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**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

MOUNTAIN HEIGHTS AT ROSECREST
A Planned Unit Development
Herriman, Utah

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made this 9th day of September, 2014, by Wasatch Land Company, Inc., a Utah corporation, in its capacity as the owner and developer of MOUNTAIN HEIGHTS AT ROSECREST, an expandable planned unit development in Herriman, Utah. Capitalized terms used in this Declaration that are not otherwise defined herein will have the meanings contained in Article II below.

**ARTICLE I
PURPOSE AND EFFECTUATION**

Section 1.1 **Purpose.** The purpose of this instrument is to provide for the preservation of the values of Lots and Common Areas within MOUNTAIN HEIGHTS AT ROSECREST, an expandable planned unit development in Herriman, Utah (the "Development"), and for the maintenance of any private roadways, sidewalks, open spaces, and all other Common Areas therein, if any. The Development may include one or more Subsidiary Developments with benefits, covenants, conditions, and restrictions applicable thereto as contained in the Declaration.

Section 1.2 **Effectiveness.** From and after the effective date hereof: (a) each part of the Development and each Lot lying within the boundaries of the Development shall constitute constituent parts of a single master planned unit development, with certain designated Lots within the Development; (b) the Development shall consist of the Lots and of the Common Areas which are described and depicted on the initial Plats, together with such additional Lots and Common Areas as may come into existence pursuant to the provisions hereof relating to any annexation or expansion of the Development; (c) the Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) the initial Plat of the Development shall consist of the instrument which is identified as MOUNTAIN HEIGHTS AT ROSECREST, recorded concurrently with this Declaration in the Public Records, as the same may be thereafter amended, and any subsequent plats which may be filed for record pursuant to the provisions hereof relating to any annexation or expansion of the Development.

ARTICLE II DEFINITIONS

When used throughout this Declaration each of the following terms shall have the meaning indicated:

Section 2.1 “**Applicable Municipality**” shall mean initially the City of Herriman, Utah, or such other governmental body in which the Property is located and whose approval is required to be noted on a particular Plat.

Section 2.2 “**Articles**” shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed with the Division of Corporations and Commercial Code, State of Utah, as the same may be amended from time to time.

Section 2.3 “**Assessment**” shall mean the amount which is to be levied and assessed against each Owner and the Owner’s Lot (whether an Annual, Special or Specific Assessment, as described herein) and paid to the Association for Common Expenses and other expenses.

Section 2.4 “**Association**” shall mean the MOUNTAIN HEIGHTS At Rosecrest Property Owners’ Association, a Utah non-profit corporation, its successors and assigns, which shall own and manage the Common Areas. Each Owner shall hold an appurtenant membership interest in the Association, as set forth in the Bylaws.

Section 2.5 “**Board**” shall mean the Board of Directors of the Association.

Section 2.6 “**Bylaws**” shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto and incorporated herein by this reference as Exhibit B.

Section 2.7 “**Common Areas**” shall mean all portions of the Development, except the Lots and public streets, and shall include all property to be owned by the Association for the common use and enjoyment of the Owners (except that the Owners of Lots in certain Subsidiary Developments may be restricted or prevented from using certain Common Areas in this Declaration), such as any and all private undedicated roadways, driveways, parking, recreational amenities, open spaces, landscaping, structural common areas, and the like, together with all easements appurtenant thereto, whether or not reflected on a Plat.

Section 2.8 “**Common Expenses**” shall mean and refer to those sums expended by the Association in carrying out its duties and responsibilities of ownership, operation and management of the Common Areas.

Section 2.9 “**Contractor**” shall mean any contractor licensed in the State of Utah that furnished labor, materials, or equipment for the Initial Construction pursuant to a contract with the Declarant.

Section 2.10 “**DRC**” shall mean and refer to the Design Review Committee referred to in ARTICLE VII.

Section 2.11 “**Declarant**” shall mean Wasatch Land Company, Inc., a Utah corporation, its successors and assigns, if any, as developer of the Development. Declarant can mean more than one party in the event that the initial Declarant makes an assignment of a portion of its rights hereunder to another party. In the event of multiple Declarants, each such Declarant shall have the Class B voting rights assigned to such Declarant by another Declarant and the Class B voting rights to which such Declarant is entitled by virtue of subjecting to this Declaration the Property to which such Class B voting rights relate.

Section 2.12 “**Declaration**” shall mean this Declaration of Easements, Covenants, Conditions and Restrictions for MOUNTAIN HEIGHTS AT ROSECREST, a planned unit development in Herriman, Utah, as the same may be supplemented or amended from time to time.

Section 2.13 “**Design Professional**” shall mean any architect, engineer, or surveyor licensed in the State of Utah that performed professional services for the Initial Construction pursuant to a contract with the Declarant.

Section 2.14 “**Development**” shall mean the expandable planned unit development known as MOUNTAIN HEIGHTS AT ROSECREST in Herriman, Utah, as it exists at any given time, which development is a master development that may include Subsidiary Developments.

Section 2.15 “**Dwelling**” shall mean the detached single family residence constructed upon a Lot.

Section 2.16 “**Governing Documents**” means this Declaration, the Plat and the Rules and Regulations, as applicable.

Section 2.17 “**Improvements**” shall mean all structures and appurtenances thereto of all kinds and types, including but not limited to, Dwellings, roads, driveways, storm drains, water systems, sprinkler pipes, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, recreational equipment, poles, signs and lighting.

Section 2.18 “**Initial Construction**” shall mean the design and construction of the Improvements, including all services, labor, materials, and equipment furnished for the improvement thereof, that achieved Substantial Completion within six (6) years of date of the recording of this Declaration.

Section 2.19 “**Lot**” shall mean and refer to any of the separately numbered and individually described parcels of land within the Development, as designated on a Plat and intended for single family residential use or other use as described herein.

Section 2.20 “**Managing Agent**” shall mean any person or entity appointed or engaged as Managing Agent of the Development by the Association or the Board.

Section 2.21 “**Master Association**” shall mean the Rosecrest Communities Master Homeowners Association established pursuant to the Master Declaration.

Section 2.22 “**Master Declaration**” means that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements dated February 21, 2012 and recorded in the Public Records February 21, 2012 as Entry No. 11336225, in Book 9992, Pages 8551-8612.

Section 2.23 “**Member**” unless the context clearly requires otherwise, shall mean and refer to the Owner of a Lot, each of whom is obligated, by virtue of his ownership to be a member of the Association.

Section 2.24 “**Mortgage**” shall mean any recorded first mortgage or first deed of trust encumbering a Lot.

Section 2.25 “**Mortgagee**” shall mean any mortgagee or beneficiary named in a Mortgage.

Section 2.26 “**Owner**” shall mean any person who is the owner of record (as reflected in the Public Records) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple Owners of a particular Lot shall be jointly and severally liable as to all responsibilities and obligations of an Owner.

Section 2.27 “**Plat**” shall mean and refer to a recorded subdivision, planned residential unit, or similar plat within the Development. The initial Plat is entitled M3 AT ROSECREST, PHASE 1 (which contains 17 Lots), prepared and certified by Chad Poulsen, of LEI Engineers (a duly registered Utah land surveyor holding License No. 501182), executed and acknowledged by Declarant, accepted by the City of Herriman, and recorded in the Public Records August 19, 2014, as Entry No. 11899427, Book 2014P, Page 212.

Section 2.28 “**Property**” shall mean all land covered by this Declaration, including Common Areas and Lots, and other land annexed to the Development as provided in this Declaration. The initial Property shall consist of the land described in Exhibit A attached hereto and by this reference made a part hereof.

Section 2.29 “**Public Records**” shall mean the Office of the Salt Lake County Recorder in Salt Lake City, Utah.

Section 2.30 “**Rules and Regulations**” shall mean and refer to those Rules and Regulations authorized, adopted, and promulgated to the Owners from time to time by the Board pursuant to the provisions of Section 12.3.

Section 2.31 “**Subsidiary Development**” shall mean a subdivision, planned unit development, or similar development that is a part of the Development with Lots of a distinguishable type or style.

Section 2.32 “**Substantial Completion**” shall mean the stage in the progress of the Initial Construction when the Initial Construction or designated portion thereof is sufficiently complete so that it can be put to its intended use.

Section 2.33 “**Supplemental Declaration**” shall mean and refer to an instrument which supplements the Declaration and which is recorded in the Public Records concurrently with a Plat for a subsequent phase of the Development pursuant to the annexation provisions of ARTICLE III of this Declaration.

ARTICLE III PROPERTY DESCRIPTION AND ANNEXATION

Section 3.1 **Submission.** The Property which initially is and shall be held, transferred, sold, conveyed, and occupied, subject to the provisions of this Declaration, consists of the real property described on Exhibit A, attached hereto and by this reference made a part hereof.

Section 3.2 **Division into Lots.** The Development is hereby divided into the Lots described in the following subparagraphs, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to Assessments, maintenance, insurance, etc., unless otherwise set forth in this Declaration:

Seventeen (17) Lots, as set forth and described on the Plat entitled M3 AT ROSECREST, PHASE 1.

Section 3.3 **Master Declaration.** The Property is a part of the Rosecrest Communities Planned Unit Development and subject to the Master Declaration. In the event of any inconsistencies between this Declaration and the Master Declaration, the Master Declaration shall control. Capitalized terms set forth in the Declaration which are not otherwise defined in this Declaration shall have the meaning ascribed to such term in the Master Declaration.

Section 3.4 **Additional Land.** Additional real property (the “Additional Property”) may be made subject to the provisions of this Declaration in accordance with the procedures set out in this Section 3.4. Upon the recording of a Supplemental Declaration, the covenants, conditions and restrictions contained in this Declaration shall apply to such Additional Property in the same manner as to the Property originally subject to this Declaration and thereafter, the rights, privileges, duties and liabilities of all persons subject to this Declaration shall be the same with respect to the Additional Property as with respect to the Property originally covered by this Declaration.

A. **Contents of Supplemental Declaration.** The Supplemental Declaration shall be (i) signed by the holder of fee title to the Additional Property, (ii) consented to by the holder of any Mortgage which encumbers the Additional Property, (iii) recorded in the Public Records, and (iv) contain the following provisions:

(i) A reference to this Declaration, which reference shall state the date of Recordation hereof and the book and page numbers wherein this Declaration is Recorded;

(ii) A statement that the provisions of this Declaration shall apply to the Additional Property as set forth herein; and

A complete legal description of the Additional Property.

ARTICLE IV DUTIES AND OBLIGATIONS OF OWNERS

Section 4.1 **Maintenance and Repairs.** Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good condition and repair at all times. Each Owner shall be responsible to remove snow from their driveways, walkways, entryways and steps, porches, terraces, and decks.

Section 4.2 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments made pursuant to the provisions of this Declaration, and for the observance of the Rules and Regulations promulgated by the Association's Board from time to time. Owners in violation of the provisions of this Section 4.2 will not be deemed to be in good standing for Association voting purposes.

Section 4.3 **Transfer of Interests.** Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

ARTICLE V PROPERTY AND OTHER RIGHTS; CONVEYANCES

Section 5.1 **Easement Concerning Common Areas.** Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes; subject, however to the provisions of Section 5.4, below. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

Section 5.2 **Form of Conveyancing.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot ___ as identified in the official ROSECREST POD M-3, PLAT A, Herriman City, Salt Lake County, Utah [OR in another applicable Plat within the Development] recorded in the Office of Salt Lake County Recorder as Instrument No. _____, on _____, 2___, **SUBJECT TO** the Declaration of Easements, Covenants, Conditions and Restrictions of MOUNTAIN HEIGHTS AT ROSECREST, a Planned Unit Development, recorded in the Office of the Salt Lake County Recorder as Instrument No. _____ (as said Declaration may have heretofore been amended or supplemented), **TOGETHER WITH** a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and

Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

Section 5.3 **Transfer of Title to Common Areas.** As soon as possible following the recordation of this Declaration and the initial Plats, Declarant shall convey to the Association title to the various Common Areas described in such Plats, free and clear of all liens other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities. The same procedure shall be followed with respect to the Common Areas contained in subsequent Plats following their concurrent recordation with accompanying Supplemental Declarations in the Public Records.

Section 5.4 **Limitation on Easement.** Each Lot's appurtenant right and easement of use and enjoyment of the Common Areas shall be subject to the following:

A. The Owners of Lots in certain Subsidiary Developments may be restricted or prevented from using the appurtenant right and easement of use and enjoyment of certain Common Areas in accordance with the Supplemental Declaration under which the Lots are created. Assessments made to such Lots and the Owners thereof shall be adjusted accordingly;

B. The right of the Association as provided in Section 12.3 below, to govern by reasonable Rules and Regulations the use of the Common Areas so as to provide for the enjoyment thereof in a manner consistent with the collective rights of all of the Owners;

C. The right of the Applicable Municipality, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any private street or driveway, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

D. After the filing of a particular Plat, the right of the Association to dedicate or transfer any part of the Common Areas to any public agency or other authority (including, but not limited to, an adjacent homeowners association) for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) the Mortgagee of each and every Mortgage that encumbers any Lot and (ii) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain. Notwithstanding the foregoing, the assenting provisions of this Section 5.4(D) shall not apply to the Owners and Mortgagees relating to certain Lots if the Common Areas in question are Common Areas in which such Owners (and the corresponding Mortgagees) do not have a right of common use.

Section 5.5 **Utility Easements.** Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as

are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result.

ARTICLE VI USE RESTRICTIONS

Section 6.1 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots set forth in this Declaration.

Section 6.2 **Residential Use.** The Property is zoned for, and restricted to, single family residential use pursuant to applicable zoning ordinances of the Applicable Municipality. Each Lot and Owner are subject to the uses and restrictions imposed by such zoning, including, but not limited to occupancy and parking restrictions. No Lot shall be used, occupied, or altered in violation of such ordinances so as to create a nuisance or to interfere with the rights of any other Owner.

Section 6.3 **Prohibited Use and Nuisances.** The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 12.3 of this Declaration:

A. No lease of any Dwelling shall be for less than the whole thereof. All leases shall be in writing, with notice thereof given to the Managing Agent or to the Board. All leases shall be subject to the provisions of the Declaration whether or not stated therein.

B. No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Dwelling except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash laws, adopted by the Board pursuant to Section 12.3 of this Declaration.

C. Parking in any designated guest parking area within the Development shall be subject to the Rules and Regulations adopted by the Board pursuant to Section 12.3 of the Declaration. Parking on public streets within the Development is subject to the ordinances of the Applicable Municipality and will subject the owners of any recreational or other vehicles illegally parked to penalties as provided therein. Parking on private streets within the Development will not be allowed overnight and will not be done in such a way as to obstruct passage along the streets. Visitor parking may not exceed forty-eight (48) hours.

D. No outside television or radio aerial or antenna, satellite dish (greater than two feet in diameter) or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any Dwelling or Improvement except by written approval of the DRC pursuant to Rules and Regulations adopted by the Board pursuant to Section 12.3 of this Declaration. Notwithstanding anything contained herein, no satellite dish will be permitted on the front roof or elevation of any Dwelling or Improvement.

E. No Dwelling within the Development shall (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or

unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a swamp cooler.

F. Notwithstanding anything contained herein, no business vehicle in excess of one (1) ton shall be parked in front of Lots or Dwellings overnight nor shall any vehicle be repaired, disassembled or reassembled on any Lot, private street, Common Area, or guest parking in the Development.

G. Garages are to be used for the parking of automobiles and not for general storage of miscellaneous items. Any vehicles may be parked on the garage apron as long as the vehicle does not extend into the sidewalk.

H. Except for trash collection days, trash cans are not to be left outside within view of the private or public streets. Empty trash cans should be returned to an inside or screened area as soon as possible, but no longer than twenty-four (24) hours after trash pick-up.

I. Dwelling interior windows shall be covered, within thirty (30) days of occupancy with permanent window coverings (as seen from exterior streets or Common Areas).

J. Patios and balconies shall not be used as a storage area nor for the hanging and drying of laundry or for decorative items visible from adjoining Lots or Common Areas.

K. The Development does not contain, nor will the Association provide, any parking area for the storage of recreational Vehicles ("RVs") of any kind, including, but not limited to, motor homes, campers, trailers, ATVs, motorcycles, snowmobiles, wave runners, etc., and no such RVs shall be parked or stored on any public or private street, Common Areas, or on any Lot driveway.

ARTICLE VII DESIGN REVIEW

Section 7.1 **Design Review Committee.** The Board of Directors of the Association shall appoint a three-member Design Review Committee (the "DRC"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The DRC need not be composed of Owners. If the DRC is not appointed, the Board itself shall perform the duties required of the DRC.

Section 7.2 **Submission to DRC.** Except for original construction by Declarant, no Dwelling or other Improvement shall be constructed or maintained, and no alteration, repainting, or refurbishing of any Dwelling or other Improvement shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the DRC.

Section 7.3 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the DRC shall use its best judgment to ensure that all improvements, construction, landscaping, and alterations on Lots within the Development conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be

constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefor meet such criteria, the DRC must approve the same.

Section 7.4 **Approval Procedure.** Except as provided in Section 7.3, any plans and specifications submitted to the DRC shall be approved or disapproved by it in writing within forty (40) days after submission. In the event the DRC fails to take any action within such specified period, it shall be deemed to have approved the material submitted except in those respects to which such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

Section 7.5 **Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the DRC shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity, provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

Section 7.6 **Liability for Damages.** Neither the DRC nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the DRC with respect to any request made pursuant to this ARTICLE VII.

Section 7.7 **Declarant's Obligation.** Declarant hereby covenants in favor of each Owner: (a) that all Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another in Declarant's commercially reasonable discretion (except that architectural compatibility is not required as between Subsidiary Developments); and (b) that on the date on which this Declaration is filed for record in the Public Records all Lots and Common Areas of the Development will be located approximately in the locations shown on the applicable Plat.

Section 7.8 **Reimbursement.** The members of the DRC shall receive no compensation for services rendered, other than reimbursement approved by the Association's Board for reasonable expenses incurred in the performance of their duties hereunder.

Section 7.9 **No Waiver.** The approval of the DRC to any proposal or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the DRC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposal, plans and specifications, drawings or any matter whatever subsequently or additionally submitted for approval or consent.

**ARTICLE VIII
INSURANCE**

Section 8.1 **Hazard and Liability Insurance.** To the extent reasonably available, the Board shall procure and maintain from a company or companies holding a financial rating of Class A or better from Best’s Key Rating Guide, the following policies of insurance:

A. subject to the provisions of Section 57-8a-405 of the Utah Code, a blanket policy of property insurance or guaranteed replacement cost insurance on the physical structure of all Common Areas in the Property, insuring against all risks of direct physical loss commonly insured against, including fire and extended perils.

B. subject to the provisions of Section 57-8a-406 of the Utah Code, a liability policy of insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in Salt Lake County, Utah, nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for the property of others, and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The policy shall contain a “Severability of Interest” endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners, and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least 30 days’ prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

Section 8.2 **Additional Insurance; Further General Requirements.** The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

A. a waiver of the insurer’s right of subrogation against the Association, the Owners, and their respective directors, officers, agents, employees, invitees and tenants;

B. that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;

C. that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

D. that any “no other insurance” clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

Section 8.3 **Fidelity Coverage.** The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

- A. name the Association as an obligee;
- B. be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;
- C. contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of “employee” or similar expression; and
- D. provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the insured.

Section 8.4 **Review of Insurance.** The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

Section 8.5 **Other Insurance Provisions.** All insurance required pursuant to this ARTICLE VIII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this ARTICLE VIII to the contrary, any insurance required to be obtained by the Association pursuant to Sections 8.1, 8.2, or 8.3 of this ARTICLE VIII shall be required only to the extent that the Development includes a material amount of Common Areas, such coverage is reasonably obtainable at reasonable rates, and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas or risks being insured.

ARTICLE IX RIGHTS OF MORTGAGEES

Section 9.1 **Title and Mortgage Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title, or of any other interest in a Lot, or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render

invalid the lien of, or other rights under, any Mortgage. Unless and until it enters into possession, or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee if such Mortgagee's failure to do so is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee named in a Mortgage which is in effect at the time of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

Section 9.2 **Preservation of Common Areas.** The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) at least two-thirds (2/3) of the outstanding votes in the Association, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

Section 9.3 **Notice of Matters Affecting Security.** The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

A. there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration, or the Articles of the Association, which is not cured within sixty (60) days after default occurs; or

B. damage to the Common Areas from any occurrence exceeds \$10,000;
or

C. there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

Section 9.4 **Notice of Meetings.** The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

Section 9.5 **Right to Examine Association Records.** Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association, and receive financial statements, as the Owner of the Lot securing the Mortgage.

Section 9.6 **Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may, or have, become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 9.7 **No Priority Accorded.** No provision of this Declaration gives, or may give, a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

Section 9.8 **Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this ARTICLE IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ARTICLE X MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 10.1 **Membership.** Every Owner, upon acquiring title to a Lot, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association, with respect to such Lot, shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from, the ownership of a Lot.

Section 10.2 **Voting Rights.** The Association shall initially have two classes of voting memberships, votes of both classes being of equal value as to all matters except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights:

A. **Class A.** Each Owner, including Declarant, shall be a Class A member entitled to one vote for each Lot in which such member holds the interest required for Association membership.

B. **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to one vote for each Class A voting right outstanding at the time (including any to which Declarant is entitled). Class B voting rights shall terminate and become a nullity on the earlier of:

- (i) the closing by Declarant of the last Lot to which it holds title; or
- (ii) upon surrender of the Class B voting rights by Declarant in writing to the Association.

Upon the termination of the Class B voting rights, all members, including Declarant, shall have equal voting rights as to all matters, except as otherwise provided herein.

ARTICLE XI ASSESSMENTS

Section 11.1 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant with, and agree to

pay to, the Association the Assessments described in this ARTICLE XI together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners 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 in 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 unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorney's 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 therefor. Notwithstanding the foregoing or anything contained herein to the contrary, and to the greatest extent permitted by law, the Declarant's Assessments for Lots owned by Declarant shall be limited to five dollars (\$5.00) per month per Lot.

Section 11.2 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Areas. The use made by the Association of funds obtained from Assessments may include, but shall not be limited to, payment of the Common Expenses and any other expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration, the Articles, the Bylaws, or the Rules and Regulations.

Section 11.3 **Assessments under the Master Declaration.** As part of the Annual Assessment authorized pursuant to Section 11.4, the Association shall collect a fee in the initial amount of One Hundred Fifty-Five Dollars (\$155.00) which shall be paid to the Master Association under the Master Declaration ("Master Declaration Annual Fee"). Nothing herein shall limit the amounts the Master Association may assess pursuant to the Master Declaration and each Owner shall be required to pay, as part of the Annual Assessment, the Master Declaration Fee as then constituted.

Section 11.4 **Annual Assessments.** Annual Assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of Common Expenses.

Section 11.5 **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year, the Board shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within ninety (90) days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

Section 11.6 **Notice and Payment of Annual Assessments.** Except with respect to the fiscal period ending December 31, 2014, the Association shall notify each Owner as to the amount of the Annual Assessment against his Lot on or before December 15 of the year preceding the year for which such Annual Assessment is made. Annual Assessment shall be payable in such installments and at such times as the Association, in the sole discretion of its Board, may determine; provided that the Annual Assessment for the first fiscal period shall be based upon such portion of such fiscal period as follows the recordation of the Declaration in the Public Records. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment, or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such Annual Assessment shall have been given to the Owner in the manner provided in Section 14.1.

Section 11.7 **Initial and Transfer Fees.** Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Lot, whether as a first time or subsequent Owner, a sum equal to Two Hundred Fifty Dollars (\$250.00) ("Transfer Fee"), which sum shall be in addition to any proration of the Annual Assessment which may be due for the current fiscal year in which a new Owner purchases his Lot. The Transfer Fee shall be retained by the Board to be applied to the general fund to be utilized as necessary for payment of Common Expenses.

Section 11.8 **Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall not exceed the amount per Lot that is determined by the Board pursuant to Section 11.5. From and after January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased by the Board each calendar year thereafter (non-cumulatively) by not more than fifteen percent (15%) above the maximum Annual Assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

Section 11.9 **Special Assessments.** The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to, or replacement of, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Lots in the same manner as Annual Assessments. Such Special Assessments must be assented to by at least sixty percent (60%) of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date. Notwithstanding anything contained herein and to the greatest extent permitted by law, the Association may, one (1) time per year only and without the approval of the Owners, levy a Special Assessment wherein each Owner is assessed \$500.00 or less.

Section 11.10 **Uniform and Different Rates of Assessment; Declarant Exemption.** All Annual and Special Assessments authorized by Sections 11.4 and 11.9, respectively, shall be fixed at a uniform rate for all Lots, except that in the future there may be Subsidiary

Developments added to the Development whose Owners shall be required to bear a greater or lesser Assessment burden depending upon the benefits afforded to them through the Declaration and the Association. Notwithstanding the foregoing, no Annual or Special Assessments shall be due and payable until a Lot has been both fully improved with a completed Dwelling and occupancy taken for the first time by an Owner or tenant. Accordingly, no Assessments will be owed by the Declarant with respect to Lots that are not yet fully improved. During the period of time that Declarant holds the Class B voting rights in the Association, if assessed fees collected by the Association fail to meet the Association expenses adequately, then Declarant shall pay any shortfall.

Section 11.11 **Specific Assessment.** In addition to the Annual Assessment and any Special Assessment authorized pursuant to Sections 11.4 and 11.9, the Board may levy at any time Specific Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement 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; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration; and (d) on any Lot and Owner for a pro rata share of real estate taxes assessed to Development Common Area separately, i.e., not assessed by the Salt Lake County Assessor pro rata to each Owner and such Owner's Lot in a single, combined assessment. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit, or cause of damage, or maintenance, or repair work, or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots benefitted.

Section 11.12 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payment of 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 rely thereon in good faith.

Section 11.13 **Effect of Nonpayment; Remedies.** Any Assessment (whether Annual, Special or Specific) not received within ten (10) days of the date on which it or any installment thereof becomes due shall be subject to a late charge not to exceed five percent (5%) thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot. If any Assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefor, or may foreclose (judicially or non-judicially) its lien against the Lot pursuant to provisions of the Utah Code applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. Any judgment

obtained by the Association in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs, and every other expense incurred by the Association in enforcing its rights. Failure of the Association to promptly enforce any remedy granted pursuant to this Section 11.13 shall not be deemed a waiver of any such rights.

Section 11.14 **Subordination of Lien to Mortgages.** The lien of the Assessments provided herein shall be subordinate to the lien of any Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or a purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such Mortgage, or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such Assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage, or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a Mortgage shall relieve any Lot from the lien of any Assessment installment, or portion thereof, thereafter becoming due.

Section 11.15 **No Abatement.** No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance, or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any Common Areas of the Development; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

Section 11.16 **Reserve Account.** The Association shall establish a reserve account to fund long-term maintenance and replacement items. The Board shall use reasonable efforts, subject to the Owners' rights under the Community Association Act, to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

ARTICLE XII DUTIES AND POWERS OF ASSOCIATION AND DECLARANT

Section 12.1 **Duties of the Association.** The Association, through its Board, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Without limiting any other duties which may be imposed upon the Association by its Articles, Bylaws, or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Development:

- A. Accept all Owners as members of the Association.
- B. Accept title to all Common Areas conveyed to it, whether by Declarant or by others, but may refuse if the same is not free and clear of liens and encumbrances.
- C. Maintain, repair and replace any structural Common Areas.
- D. In connection with its duties to maintain and repair Common Areas, to provide (i) removal of snow from sidewalks (not including walkways) and any roads which have not been dedicated to the Applicable Municipality and the areas for which an easement is granted pursuant to Section 5.1. The Association shall also be responsible for maintenance and repair as needed of terrace and subsurface drains ("V" ditches and the like), if any which traverse any Common Areas within the Development.
- E. To the extent not assessed to or paid by the Owners directly, pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments; and further, to make a pro rata Specific Assessment to all Lots and the Owners thereof for the total amount so levied and paid by the Association.
- F. Obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

Section 12.2 **Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- A. At any time and from time to time, and 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 if for any reason the Owner fails to maintain and repair such Lot or improvement as required by the provision of the Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by mandatory injunction, or otherwise, all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.
- B. In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots to the extent necessitated by the failure to do so of the Owners of such Lots, or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for:

(i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board, and the Owners;

(iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys, certified public accountants, and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any portion of the Development; and

(vi) Such materials, supplies, equipment, services and labor as the Board may deem necessary.

Section 12.3 **Association Rules and Regulations.** The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Areas; (b) the collection and disposal of refuse; (c) uses and nuisances pertaining to the Development; and (d) all other matters concerning the use and enjoyment of the Common Areas and the conduct of Owners and their invitees within the Development.

Section 12.4 **Managing Agent.** The Association may engage (but is not required to do so) a responsible corporation, partnership, firm, person or other entity, as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days' written notice thereof. Any Managing Agent shall be an independent contractor.

Section 12.5 **Limitation of Liability.** No member of the Board, acting in good faith, shall be personally liable to any Owner, guest, tenant or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

Section 12.6 **Administrative Control of Association by Declarant.** Notwithstanding anything contained herein to the contrary, the Declarant shall assume full administrative control of the Association through an appointed interim Board, which Board shall serve until the occurrence of a meeting held for the purpose of having Declarant turn over to the Owners control of the Association and Board (the "**Turnover Meeting**"). The Turnover Meeting shall be held at the Declarant's option and sole discretion, but shall not be held later than three (3) years from the date the last Lot to be developed upon the Property is sold. Declarant may

elect to relinquish control of the Association at an earlier time by written notice to the Owners, and the Turnover Meeting shall be held within ninety (90) days of such notice.

Section 12.7 **Other Rights of Declarant.** In addition to any other rights under the Declaration, Bylaws, Articles of Incorporation and rules and regulations (the “Governing Documents”), as long as Declarant owns at least one (1) Lot within the Property, Declarant:

A. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

B. May maintain a reasonable number of “For Sale” signs, the size of which may be determined by Declarant, at reasonable locations on the Property, including without limitation, the Common Area.

C. Unless specifically and expressly bound by a provision of the Governing Documents, the Declarant shall be exempt from the provisions of the Governing Documents.

Section 12.8 **Working Capital Fund.** A working capital fund shall be established by the Declarant in the amount of Five Thousand Dollars (\$5,000.00). Each Lot’s share of the working capital fund shall be collected and transferred to the Board at the time of closing of the sale of each Lot by Declarant. The purpose of the working capital fund is to insure that the Board will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Development. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

Section 12.9 **Initial Development and Construction.**

A. In all claims and causes of action by the Association, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall attach as an exhibit to its first Complaint filed with a court of competent jurisdiction an affidavit of a third-party licensed in the State of Utah in the same profession, area of practice, or construction trade as each defendant and who is competent to testify. Each affidavit shall set forth specifically a professional opinion as to each act, error, or omission alleged in the Complaint against the respective defendant that caused the Association’s alleged damages and the factual basis for each such opinion. The Association’s failure to file the affidavit in accordance with this Section 12.9 shall result in dismissal with prejudice of any claim described in this Section 12.9 against the particular defendant for which such affidavit is required and an award of reasonable attorney fees and expenses incurred by the particular defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the allegations of the Complaint.

B. The Association shall commence all claims and causes of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against

Declarant, a Design Professional, Contractor, any design consultants of a Design Professional, or any subcontractors of a Contractor not more than four (4) years after the respective date of Substantial Completion of each portion of the Initial Construction for which the claim or cause of action is made. The Association waives all claims and causes of action not commenced in accordance with this section.

C. During the four (4) years following the date of Substantial Completion of the Initial Construction, the Association shall schedule an annual walkthrough of all common areas with the Association's maintenance personnel and Declarant, all Design Professionals and Contractors for the purpose of identifying items potentially in need of repair or maintenance within the next year. The Association shall give at least thirty (30) days prior written notice of the date and time of the walkthrough to Declarant, all Design Professionals and Contractors, which time and date shall be during normal business hours. The Association shall conduct each walkthrough regardless of any lack of participation by Declarant, any Design Professionals, or Contractors.

D. As an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall give written notice by United States Postal Service certified mail, return receipt requested, of an alleged defect in the Initial Construction to Declarant, all Design Professionals, and Contractors within thirty (30) days of first discovering the alleged defect, and Declarant and each Design Professional, and Contractor shall then have ninety (90) days from the mailing date of the last written notice to any of them to cure such alleged defect. The Association's failure to provide notice shall result in dismissal with prejudice of any claim and an award of reasonable attorney fees and expenses incurred by any defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the alleged defect.

E. To the extent damages are covered by insurance, the Association waives all rights against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor for damages, except such rights as the Association may have to the proceeds of such insurance.

F. The Association waives any claim or cause of action for consequential damages arising out of or relating to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor.

G. A vote in favor of at least 75% of the voting members of the Association is an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor.

ARTICLE XIII SECURITY

Section 13.1 **Operation by the Association.** Each Owner and their respective guests and invitees shall be responsible for their own personal safety and the security of their property. The Association may, but shall not be obligated to, maintain or support certain activities on the Property designed to enhance the level of safety or security which each person provides for himself and his property.

Section 13.2 **Association Easement.** The Association is hereby granted the right and easement to enter any Lot (but not the residence improved thereon unless such authority is specifically given in writing) in answer to an alarm or when circumstances reasonably cause security personnel, if any, to believe that a present security risk justifies such entrance.

ARTICLE XIV GENERAL PROVISIONS

Section 14.1 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or Board member of the Association or to the Association's Registered Agent as reflected in the Association's records at the Office of the Division of Corporations and Commercial Code of the State of Utah. Any notice required or permitted to be given to the DRC may be given by delivering or mailing the same to the Managing Agent of the Association or any member of the DRC.

Section 14.2 **Severability.** All of said conditions, covenants and restrictions contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or restrictions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or restriction, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 14.3 **Amendment.** This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association, or by the Association's President and Secretary, who shall certify that the required sixty percent (60%) vote was obtained in a Member meeting, or by consent, and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant. Notwithstanding anything

contained in this Declaration, so long as the Class B membership exists, the written consent of the Declarant is required to amend this Declaration. Furthermore, as long as Declarant owns any Lot, the Declarant shall have the unilateral right to amend the Declaration.

Section 14.4 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association, or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.4:

- A. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;
- B. The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;
- C. Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and
- D. Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

Section 14.5 **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Development, may be assigned without the consent of any Owners.

Section 14.6 **Interpretation.** The captions pertaining to the Article and Section numbers of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

Section 14.7 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

Section 14.8 **Covenants to Run with Land.** This Declaration and all the 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 Declarant, all parties who hereafter

acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

Section 14.9 **Enforcement of Restrictions.** The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of, this Declaration. The prevailing party in any such action shall be entitled to collect court costs and reasonable attorney's fees.

Section 14.10 **Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the City of Herriman authorizing such termination, an instrument of termination which is executed by eighty percent (80%) of the total outstanding votes of the Association, plus the Mortgagee of each and every Lot.

Section 14.11 **Effective Date.** This Declaration, and any amendment hereto, shall take effect upon its being filed for record in the Public Records.

[signature and acknowledgement to follow]

EXECUTED by Declarant on the day and year first above written.

WASATCH LAND COMPANY, INC.
a Utah corporation

By: _____
Name: _____
Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The within instrument was acknowledged before me this ___ day of _____, 2014,
by _____ in the capacity indicated.

NOTARY PUBLIC

EXHIBIT A

Legal Description of the Property

The following real property located in Salt Lake County, State of Utah:

Phase 1 – Mountain Heights at Rosecrest

A portion of the Northeast Quarter of Section 12, Township 4 South, Range 2 West, Salt Lake Base & Meridian, located in Herriman, Utah, more particularly described as follows:

Beginning at the Northwest Corner Phase 1, Plat "V", Rosecrest subdivision according to the official plat thereof on file in the office of the Salt Lake County Recorder, said point being located N89°50'17"W along the Section Line 275.57 feet and South 1548.77 feet from the Northeast Corner of Section 12, Township 4 South, Range 2 West, Salt Lake Base & Meridian; thence along the westerly line of said subdivision the following five (5) courses: southeasterly along the arc of a 25.00 foot radius non-tangent curve to the right (radius bears: S27°38'57"W) 40.45 feet through a central angle of 92°42'10" (chord: S15°59'58"E 36.18 feet); thence S30°21'07"W 32.88 feet; thence along the arc of a 630.00 foot radius curve to the left 581.98 feet through a central angle of 52°55'44" (chord: S3°53'15"W 561.51 feet); thence S22°34'37"E 218.87 feet; thence along the arc of a 970.00 foot radius curve to the right 66.01 feet through a central angle of 3°53'58" (chord: S20°37'38"E 66.00 feet) to the north line of the Herriman Fire Station subdivision according to the official plat thereof on file in the office of the Salt Lake County Recorder; thence N85°32'20"W along the north line of said subdivision 142.36 feet; thence N22°52'06"W 54.23 feet; thence N67°07'54"E 45.00 feet; thence N22°52'06"W 133.93 feet; thence N67°07'54"E 4.25 feet; thence N21°20'22"W 46.85 feet; thence N18°17'11"W 65.58 feet; thence N13°52'15"W 54.59 feet; thence N9°27'18"W 54.59 feet; thence N5°02'22"W 54.59 feet; thence N0°37'25"W 54.59 feet; thence N3°47'31"E 54.59 feet; thence N8°12'28"E 54.59 feet; thence N12°37'24"E 54.59 feet; thence N17°02'21"E 54.59 feet; thence N21°27'17"E 82.25 feet; thence N24°48'00"E 109.46 feet to the south line of Plat "I", Rosecrest subdivision according to the official plat thereof on file in the office of the Salt Lake County Recorder; thence along said southerly line along the arc of a 1255.00 foot radius non-tangent curve to the right (radius bears: S24°45'02"W) 63.35 feet through a central angle of 2°53'33" (chord: S63°48'12"E 63.35 feet) to the point of beginning.

Contains: ±1.81 Acres

Also described as Lots 1-17, M3 At Rosecrest Phase 1, recorded in the Salt Lake County Recorder's Office on August 19, 2014 as Entry No. 11899427, Book 2014P, Page 212.

32-12277-003, 32-12-277-004 and 32-12-277-005

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on a Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (including Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the improvements described in this Declaration or in a Plat, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is recorded in the Public Records.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on, or revealed by, a Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **AND TO EACH OF THE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

EXHIBIT B

[Bylaws]

MOUNTAIN HEIGHTS AT ROSECREST
A Planned Unit Development
Herriman, Utah

ARTICLE I PLAN OF LOT OWNERSHIP AND INCORPORATION

1. **Submission.** These are the Bylaws referred to in the foregoing DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MOUNTAIN HEIGHTS AT ROSECREST, a Planned Unit Development (the "Declaration"), which project is located in Salt Lake County, State of Utah. These Bylaws shall govern the administration of the Project and the Association. Except as otherwise provided herein or as otherwise required by the context, all terms defined in the Declaration shall have such defined meanings when used in these Bylaws.
2. **Organizational Form.** If the Association is incorporated under the laws of the State of Utah, then these Bylaws shall also function and operate as the Bylaws of the corporation.
3. **Office and Registered Agent.** The initial Registered Agent shall be Brian Haskell having an address of 3688 East Campus, Eagle Mountain, Utah 84005. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

ARTICLE II ASSOCIATION

1. **Composition.** The association of Owners is a mandatory association consisting of all Owners.
2. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.
3. **Notice of Meeting.** It shall be the duty of the Secretary to hand deliver or mail to each Owner at his last known address, by regular U.S. mail postage prepaid, a notice of each Annual Meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of the Annual Meeting. The notice shall state the purpose, day, date, time and place of the Annual Meeting. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. Qualified Voters. An Owner shall be deemed to be in “good standing” and “entitled to vote” at any meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Declaration, Bylaws, Rules and Regulations, and Articles of Incorporation (the “Project Documents”), and shall have fully paid his share of the Common Expenses, and/or the Assessments.

5. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly execute by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically if: (a) the Owner attends the meeting in person, (b) the proxy is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. Fifty-one percent (51%) of the members of the Association shall constitute a quorum for the adoption of decisions. If however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special committees, if any;
- (f) election of inspectors of election, if applicable;
- (g) election of Board Members, if applicable;
- (h) unfinished business; and
- (i) new business.

8. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring at the meeting.

9. Open Meeting Policy. All Board meetings shall be open to all voting Members, but attendees other than members of the Board may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

10. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Management Committee or any action that be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Management Committee. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas with three (3) days after the written consents of all of the members of the Management Committee have been obtained.

11. Executive Session. The Board, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session. Notwithstanding the foregoing, and to the greatest extent permitted by law, the Board shall not be entitled to commence litigation against the Declaration without the prior express written and affirmative consent of at least seventy-five percent (75%) of the Owners.

ARTICLE III BOARD OF DIRECTORS

1. Powers and Duties. The affairs and business of the Association shall be managed by the Board consisting of three (3) Lot Owners. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Development. The Board shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Board may delegate its authority to the Managing Agent. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for at least the following:

(a) Preparation of the Annual Budget, as provided in Section 11.4 of the Declaration, in which there shall be established each Owner's share of the Common Expenses;

(b) Establishing the Assessment of each Owner, the means and methods of collecting Assessments from the Owners, and the method of payment. Unless otherwise determined by the Committee, each Owner's Common Area Expenses may be payable in equal monthly installments, due and payable in advance on the first day of each month of each year. However, in the event an Owner fails to make an installment payment in a timely manner or the Association deems itself insecure, then the entire annual Assessment may be accelerated by the Committee and shall thereafter be automatically due and payable without further notice. The Committee may subsequently elect to de-accelerate the obligation in whole or in part;

- (c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas;
- (d) Designating, hiring, and dismissing the personnel necessary to operate and maintain the Development;
- (e) Collecting and depositing the Assessments;
- (f) Making, amending, and enforcing the Rules and Regulations;
- (g) Opening and closing of bank accounts for and in behalf of the Association, and designating the signatories required therefor;
- (h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of the Bylaws, after damage or destruction by fire or other casualty;
- (i) Enforcing by legal means the Project Documents;
- (j) Purchasing and maintaining insurance;
- (k) Paying the cost of all services rendered to the Development and not billed directly to Owners;
- (l) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Development, specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. Said documents, books, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon a resolution approved by a majority of the Members of the Association, shall be formally audited by an outside auditor employed by the Board who shall not be a resident of the Development or an Owner therein. The cost of such audit shall be a Common Expense. Copies of books and records, financial statements, reports, compilations, and audits shall be supplied to any first mortgagee of any Lot in the Development who requests the same in writing from the Secretary. A mortgage holder, at its expense, may have an audited financial statement prepared at any time;
- (m) Providing, where necessary, all water, electricity, and other necessary utility services for the Common Areas;
- (n) Paying any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the Property, or any part thereof, which may in the opinion of the Board constitute a lien against the Property or against the Common

Areas. When one or more Owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Owners and shall, until paid by said Owners, constitute a lien on the interest of said Owners in the Property which lien may be perfected and foreclosed in the manner provided in the Declaration;

(o) Giving notice of and conducting hearings on alleged violations of the Project Documents, sanction, cite, or fine Owners, occupants and residents;

(p) Making emergency repairs;

(q) At the sole expense and risk of the Owner, impounding, immobilizing, towing or otherwise removing any motor vehicle parked, stored or standing in violation of the parking Rules and Regulations or in an unauthorized area;

(r) Evicting non-Owner residents in material violation of the Project Documents;

(s) Assigning or leasing overflow parking spaces to residents;

(t) Establishing and collecting user fees; and

(u) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or Bylaws, or to do anything required by a proper resolution of the Board or the Association;

2. Composition of the Board. The Board shall be composed of three (3) members.

3. Election and Term of Office of the Committee. The term of office of membership on the Board shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

4. First Meeting. The first meeting of the members of the Board shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.

5. Regular Meetings. Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than yearly.

6. Special Meetings. Special meetings of the Board may be called by the President, Vice President or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

8. Board's Quorum. At all meetings of the Board, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. After the Turnover Meeting, vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Board Member. After the Turnover Meeting, a member of the Board may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board member who misses twenty-five percent (25%) or more of the Board Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Board.

11. Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board meetings, recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

12. Report of Board. The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

ARTICLE IV OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Board at the first meeting of each Board immediately following the annual meeting of the Association and shall hold office at the pleasure of the Board. Any vacancy in an office shall be filled by the Board at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board shall be an ex officio member of all committees; he shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. He shall have all of the general powers and duties which are usually vested and/or incident to the use of president of a corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice President is able to act, the Committee shall appoint a member of the Board to do so on an interim basis.

6. Secretary. The Secretary shall attend all meetings of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for the Board when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board and shall perform such other duties as may be prescribed by the Board. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities held by the Association, and shall keep full and accurate records of receipts and disbursements, shall prepare

all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Development.

ARTICLE V FISCAL YEAR

Except as otherwise provided in the Declaration, the fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

ARTICLE VI INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured. Common funds shall be deposited into savings or money market accounts, or to purchase certificates of deposit. Other higher-risk investments, with a potential higher-rate-of-return, such as stocks, bonds, mutual funds and U.S. treasuries and the like, may only be used with the prior express written and affirmative consent of at least seventy-five percent (75%) of the Owners.

ARTICLE VII AMENDMENT TO BYLAWS

1. Amendments. These Bylaws may be modified or amended either (a) by the affirmative vote of a majority of the members of the Association, or (b) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

2. Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the County Recorder of Salt Lake County, State of Utah.

ARTICLE VIII NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these Bylaws (except as to notices of Association meetings which were previously addressed in Article II of these Bylaws) shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board or the

Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration.

ARTICLE IX COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These Bylaws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provision of the Declaration shall control.

2. Waiver. No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

3. Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

4. Interpretation. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine; and the term “shall” is mandatory while the term “may” is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

[signatures and acknowledgements to follow]

IN WITNESS WHEREOF, Wasatch Land Company, Inc., has executed this Declaration as of the date first above written.

WASATCH LAND COMPANY, INC.,
a Utah corporation

By: *Mark D. Lords*
Name: MARK D. LORDS
Its: SECRETARY

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The within instrument was acknowledged before me this 9 day of September, 2014, by Mark Lords in the capacity indicated.

Jamie Hills
NOTARY PUBLIC

