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12/22/2016 1:04:00 PM \$122.00
Book - 10513 Pg - 8986-9042
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Recorder, Salt Lake County, UT
MILLER HARRISON LLC
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**DECLARATION
OF
COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
HORIZON HEIGHTS
PLANNED UNIT DEVELOPMENT**

Herriman City, Salt Lake County, Utah

**AN EXPANDABLE
PLANNED UNIT DEVELOPMENT**

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HORIZON HEIGHTS PLANNED UNIT DEVELOPMENT ("Declaration") is made and executed this ____ day of _____, 2016 by Edge Horizon Heights, LLC, a Utah corporation ("Declarant") and becomes effective when recorded with the Salt Lake County Recorder's Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article I.
- B. The real property situated in Herriman City, Salt Lake County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), is hereby submitted, together with all Residences, buildings, and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a residential planned unit development consisting of Residences which are to be constructed upon Lots and related Common Areas pursuant to Utah Code Ann. § 57-8a-101 et seq. that shall be known as Horizon Heights Planned Unit Development (the "Project").
- C. Declarant is the owner of the Parcel subject to this Declaration.
- D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the Property.
- E. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse Assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration.
- F. The Association is not a cooperative.
- G. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Property, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.
- H. Declarant explicitly reserves for itself the option in the future to expand the Project.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions and restrictions. These covenants, conditions, and restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

ARTICLE I. DEFINITIONS

1.1. **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. **Additional Land** shall mean and refer to any parcel of land, including the land more particularly described on Exhibit B attached hereto and incorporated herein by reference, that may be added to the Project in accordance with the provisions outlined in this Declaration.

1.3. **Architectural Review Committee** or **ARC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.4. **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.

1.5. **Assessments** shall mean any charge imposed or levied by the Association against Owners including but not limited to annual assessments corresponding with the Common Expenses as well as special assessments, individual assessments, late fees, and fines, all as provided in this Declaration.

1.6. **Association** shall mean and refer to the Horizon Heights Homeowners Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association, and in the event that the corporate status is invalidated, the Association may be reincorporated at the discretion of the Board of Directors who may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, the term Association as used herein shall refer to that entity.

1.7. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Governing Documents. The Board is the governing body of the Association.

1.8. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

1.9. **Common Areas** shall mean and refer to that part of the property which is not included with the Lots. The Common Area shall be owned and managed by the Association for the common use and enjoyment of the Owners, including but not limited to private streets owned by the Association, any open space, undesignated parking stalls, and other areas so designated on the Plat.

1.10. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act or the Governing Documents.

1.11. **Declarant** shall mean and refer to Edge Horizon Heights, LLC, a Utah Corporation, and any successor in interest.

1.12. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Horizon Heights Planned Unit Development.

1.13. **Director** shall mean and refer to an individual member of the Board of Directors.

1.14. **Governing Documents** shall mean and refer to the Declaration, Articles, Bylaws, Plat, and any Rules adopted by the Board.

1.15. **Lot** shall mean and refer to each of the individual lots within the Project, as shown on the Plat, with the exception of the Common Areas.

1.16. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Property.

1.17. **Member** shall mean and refer to a Lot Owner.

1.18. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.19. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.20. **Occupant** shall mean and refer to any Person, other than an Owner, visiting, living, dwelling, or staying in a Residence. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives visiting, living, dwelling, or staying in a Residence.

1.21. **Owner** or **Lot Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer otherwise agree, in which event they shall inform the Board in writing of the alternative arrangement.

1.22. **Parcel** shall mean and refer to the real property legally described in Exhibits A.

1.23. **Period of Declarant Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (1) the date on which all of the Residences have been conveyed, or (2) the Declarant executes and records a written waiver of its right to control.

1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.25. **Plat** shall mean and refer to the official subdivision plats of Horizon Heights Planned Unit Development, filed and recorded in the official records of the Salt Lake County Recorder's Office.

1.26. **Project** as hereinbefore defined shall at any point in time mean, refer to the Horizon Heights Planned Unit Development.

1.27. **Property** as hereinbefore defined shall include the Parcel, together with the Residences, buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.28. **Residence** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.29. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.30. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board.

1.31. **Supplemental Declaration** shall mean and refer to a written instrument recorded in the records of the Salt Lake County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

ARTICLE II. PROPERTY DESCRIPTION

2.1. **Submission.** The Declarant hereby confirms that the Parcel described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Property and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.

2.2. **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Horizon Heights Planned Unit Development.

2.3. **Description of Improvements.** The improvements contained in the Project will be located upon the Parcel as set forth on the Plat. Other Lots may be added to the Project as reserved by the Declarant. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. **Common Areas.** The Common Areas of the Project are defined and described in Article 1 above.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot and Residence in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot and Residence to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot and Residence should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot and Residence, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned. Voting is limited to one (1) vote per Lot.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose other than towards the establishment of a quorum.

3.4. **Proxies.** An Owner may give his proxy to another Owner, a third person, legal representative, or to a contract purchaser of his Lot to vote on all matters coming before the Association as further set forth in the Bylaws.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom.

4.2. **Title to Common Areas.** Title to the Common Areas shall be conveyed to the Association by the Declarant as determined by the Declarant. However, neither this conveyance nor any other provision of the Declaration shall be construed to create a contractual relationship between the Association and Declarant.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

1) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

2) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, open area, or other Common Area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

3) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

4) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the Lot Owners.

5) The Shared Use Agreement between the Project and the neighboring Horizon Heights Condominium Project.

4.4. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Property. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in above Section.

4.5. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner and Occupant shall fully and faithfully comply with the Rules.

ARTICLE V. BUDGETS, ASSESSMENTS, RESERVES

5.1. **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration,

management, and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted.

5.2. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in this Declaration and the Rules.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. **Declarant's Covenant for Assessments.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot or Residence owned by it until such time as the earlier of the following two events occurs: (1) certificates of permanent occupancy are issued on a Residence, and the Residence is sold or rented by Declarant; or (2) Declarant elects in writing to pay the Assessments, whichever first occurs.

5.5. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.6. **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to one-thousand dollars (\$1,000), payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over one-thousand dollars (\$1,000) in a calendar year may be

levied if assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

5.7. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Project Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Project Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his/her Occupants' negligence.

5.8. **Allocation of Assessments.** Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots.

5.9. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.10. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall

be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.11. **Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

5.12. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.13. **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of 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 thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.14. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due.

Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15. **Collection Charge.** If any Assessment is delinquent, the Owner may be obligated to pay interest at the rate of eighteen percent (18%) per annum, in addition to a collection charge and/or such other late fee penalty established by the Board. Until paid, such collection charge, interest, and/or late fees shall constitute part of the Assessment lien provided above. Late fees may be assessed each month until the delinquent Assessment, including all of its accompanying charges, costs, and attorneys' fees, is paid in full.

5.16. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

1) The Association may suspend such Owner's voting rights.

2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Salt Lake County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

4) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge

the Owner for such Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.

6) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7) The Association shall have any other remedy available to it whether provided in the Project Documents, the Act, or other law or in equity.

5.17 **Power of Sale.** The Owners hereby convey and warrant pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to the Association's attorney of record, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration;

5.18. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.19. **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration that the Association will own the Common Areas, which may obligate it to pay property taxes to Salt Lake County to the extent taxes are required on such Common Areas. Each Owner will be required to reimburse the Association for its pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.20. **Reinvestment Fee.** Subject to the terms and conditions of this Section, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

1) Upon the occurrence of any sale, transfer, or conveyance of any Residence (as applicable, a "Transfer"), but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to

the Residence (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (i) 0.5% of the value of the applicable Residence, or (ii) the maximum rate permitted by applicable law.

2) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

a) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

b) Any Transfer to the Association or its successors.

c) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Residence transferred.

d) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Residence by the estate of an Owner.

e) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded, removing clouds on titles.

f) Any lease of any Residence or portion thereof for a period of less than thirty (30) years.

g) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

h) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

3) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act or Governing Documents. The Association shall have all rights and powers granted to it under the Act and Governing Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

6.2. **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

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

- 1) The powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowners' association pursuant to the Act;
- 4) The powers, duties, and obligations not reserved specifically to the Lot Owners; and
- 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles or Bylaws of the Association made in accordance with such instruments.

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

1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

3) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Property.

4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

5) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

6) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by the Declarant and pay all real property taxes and governmental assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

7) **Employment of Agents, Advisers, and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers; hire employees to manage, conduct, and perform the business, obligations, and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists; or do what is convenient for the management, maintenance, and operation of the Property.

8) **Litigation.** Except as otherwise provided herein, the Association may instigate litigation to enforce the provisions of this Declaration or any other

common law or statutory right which the Association is granted and defend itself in any proceeding.

6.5. **Board of Directors.** The governing body of the Association shall be the Board of Directors elected as provided by the Bylaws. Except where a matter or vote is specifically reserved to the Owners, the Board of Directors shall act in all instances on behalf of the Association.

6.6. **Director and Officer Liability.** A Director or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts. In the event any Director or any officer of the Association is made a party to any proceeding because the individual is or was a Director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Director or officer is found by a court of law to have acted willfully or intentionally in carrying out his/her duties.

6.7. **Board Indemnification.** Each past and present Director (including Declarant and its appointees) shall be entitled to indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act and other applicable laws. The right of any Person to be indemnified shall be subject always to the right of the Association, by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

6.8. **Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

- (a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:
 - i. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
 - ii. The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);

- iii. The proposed remedy; and
 - iv. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
 - v. That the person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the claim.
- (b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (c) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following one hundred eight (180) days of the original notice.
- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
- i. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
 - ii. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
 - iii. Receive approval from two-thirds (2/3) vote of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable; and
 - iv. Allow the one hundred and eighty (180) day right to cure period to expire.

- (e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.
- (f) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting interests of the Association, and (b) not less than seventy-five percent (75%) of the Directors; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.
- (g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

ARTICLE VII. MAINTENANCE

7.1. **Association Maintenance.** The Association shall maintain, repair, and replace all Common Areas. The Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Lot or Residence. Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended.

7.3. **Services.** The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, garbage/trash removal services for all Residences.

7.4. **Owner Residence and Lot Maintenance.** Each Owner shall have the obligation to maintain, repair, and replace the Lot and every improvement thereupon including, without limitation, the Residence. The Lot and Residence shall be maintained in a safe and aesthetically pleasing manner as further provided in Article X.

7.5. **Owner Maintenance Neglect.** The Association shall have the power and authority, without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Residence); but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein.

7.6. **Maintenance Caused by Owner Negligence.** In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

ARTICLE VIII. INSURANCE

8.1. **Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense. The Board may adopt insurance rules and policies to maintain the

insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

8.2. **Types of Insurance Maintained by the Association.** To the extent reasonably available, the Association shall obtain the following insurance coverage:

- 1) Public liability for the Common Areas for at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for property damage, bodily injury, or death;
- 2) Property, fire, and extended hazard for all Common Areas, if available and advisable;
- 3) Directors and officers for at least \$1,000,000.00;
- 4) Fidelity bond or dishonest acts insurance for at least the value of the reserves and operating capital of the Association.
- 5) Worker's Compensation Insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

8.3. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

8.4. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

8.5. **Premium as Common Expense.** The premiums for the Association's insurance policies shall be a Common Expense.

8.6. **Insurance by Owner.** Each Owner shall insure his/her Lot, Residence, any and all Lot improvements, and personal property.

8.7. **Payment of Deductible.** The deductible on a claim made against an Association policy shall be paid for by the party:

- 1) Who would be liable for the loss, damage, claim or repair in the absence of insurance; or
- 2) From whose Lot the cause originates.

If there are multiple responsible parties, the loss shall be allocated equally amongst the parties. If a loss is caused by an Act of God, nature, or risk or peril beyond the control of the parties, then any Owner benefiting from the coverage shall be responsible for the deductible. Deductibles shall be determined by the Board. If the Board finds an Owner to be responsible for the deductible, it shall be an Individual Assessment.

ARTICLE IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature, the Restrictions, and the Rules.

9.2. **Use of Lots and Residences.** All Lots are intended to be improved with Residences and are restricted to such use. Except as may be approved to the contrary, each Residence shall be used only as a single-family residence. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Residence without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Residence and that the activities would not be in violation of applicable local ordinances. No Lot or Residence shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Residence, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in an increase in the cost of any insurance covering the Common Areas.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Residences, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Residence which shall cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, or the like belonging to Owners or other residents of the Property shall be parked within the Project, except for loading and unloading purposes not to exceed twenty-four (24) hours unless such are placed within the Residence's garage. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any

Lot, street, or other Common Area (unless done within the Residence's garage), except for emergency repairs to vehicles, and then only to allow the vehicle to get to a proper repair facility.

9.5. **Pets.** No animals shall be kept in the Project except common household pets that may be determined by Rules of the Association. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No savage or dangerous animals shall be kept. No pets shall be permitted to run loose upon the Common Areas. In addition to the restrictions set forth in this Section, the Board shall be authorized to adopt and implement reasonable Rules pertaining to pets and animals. In addition to levying fines for pet violations, the Board may require an Owner or Occupant to remove a pet from the Project for frequent violations or if the pet's behavior is threatening and dangerous to other residents.

9.6. **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, machinery, or other things or materials so as to constitute an eyesore as reasonably determined by the Board or the Association;
- 4) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents or their guests, particularly if the police or sheriff must be called to restore order;

7) Maintaining any plants, animals, devices, or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invites;

8) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;

9) Too much traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

10) Allowing a pet to be unleashed while outside of the Residence or fenced backyard;

11) Continuous barking, meowing, or other animal noises;

12) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area or upon any Lot.

9.7. **Signs.** No signs shall be erected or maintained on any Lot, except as provided by the Board.

9.8. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection. The Association may provide garbage cans and waste removal services.

9.9. **Parking.** Parking is prohibited on the streets, unless otherwise designated by the Board and allowed by applicable law. Each Residence has a garage to be used for the parking of vehicles. Vehicles shall not be parked at any location within the Project, which would impair vehicular or pedestrian access, or snow removal. Undesignated parking stalls shall be subject to and governed by Association Rules. The Board may adopt Rules relating to the size and dimensions of the vehicles parked within the Project; relating to the admission and temporary parking of vehicles within the Project; and the use of the undesignated parking spaces identified on the Plat, if any, the right to remove or cause to be removed any vehicles that are improperly parked, the time visitor spaces may be used and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

9.10. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on backyard patios/decks, except for patio furniture and portable

barbecue grills in good condition, and other items if so approved by the Board. All approved items shall conform with standards set by the Board.

9.11. **Window Coverings.** Every Owner of a Residence shall be obligated to ensure that window coverings are installed within the Residence within one month of purchasing or taking possession of a Residence. Furthermore, the Board of Directors may adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings. Under no circumstances shall any cardboard, blankets, paint, or tinfoil be used as window coverings in the Project.

9.12. **Aerials, Antennas, and Satellite Dishes.** Aerials, antennas, and satellite dishes larger than one meter in diameter are prohibited. Aerials, antennas, and satellite dishes may not be installed on Common Areas. One antenna or satellite dish smaller than one meter in diameter may be installed within the Lot. The Association may create policies to create a hierarchy of preferred installation locations to protect the aesthetics of the Project. The hierarchy of preferred installation locations may not interfere with reception.

9.13. **Timeshares.** Timeshares and time-sharing of Residences within the Project is prohibited, and under no circumstances shall any Residence be owned or used for time sharing, including but limited to a "Timeshare Interest" as that term is defined in Utah Code Ann. § 57-19-2(17), as amended.

9.14. **Utility Service.** All lines, wires, or other devices for the communication or transmission of electric current of power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Board.

9.15. **Subdivision of Lots.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, except the Declarant upon approval from the applicable municipality. No further covenants, conditions restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use in compliance with this Declaration.

9.16. **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Property except as allowed by Rules.

9.17. **Front Porches.** Front porches are required to be maintained in a clean and tidy fashion. Owners may have outdoor furniture made of wood or metal on the front porch, unless prohibited by Rule. Any outdoor furniture kept on the front porch shall be well maintained and in good condition. The Association may require worn

furniture or furniture that detracts from the theme of the community to be removed from the front porch. Front porches shall not be used for storage. Examples of items prohibited from being kept on front porches include, without limitation, bicycles, toys, barbecues, trash receptacles, ash trays, and anything else which appears unkempt, dirty, or detracts from the appearance of the Project.

9.18. **Off Road Vehicles.** No off road motor vehicles, including but not limited to snow mobiles, three wheelers or four wheelers may be driven on the roads, streets, footpaths, walkways, or Common Areas within the Project.

9.19. **Leases.** The leasing of Residences is permitted. Any agreement for the leasing, rental, or occupancy of a Residence (hereinafter in this Section referred to as a "lease") shall be in writing, a copy of which shall be provided to the Board upon request, along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Owner shall be permitted to lease his/her Residence for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his or her entire Residence. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. In the event that the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

ARTICLE X. ARCHITECTURAL CONTROLS

10.1. **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Review Committee, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The ARC need not be composed of Owners. If the ARC is not appointed, the Board shall perform the duties required of the ARC.

10.2. **Architectural Controls.** To maintain a degree of uniformity and to protect the investments made by the Owners, each Owner shall adhere to the architectural controls provided herein. In the event of any reconstruction of a Residence or improvement due to a casualty, the design, quality, and appearance of the reconstructed Residence or improvement shall be substantially the same as the structure initially built, unless otherwise approved by the ARC. No landscaping, grading, excavation, building, fence, wall, Residence, or other structure, or alteration of any kind, shall be commenced,

erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the ARC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the ARC. Once approved by the ARC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ARC. Subsequent to receiving approval of the ARC and prior to the commencement of construction, each Owner will be responsible for obtaining applicable building permits.

No construction, reconstruction, or modification of a Residence, improvement or landscaping may commence without approval by the ARC of the working drawings including, but not limited to, the following:

- 1) Plot plans to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- 2) Detailed floor plans showing dimensions and measurements.
- 3) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- 4) Detailed sections, cross and longitudinal.
- 5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ARC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with any design guidelines adopted by the Association, and other provisions found within the development plan.

10.3. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict the non-residential use of Lots and Residences, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of Residences and other improvements within the Project. Any Residences constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Residences within the Project.

10.4. **Liability for Damages.** The ARC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval made by it pursuant to this Article X.

ARTICLE XI. ENFORCEMENT

The Association and any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and the Governing Documents including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provision of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees.

ARTICLE XII. SPECIAL DECLARANT RIGHTS

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

- 1) Any improvements shown on the Plat;
- 2) Any Lots and corresponding Residences upon all or any portion of the Additional Land, and subject to the requirements as set forth herein, the addition of the same to the Project; and
- 3) Any other buildings, structures, or improvements that Declarant desires to construct on the Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

12.2 **Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Lots and Residences and improvements to be constructed thereon, all in accordance with this Section.

- 1) The Project may be expanded by the addition of, without limitation, all or a portion of the real property designated on Exhibit "B" attached hereto and incorporated herein by reference, such real property or portions thereof where applicable being referred to as "Additional Land".
- 2) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

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

4) The Additional Land designated on Exhibit "B" attached hereto and incorporated herein by reference, may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Project.

5) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. All of the additional Lots and Residences to be constructed upon Additional Land will be constructed for or are to be designated exclusively for residential use.

6) All improvements erected upon any Additional Land added to the Project will be compatible with the Residences and improvements thereupon or to be constructed upon the Property, all such additional Residences and improvements to be approximately equal to or better in terms of quality of construction and materials to be used. Notwithstanding the above, no assurances can be made by the Declarant in every instance that such structures and improvements will be identical in all regards.

7) Declarant consents and agrees that any Lot and Residences constructed within the Project and upon Additional Land will be similar in all material respects to the Residences presently contained or to be constructed upon the Property and shown on the Plat.

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

9) Simultaneously with the recording of said supplemental Plat, the Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include, in addition to any requirements of the Act, the following: (i) if now shown on the supplemental Plat, a legal description of the Additional Land added to the Project; (ii) the designation of each Lot and Residence created from and included within the Additional Land.

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

- 1) the right to maintain sales offices, model Residences, and signs advertising the Project or any Residence at any location in the Project;
- 2) the right to use easements through the Common Areas as set forth in this Declaration;
- 3) the exclusive right to appoint or remove members of the Board during the Period of Declarant Control;
- 4) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.
- 5) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

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

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

12.6. **Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any

of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

12.7. **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person. Such transfer, conveyance, or assignment shall be effective upon recording in the office of the Salt Lake County Recorder.

12.8. **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Residence prior to the contracting for the conveyance of the Residence to a purchaser.

12.9. **Voting.** During the Period of Declarant Control, any matter voted upon by the Owner shall not become effective unless the matter is approved in writing by the Declarant.

12.10. **Easements Reserved to Declarant.**

1) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

3) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction

and development of the Project and the provision of utility services, and related services and facilities

5) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

6) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

ARTICLE XIII. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything contrary contained herein, the following provisions apply:

13.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

13.2. **Notice of Default by Lot Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.3. **Abandonment, Termination, Etc.** Unless all of the holders of first Mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission, or otherwise to abandon or terminate the Project.

13.4. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of

a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

ARTICLE XIV. RIGHT OF ENTRY

14.1. **Right of Entry.** The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon or into any Lot or Residence, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Residence or any other part of the Project, including the sound or sight of running water in a Residence, the smell or sight of smoke in a Residence, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering upon a Lot or into a Residence under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

ARTICLE XV. AMENDMENTS

15.1 **Amendments by Declarant.** Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended by the Declarant without any additional approval required. In addition, during the Period of Declarant Control no other amendment shall be valid or enforceable without the Declarant's prior written consent.

15.2 **Amendments by Association.** After termination of the Period of Declarant Control, amendments to this Declaration shall be proposed by either a majority of the Board or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the Board shall certify that the vote required by this Article for amendment has occurred. If a Lot is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute

approval for that Lot under this Article. If a Lot is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Article. No acknowledgment of any signature shall be required.

ARTICLE XVI. MISCELLANEOUS

16.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes.

16.2. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in the Association. The following additional provisions shall govern any application of this Section:

- 1) All necessary consents must be obtained prior to the expiration of sixty (60) days after the first consent is given by any Member.
- 2) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.
- 3) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

16.3. **Dissolution.** Subject to the restrictions set forth in Article XIII of this Declaration pertaining to Mortgagee protection, the Association may be dissolved by the affirmative assent in writing from 90% of the Lot Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas; and any common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V of this Declaration.

16.4. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

16.5. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

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

16.7. **UDOT Trax Rail Line Disclaimer.** EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE UTAH DEPARTMENT OF TRANSPORTATION HAS PLANS TO EXTEND TRAX RAIL LINES THROUGH THE HERRIMAN TOWNE CENTER NEARBY THE PROJECT. DECLARANT HAS NO CONTROL ON WHETHER THE TRAX RAIL LINE WILL BE CONSTRUCTED AND MAKES NO WARRANTY FOR OR AGAINST ANY IMPACT (INCLUDING FINANCIAL AND PHYSICAL) THAT MAY RESULT THEREFROM.

16.8. **Security.** The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY

REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

16.9. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

CERTIFICATION

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized president and secretary.

IN WITNESS WHEREOF, this amendment is hereby executed this ____ day of _____ in 2016.

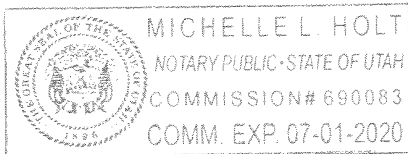
EDGE HORIZON HEIGHTS, LLC,
a Utah corporation

By 

Its: Manager

State of Utah)
County of Utah) ss.

On the 19 day of December 2016, personally appeared before me Gordon Jones who by me being duly sworn, did say that he is the manager of Edge Horizon Heights, LLC; and that the foregoing instrument is signed and executed by authority of its principals.





NOTARY PUBLIC

EXHIBIT A -LEGAL DESCRIPTION OF PARCEL

That certain real property, located in Salt Lake County, State of Utah and more particularly described as follows:

All of Horizon Heights Subdivision Phase 3, which plat map was recorded on December 5, 2016 as entry number 12427463, Book 2016, Page 308, and is more fully described as:

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning at a point on the north line of Horizon Heights Subdivision Phase 2, said point being North 0°32'22" East 1775.33 feet along the Section Line and North 89°27'38" West 1506.32 feet from the Southeast Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running

thence South 85°41'55" West 15.17 feet along the North line of said Subdivision and continuing along said line the following three courses:

thence 174.01 feet along the arc of a 303.00 foot radius curve to the left through a central angle of 32°54'14" (Long Chord Bears South 69°14'48" West 171.63 feet);

thence South 52°47'41" West 256.00 feet to a point of curvature;

thence 23.56 feet along the arc of a 15.00 foot radius curve to the left through a central angle of 90°00'00" (Long Chord Bears South 07°47'41" West 21.21 feet);

thence North 37°12'19" West 155.00 feet;

thence North 52°47'41" East 305.96 feet;

thence North 66°18'03" East 89.65 feet;

thence North 88°19'58" East 50.00 feet;

thence North 82°10'42" East 91.45 feet;

thence South 04°18'42" East 61.02 feet to a point of curvature;

thence 60.09 feet along the arc of a 329.11 foot radius curve to the left through a central angle of 10°27'38" (Long Chord Bears South 04°57'07" East 60.00 feet) to the point of beginning.

All of Horizon Heights Subdivision Phase 4, which plat map was recorded on December 5, 2016 as entry number 12427464, Book 2016, Page 309, and is more fully described as:

A parcel of land located in the Southeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning at a point North 89°37'15" West 1035.03 feet along the Section Line to the West line of the Towers Subdivision, Phase 1 and South 0°32'17" West 448.33 feet along said west from the East Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running:

thence South 0°32'17" West 601.66 feet along the said west line of the Towers Subdivision, Phase 1;

thence North 89°37'03" West 327.93 feet;

thence North 35°11'33" West 89.52 feet to a point of curvature;

thence 150.35 feet along the arc of a 279.00 foot radius curve to the right through a central angle of 30°52'36" (Long Chord Bears North 19°44'23" West 148.54 feet);

thence North 04°18'05" West 30.00 feet to a point of curvature;

thence 30.95 feet along the arc of a 363.00 foot radius curve to the right through a central angle of 04°53'09" (Long Chord Bears North 88°08'30" East 30.94 feet);

thence South 89°24'56" East 38.06 feet to a point of curvature;

thence 16.09 feet along the arc of a 25.00 foot radius curve to the left through a central angle of 36°52'12" (Long Chord Bears North 19°01'10" East 15.81 feet);

thence North 08°48'15" East 3.50 feet;

thence North 0°35'04" East 91.02 feet to a point of curvature;

thence 50.43 feet along the arc of a 465.00 foot radius curve to the left through a central angle of 06°12'48" (Long Chord Bears North 02°31'20" West 50.40 feet);

thence North 05°37'44" West 113.93 feet to a point of curvature;

thence 36.51 feet along the arc of a 500.00 foot radius curve to the right through a central angle of 04°11'02" (Long Chord Bears North 03°32'13" West 36.50 feet);

thence North 0°28'19" West 17.71 feet;

thence North 0°35'14" East 53.15 feet;

thence South 89°24'56" East 224.00 feet;

thence South 0°35'04" West 20.65 feet;

thence South 89°24'56" East 153.44 feet to the point of beginning.

EXHIBIT B -LEGAL DESCRIPTION OF ADDITIONAL LAND

That certain real property, located in Salt Lake County, State of Utah and more particularly described as follows:

All of Horizon Heights Subdivision Phase 5, as more fully described as:

A parcel of land located in the Southeast Quarter and the Northeast Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian described as follows:

Beginning at a point North 89°37'15" West 1032.78 feet along the Section Line from the East Quarter Corner of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running:

thence North 89°37'15" West 2.25 feet along said section line to the West line of the Towers Subdivision, Phase 1;

thence South 0°32'17" West 448.33 feet along said west line of the Towers Subdivision, Phase 1 to the North line of Horizon Heights Subdivision Phase 1 the following six courses:

thence North 89°24'56" West 153.44 feet;

thence North 0°35'04" East 20.65 feet;

thence North 89°24'56" West 224.00 feet;

thence South 0°35'14" West 53.15 feet;

thence South 0°28'19" East 17.71 feet;

thence North 89°35'23" West 77.07 feet;

thence North 0°24'37" East 597.35 feet;

thence South 89°36'40" East 457.53 feet to the West line of Lot 663, Western Springs Subdivision Phase 6, as recorded in the office of the county recorder in Book 2001 at Page 260;

thence South 0°22'37" West 100.12 feet along said west line to the point of beginning.

EXHIBIT C -BYLAWS

BYLAWS OF HORIZON HEIGHTS HOMEOWNERS ASSOCIATION, INC.

CITY OF HERRIMAN, SALT LAKE COUNTY, UTAH

THESE BYLAWS OF HORIZON HEIGHTS HOMEOWNERS ASSOCIATION, INC. are effective upon recording in the Salt Lake County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

RECITALS

1. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
2. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the project known as Horizon Heights Planned Unit Development and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I DEFINITIONS

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration.

ARTICLE II APPLICATION

All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Living Units or the mere act of occupancy or use of any said Living Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE III OWNERS

3.1 **Annual Meetings.** The annual meeting of the Owners shall be held each year during the months of April, May or June on a day and at a time established by the Board of Directors. The purpose of the annual meeting shall be electing Board Members and transacting such other business as may come before the meeting. If the election of Board Members cannot be held on the day designated herein for the annual meeting of the Owners, or at any adjournment thereof, the Board of Directors shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board of Directors may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.2 **Special Meetings.** Special meetings of the Owners may be called by a majority of the Board of Directors, the Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a special meeting within 45 days of receipt of the request.

3.3 **Place of Meetings.** The Board of Directors may designate any place in Salt Lake, Summit, or Utah County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association.

3.4 **Notice of Meetings.** The Board of Directors shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Owners. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than fifteen (15) days prior to the meeting. Such notice may be emailed, hand-delivered, or mailed. If emailed, such notice shall be deemed delivered when sent to the Owner's email address registered with the Association. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Owner at the Owner's address registered with the Association, with first-class postage thereon prepaid. Each Owner shall register with the Association such Owner's current email address and mailing address for purposes of notice hereunder. Such registered email and mailing addresses may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Living Unit shall be deemed to be the Owner's registered address and notice to the Living Unit address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email by giving written notice to the Board of Directors stating that the Owner will not accept notices by way of email.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting.

3.6 **Record Date for Notice Purposes.** The Board of Directors may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no

record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Living Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 **Quorum.** At any meeting of the Owners, the presence of Owners and holders of proxies entitled to cast more than thirty-three percent (33%) of the voting interests of the Association shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting, the Board of Directors shall have power to adjourn the meeting and reschedule for a time not earlier than twenty-four (24) hours, nor later than thirty (30) days after the set time for the original meeting. Notice of such rescheduled meeting shall not be required except an oral announcement at the meeting to be rescheduled. No other type of notice shall be required for the rescheduled meeting. At such rescheduled meeting, the number of Owners present, either in-person or by proxy, shall constitute quorum for the transaction of business at the rescheduled meeting.

3.8 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Living Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Living Unit or the Owners' attorneys when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.9 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Living Unit of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owner, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Living Unit is jointly owned, any Owner may exercise the vote for such Living Unit on behalf of all Co-Owners of the Living Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Living Unit, no vote shall be counted for that Living Unit. In no event shall fractional or cumulative votes be exercised with respect to any Living Unit.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board of Directors or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board of Directors. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver on any

notice requirements.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of U.C.A. §16-6a-707 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Owners.

ARTICLE IV
BOARD OF DIRECTORS

4.1 **General Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of either three (3) or five (5) persons, as determined by the Board of Directors, who meet the qualifications provided in the Declaration. During the Period of Declarant Control, the Board of Directors may consist of as few as three (3) persons.

4.3 **Election to the Board of Directors.** During the Period of Declarant Control, the Board of Directors shall be elected by Declarant. Following the Period of Declarant Control, the election to the Board of Directors shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect two (2) Board Members for two (2) year terms and one (1) Board Member for a one (1) year term, and at each annual meeting thereafter, the Owners shall elect the number of Board Members whose terms are to expire for a term of two (2) years each.

4.5 **Regular Meetings.** The Board of Directors shall hold meetings at least quarterly at the discretion of the Board of Directors.

4.6 **Special Meetings.** Special meetings of the Board of Directors may be called by the President or a majority of the Board Members on at least two (2) business days' prior notice to each Board Member. The person or persons authorized to call special meetings of the Board of Directors may fix any place, within Salt Lake, Summit, or Utah County, as the place for holding the meeting and shall provide a conference call-in

number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message. By unanimous consent of the Board of Directors, special meetings may be held without call or notice to the Board Members.

4.7 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board of Directors. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.8 **Board Meetings.** Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

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

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

4.9 **Board Meeting Location.** The Board of Directors may designate any place in Salt Lake, Summit, or Utah County as the place of meeting for any regular or special Board meeting. Board meetings may also be held with Board Members appearing telephonically so long as any Board Member appearing telephonically consents to such appearance. Following the Period of Declarant Control, if a Board meeting is held by

telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.10 **Board Action.** Notwithstanding noncompliance with Sections 4.7 and 4.8, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with Sections 4.7 and 4.8 may not bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

4.11 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.12 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a special meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association.

4.13 **Vacancies and Newly Created Board Memberships.** If vacancies shall occur in the Board of Directors for any reason during the Period of Declarant Control, the Declarant shall elect the Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies shall occur in the Board of Directors for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board of Directors occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.14 **Action Taken Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the

requirements of U.C.A. §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.15 **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.16 **Adjournment.** The Board of Directors may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.17 **Meeting.** For purposes of this Article IV, a Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board of Directors.

5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each annual meeting of the Owners. Each such officer shall hold such office until the next ensuing meeting of the Board of Directors following the annual Owners meeting and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board of Directors may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board of Directors or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board of Directors at any time, with or without cause.

5.5 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board of Directors at any regular or special Board meeting.

5.6 **The President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board of Directors.

5.7 **The Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board of Directors or Owners. The Vice President shall perform such other duties as required by the Board of Directors.

5.8 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board of Directors may require such person to keep. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **The Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board of Directors, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board of Directors. The Treasurer shall perform such other duties as required by the Board of Directors.

5.10 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board of Directors.

ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board of Directors may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board of Directors. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board of Directors in a written resolution. The Board of Directors may terminate any committee at any time.

6.2 **Proceeding of Committees.** Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Directors.

6.3 **Quorum and Manner of Acting.** At each meeting of any committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Directors hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board of Directors.

6.4 **Resignation and Removal.** Any member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Directors may at any time, with or without cause, remove any member of any committee designated by it thereunder.

6.5 **Vacancies.** If any vacancy shall occur in any committee designated by the Board of Directors due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board of Directors, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Directors.

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not

exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

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

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

ARTICLE VIII RULES AND REGULATIONS

The Board of Directors shall have the authority to adopt and establish by resolution such Project management and operational Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board of Directors may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board of Directors shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

ARTICLE IX AMENDMENTS

9.1 **Amendments by Declarant.** During the Period of Declarant Control, the Declarant

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

9.2 **Amendments by Association.** After termination of the Period of Declarant Control, amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon, or included as part of the written ballot in lieu of such meeting. Except as otherwise provided herein, the Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of more than sixty percent (60%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the President shall execute the amendment and certify that the vote required by this Section for amendment has occurred. If a Living Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Living Unit under this Section. If a Living Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Living Unit under this paragraph. No acknowledgment of any Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any rights of Declarant without the express written consent of Declarant.

ARTICLE X MISCELLANEOUS PROVISIONS

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

10.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Association has executed this instrument the day and year set forth below.

DECLARANT

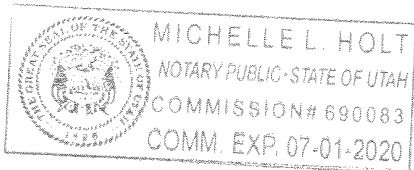
EDGE HORIZON HEIGHTS, LLC
A Utah Coporation

By: _____

Its: Manager

State of Utah)
County of Utah):ss

On this 19 day of December, 20116, personally appeared before me Gordon Jones, who being by me duly sworn, did say that he is the manager of the Edge Horizon Heights, LLC and that the foregoing information is true and accurate to the best of his/her knowledge.



Michelle Holt
NOTARY PUBLIC

EXHIBIT D –JOINT USE AND CROSS USE AGREEMENT

**EXHIBIT D
JOINT USE AND CROSS EASEMENT AGREEMENT**

DATED: this 28 day of September, 2016

PARTIES: Horizon Heights Condominiums Owners Association, Inc. ("Horizon COA") and Horizon Heights Homeowners Association, Inc. ("Horizon HOA") (collectively the "Parties" or individually a "Party").

RECITALS

- A. Horizon COA is a Utah nonprofit corporation governing a residential condominium development in Herriman City, Salt Lake County, Utah ("Horizon Condo Project"), as more fully described in the Horizon Condo Project's Declaration of Condominium ("Condo Declaration") and as depicted on the Horizon Condo Project's plat maps ("Condo Plats") recorded with the Salt Lake County Recorder.
- B. Horizon HOA is a Utah nonprofit corporation governing a residential single family home subdivision ("Horizon Subdivision") in Herriman City, Salt Lake County, Utah, as more fully described in the Horizon Subdivision's Declaration of Covenants, Conditions, and Restrictions ("Subdivision Declaration") and as depicted on the Horizon Subdivision's plat maps ("Subdivision Plats") recorded with the Salt Lake County Recorder.
- C. Horizon COA desires to grant the owners and residents at the Horizon Subdivision an easement for the right to use the Horizon COA's private roadways, visitor parking, and recreational amenities, which may include a playground, clubhouse, and swimming pool, as depicted on the Condo Plats recorded with the Salt Lake County Recorder.
- D. Horizon HOA desires to grant the owners and residents at the Horizon Condo Project an easement for the right to use the Horizon HOA's private roadways, visitor parking, and recreational amenities, which may include a playground, clubhouse, and swimming pool, as depicted on the Subdivision Plats recorded with the Salt Lake County Recorder.

AGREEMENT/EASEMENT

In consideration of the foregoing and the mutual covenants of the Parties contained in this Joint Use and Cross Easement Agreement ("Agreement"), the receipt and adequacy of which are hereby acknowledged, the Parties agree follows:

1. **Grant of Easement to Horizon Subdivision.** Subject to the rights and restrictions set forth in this Agreement, Horizon COA hereby grants and conveys to Horizon HOA a permanent and nonexclusive easement over and across the Horizon Condo Project's roadways, visitor parking areas, and common recreational amenities, as

described on the Condo Plats, for purposes of temporary parking, pedestrian and vehicular access to, ingress to and egress from the Horizon Condos' private roadways, visitor parking areas, and common recreational amenities, and for the use and enjoyment of the amenities of Horizon Condo Project by Horizon HOA permitted users, as defined below (the "Horizon HOA Easement"). The Horizon HOA Easement is granted by the Horizon COA as a benefit and right appurtenant to the Horizon Subdivision. The Horizon HOA Easement is granted for the right, benefit, and use of Horizon HOA and Horizon HOAs' successors, heirs, assigns, owners, guests, managers, mortgagees, lessees, and beneficiaries under any deeds of trust (collectively the "Horizon HOA permitted users"), subject to the provisions of this Agreement.

2. **Grant of Easement to Horizon Condos.** Subject to the rights and restrictions set forth in this Agreement, Horizon HOA hereby grants and conveys to Horizon COA a permanent and nonexclusive easement over and across the Horizon Subdivision roadways, visitor parking areas, and common recreational amenities, as described on the Subdivision Plats, for purposes of temporary parking, pedestrian and vehicular access to, ingress to and egress from the Horizon Subdivision private roadways, visitor parking areas, and common recreational amenities, and for the use and enjoyment of the amenities of Horizon Subdivision by Horizon COA permitted users, as defined below (the "Horizon COA Easement"). The Horizon COA Easement is granted by the Horizon HOA as a benefit and right appurtenant to the Horizon Condo Project. The Horizon COA Easement is granted for the right, benefit and use of the Horizon COA and Horizon COA's successors, heirs, assigns, owners, guests, managers, mortgagees, lessees and beneficiaries under any deeds of trust (collectively the "Horizon COA permitted users"), subject to the provisions of this Agreement.
3. **Roadway and Common Area Maintenance, Repair, and Replacement.** Horizon HOA and Horizon COA shall have separate and individual obligations to maintain, repair, and replace the roadways, improvements, visitor parking, and recreational amenities located within and upon their respective community and property in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, covenants, conditions and restrictions, and governmental requirements. All maintenance, repair and replacement obligations shall be performed in a prompt, diligent, and regular manner.
4. **Cost Sharing.** Horizon COA and Horizon HOA shall share all maintenance, repair, and replacement costs of any (a) playground (tot lot), (b) clubhouse, (c) swimming pool, and (d) the shared road, which provides access to the six (6) condominium buildings immediately adjoining Horizon Subdivision, on a pro rata basis based on the relative number of residential housing units certified for occupancy within each Project. Each Party shall separately fund the maintenance, repair, and replacement of any visitor parking stalls, and any other roadways and amenities on each respective Project plat. Any invoice for shared costs shall be payable no later than

30 days following submission. Late payments shall be subject to interest at the rate of 18% per annum.

5. **Damage by Horizon HOA or Horizon COA permitted users.** If damage to the easement area within the Horizon Condo Project, beyond ordinary wear and tear, is directly attributable to Horizon HOA permitted users, then Horizon HOA shall pay for the repairs to the damaged area at its sole expense without any right of partial reimbursement from Horizon COA. Likewise, if damage to the easement area within the Horizon Subdivision, beyond ordinary wear and tear, is directly attributable to Horizon COA permitted users, then Horizon COA shall pay for the repairs to the damaged area at its sole expense without any right of partial reimbursement from Horizon HOA.
6. **Restriction on Use.** Neither Horizon COA nor Horizon HOA, nor any Horizon COA or Horizon HOA permitted users shall place any obstruction to or upon the easement area whatsoever, except as is necessary in connection with the Parties' maintenance, repair, and replacement obligations. Neither Horizon COA nor Horizon HOA shall erect or place any building or other improvement upon or over the easement area, except as authorized under each Parties' governing documents. Each Party and its permitted users shall be bound by any posted or published rules governing the easement areas.
7. **Condemnation.** In the event Horizon COA or Horizon HOA property or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the obligations hereunder of the Party owning such property shall be abated to the extent of the taking. Proceeds from any taking of Horizon COA or Horizon HOA property shall belong exclusively to the respective Party over or owning such property.
8. **Non-Use.** No obligation arising from or out of this Agreement or any right granted under this Agreement, shall lapse because of non-use.
9. **Easements Run with the Land.** The Horizon COA Easement and Horizon HOA Easement shall run with the land as to all property benefitted and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit Horizon COA and Horizon HOA and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.
10. **Conformance with Governmental Requirements.** Both Parties shall cause all their respective uses of the easement area to be in conformance with all applicable federal, state, county, and municipal laws, ordinances, regulations, and requirements.
11. **Recording.** This Agreement shall be recorded in the official records of Salt Lake County, Utah.

12. **Waiver.** Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

13. **Attorneys' Fees.** If a suit, action, or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing party shall be entitled to recover its attorneys' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

14. **Remedies.** In the event that either Party fails to perform any obligation under this Agreement, the other Party shall be entitled to require specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the Party breaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not mutually exclusive and may be maintained independently of each other.

15. **Amendment and Termination.** This Agreement may be amended and/or terminated only by a written agreement signed by representatives of both Parties, their successors, or assigns. Such signers must be authorized in accordance with their respective governing documents, and in no event shall any amendment hereto be accomplished without a two-thirds (2/3) majority vote by the owners of both Horizon COA and Horizon HOA. Said amendment and/or notice of termination shall be recorded in the official records of Salt Lake County, Utah.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Horizon Heights Condominium Owners Association, Inc.

By: Stu Malla
Its: Director

Horizon Heights Homeowners Association, Inc.

By: [Signature]
Its: Director