lot Owner shall have the duty to pay a

proportionate share of the expenses commencing with the first conveyance of a Lot. The Annual Budget shall be assessed to the Lot Owners according to each Lot Owner's percentage of ownership in the Properties. Each Lot Owner shall be obligated to pay to the Association, or as it may direct, the portion of the Annual Budget assessed to such Owner in equal monthly installments on or before January 1st of the ensuing year, and the 1st day of each and every month of said year.

(c) Any expense not set forth in the Annual Budget or any increase in assessments over the amount adopted in the Annual Budget shall be separately assessed against all Lot Owners according to each Lot Owner's percentage of ownership in the Properties, and which may be payable in one lump sum or such installments as the Board may determine. The Board shall serve notice of such separate assessment on all Lot Owners as provided for herein by a statement in writing giving the amount and reasons therefore, and such separate assessment shall become effective and shall be payable at such time or times as determined by the Board. All Lot Owners shall be obligated to pay the further assessment.

(d) Except as provided in subsection (e) below, if an adopted Annual Budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year to exceed one hundred fifteen percent (115%) of the sum of all regular and separate assessments for the preceding fiscal year, the Board shall, upon written petition by Lot Owners representing twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action, call a meeting of the Lot Owners within thirty (30) days of the date of delivery of the petition to consider the budget or separate assessment. Unless a majority of the total votes of the Lot Owners are cast at a meeting to reject the budget or separate assessment, it is ratified, whether or not a quorum is present.

(e) Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Lot Owner approval or the provisions of subsection (d) or (f) hereof. As used herein, "emergency" means an immediate danger to the structural integrity of portions of the Properties or to the life, health, safety or property of the Lot Owners.

(f) Except as otherwise provided above, assessments for capital additions and alterations to the common portions of the Properties or to Association-owned property not included in the adopted Annual Budget shall be separately assessed and are subject to approval of at least a majority of the total votes of all Lot Owners.

(g) The failure or delay of the Association to prepare or serve the Annual Budget on the Lot Owners shall not constitute a waiver or release in any manner of the Lot Owner's obligation to pay the maintenance and other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and in the

absence of any annual or adjusted budget, the Lot Owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the monthly assessment payment which is due more than ten (10) days after such new annual Budget shall have been mailed.

(h) Anything herein or in the Declaration to the contrary notwithstanding, the Board may charge to fewer than all Lot Owners such portion of the insurance premium for insurance the Association is required or permitted to obtain which reflects increased charges for coverage on the Lots owned by such Lot Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a common expense with respect to the Lots owned by such Lot Owners for all purposes herein and under the Declaration.

(i) All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Lot Owners and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Lot Owners in their relative percentages of ownership interest in the Properties.

#### Section 5. Annual Accounting.

(a) On or before the 1st day of April of each calendar year following the election of the first Board of Directors, the Association shall supply to all Lot Owners an itemized accounting of the expenses for the preceding calendar year actually incurred and paid, if any, together with an indication of which portions of the Annual Budget were for capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus Reserves. Any amount accumulated in excess of the amount required for actual expenses and Reserves shall be, at the Board's option, either added to the Reserves or credited according to each Lot Owner's percentage of ownership in the Properties to the next monthly installments due from Lot Owners under the current year's Annual Budget, until exhausted, and any net shortage shall be added, according to each Lot Owner's percentage of ownership of the Properties, to the installments due in the succeeding six (6) months after rendering of the accounting.

(b) The Association shall allow any first mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association or at its direction.

#### Section 6. Reserves.

(a) The Association may build up and maintain a reasonable Reserve for operations, contingencies and replacement. To establish such Reserve, the Association shall collect from each Lot Owner upon conveyance of a Lot to such Lot Owner, an amount equal to approximately twenty-seven (27%) of the Annual Budget as initially established for the first year following the first annual meeting of the Members and allocable to such Lot. Extraordinary expenditures not originally included in the Annual Budget which may become necessary during the year shall be charged first against such Reserve. In addition, the Association or the Board shall have the right to segregate all or any portion of the Reserve for any specific replacement or contingency upon such conditions as the Association or the Board deems appropriate.

(b) The Annual Budget shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common portions of the Properties. To determine the amount of Reserves appropriate for the Association, the Board of Directors shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the Association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the Properties and construction thereon, and energy systems and equipment; (ii) the current and anticipated return on investment of Association funds; (iii) any independent professional reserve study which the Association may obtain; (iv) the financial impact on Lot Owners, and the market value of the Lots, of any assessment increase needed to fund Reserves; and (v) the ability of the Association to obtain financing or refinancing.

#### Section 7. Default in Payment.

(a) If a Lot Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Association may assess a service charge of up to five percent (5%) of the balance of the aforesaid charges and assessments for each month, or part thereof, that said balance, or any part thereof remains unpaid. The Association may bring suit for and on behalf of itself and as representative of all Lot Owners, to enforce collection thereof or to foreclose the lien therefor as provided by law; and there shall be added to the amount due, the costs of said suit, together with legal interest and reasonable attorneys fees to be filed by the Court. In addition, the Association may also take possession of such defaulting Lot Owner's interest in the Properties and maintain an action for possession of the Lot in the manner provided by law. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common portions of the Properties or abandonment of that Owner's Lot.

(b) Each such assessment, together with interest, court costs, late charges and reasonable attorneys' fees and costs of collections or the account of any unpaid fine shall also be the personal obligation of the person who was the Lot Owner at the time the assessment fell due. The personal obligation for delinquent

assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

Section 8. Unit Owner Accounts. Upon ten (10) days notice to the Association, and the payment of a reasonable fee fixed by the Association not to exceed fifteen dollars (\$15.00), any Lot Owner shall be furnished a statement of that Owner's account setting forth the amount of any unpaid assessments or other charges due and owing from such Lot Owner.

Section 9. Rules and Regulations. The Association may, pursuant to the provisions of these By-Laws, from time to time, adopt or amend such rules and regulations governing the operation, maintenance, beautification and use of the common portions of the Properties and the Lots, not inconsistent with the terms of the Declaration, as it sees fit, and the Lot Owners shall conform to, and abide by, such rules and regulations. Written notice of such rules and regulations shall be delivered to all Lot Owners and occupants. A violation of such rules or regulations shall be deemed a violation of the terms of the Declaration.

## ARTICLE VII

### CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositaries as the Board may elect.

Section 4. Gifts. The Board may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

## ARTICLE VIII



## BOOKS AND RECORDS

Section 1. Maintaining Books and Records. The Association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its Members, the Board and committees having any of the authority of the Board.

Section 2. Availability for Examination. The Association shall maintain the following records of the Association, and make such records available for examination and copying at convenient hours of weekdays by the Lot Owners, holders, insurers and guarantors of first mortgages that are secured by Lots and their duly authorized agents or attorneys:

- (a) Copies of the recorded Declaration, these By-Laws, other documents, and any amendments, Articles of Incorporation of the Association, if incorporated, annual reports, if incorporated, and any rules and regulations adopted by the Association of the Board;
- (b) Detailed accurate records in chronological order of the receipts and expenditures affecting the common portions of the Properties, specifying and itemizing the maintenance and repair expenses of the Properties and any other expenses incurred, and copies of all contracts, leases or other agreements entered into by the Association;
- (c) The minutes of all meetings of the Association and the Board. The Association shall maintain these minutes for a period of not less than seven (7) years;
- (d) A record giving the names and addresses of the Members entitled to vote; and
- (e) Ballots and proxies related thereto for all elections to the Board and for any other matters voted on by the Lot Owners. The Association shall maintain these ballots and proxies for a period of not less than one year, provided, however, that if the Association adopts the secret ballot election process provided for herein, unless directed by court order, only the voting ballot excluding a Lot number shall be subject to inspection and copying.

A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or the Board for the cost of providing such information and copying.

## ARTICLE IX

### FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the last day of December in any given calendar year.

ARTICLE X

## SEAL

If the Association is incorporated, the Board shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words "Corporate Seal, Utah."

ARTICLE XI

## WAIVER OF NOTICE

Whenever any notice whatever is required to be given under the provisions of the Act, other applicable laws, rules, or regulations of the State of Utah, or under the provisions of the articles of incorporation or By-Laws of the Association, or the Declaration, a waiver thereof (subject to all the provisions of such instruments) in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII

## AMENDMENTS TO BY-LAWS

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted upon the affirmative vote of at least sixty-seven percent (67%) of all of the Members, at a regular meeting or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment or repeal, which is signed and acknowledged by the President or Vice President and the Secretary of the Association and which contains an affidavit by an officer of the Board certifying that the necessary affirmative vote of the members of the Association has been obtained.

ARTICLE XIII

## INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a member of the Board or officer of the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to the best interests of the

Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association may indemnify any person who was or is a party, or is threatened to be made a part to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a member of the Board or an officer of the Association against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 3. To the extent that a member of the Board or officer of the Association has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in the foregoing two (2) paragraphs, or in defense of any claim issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. Any indemnification under the first two (2) paragraphs of this Article shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the member of the Board or officer of the Association is proper in the circumstances because he has met the applicable standard of conduct set forth in the first two (2) paragraphs of this Article. Such determination shall be made by either: (a) by the Board by a majority vote of a quorum consisting of members of the Board who were not parties to such action, suit, or proceeding; or (b) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or (c) by a majority of the Members of the Association.

Section 5. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of the members of the Board or the officer of the Association to repay such amount, unless it shall ultimately be determined that he is entitled to be

indemnified by the Association as authorized in this Article. The sums necessary to discharge the obligations of the Association under this Article shall be common expenses.

Section 6. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board or an officer of the Association.

## ARTICLE XIV

### MISCELLANEOUS

#### Section 1. Construction.

(a) Nothing hereinabove contained shall in any way be construed as altering, amending or modifying the Declaration. Said Declaration and these By-Laws shall always be construed to further the harmonious, beneficial, cooperative and proper use and conduct of the Properties. If there is any inconsistency or conflict between these By-Laws and the aforesaid Declaration, the provisions of the Declaration shall control.

(b) All words and terms used herein which are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.

(c) Whenever required by the context hereof, the singular shall include the plural and the plural shall include the singular. The masculine gender shall include the feminine and neuter genders.

Section 2. Parliamentary Procedure. The rules contained in *Robert's Rules of Order Revised* shall govern the meetings of this Association in all cases to which they are applicable and in which they are not inconsistent with these By-Laws.

**CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the TRAILHEAD AT SPANISH TRAILS MULTI-FAMILY ASSOCIATION, INC., a Utah not-for-profit corporation, and

THAT the foregoing By-Laws constitute the most current By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 17 day of Sept 2009.

  
Secretary