

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
AND BYLAWS  
FOR  
SUMMERLANE AT THE DISTRICT  
(A Planned Unit Development)**

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements and Bylaws for Summerlane at The District, a Planned Unit Development (the "Declaration"), is made and executed by Summerlane Development, Inc., a Utah corporation, whose principal address is 273 N. East Capitol Street, Salt Lake City, Utah 84103 (hereinafter referred to as the "Declarant").

**RECITALS**

A. The Declaration of Covenants, Conditions, and Restrictions for Summerlane at The District was recorded in the office of the County Recorder of Salt Lake County, Utah on January 24, 2008 as Entry No. 10329358 in Book 9561 at Pages 6442-6500 of the official records (the "Original Summerlane at The District Declaration").

B. Promenade at The District is a residential condominium development ("Promenade").

C. The Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Promenade at The District was recorded in the office of the County Recorder of Salt Lake County, Utah on October 9, 2008 as Entry No. 10537857 in Book 9649 at Pages 7975-8057 of the official records (the "Promenade Declaration").

D. Summerlane at The District is a residential Townhomes development ("Summerlane").

E. Summerlane will be granted a non-exclusive cross or reciprocal use easement and will share certain recreational amenities and facilities with adjoining projects, which shall include a swimming pool and clubhouse (collectively, "Recreational Amenities") administered by the Recreation Association, of which the Promenade Homeowners Association shall be a member.

F. The Declaration of Covenants, Conditions, and Restrictions for Promenade Townhomes at The District was recorded in the office of the County Recorder of Salt Lake County, Utah on March 18, 2011 as Entry No. 11152346 in Book 9912 at Pages 3610-3660 of the official records (the "Promenade Townhomes Declaration").

G. Promenade Townhomes at The District is a residential townhomes development.

H. Summerlane, Promenade and Promenade Townhomes are adjoining developments (the "Combined Properties").

I. The Combined Properties share the use of and cost of maintaining and operating a certain Recreation Amenity, including a swimming pool and clubhouse (collectively, "Recreation Amenity").

J. To govern the Recreation Amenity a Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The District Recreation Amenity was recorded in the office of the County Recorder of Salt Lake County on July 31, 2009 as Entry No. 10766469 in Book 9750 at Pages 8134-8149 of the official records (the "Recreation Declaration").

K. The land subject to the Recreation Declaration was deeded to the Recreation Association.

L. The Recreation Declaration controls the access to, ownership, and use of the Recreation Amenity.

M. The real property subject to the Declaration is located in Salt Lake County, Utah and described more particularly in Article II below (the "Property").

N. The Property is an area of unique natural beauty, featuring distinctive terrain;

O. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to re-create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

P. Declarant has constructed or is in the process of constructing upon the Property a residential Planned Unit Development which shall include certain Lots, Common Area, and other improvements. The construction will be completed in accordance with the plans contained in the Plat Map to be recorded concurrently herewith.

Q. Declarant has sold or intends to sell to various purchasers the fee title to the individual residential Lots contained in the Property, subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.

R. Declarant desires, by filing this Declaration to submit the Property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth herein.

S. The Project is known as "SUMMERLANE AT THE DISTRICT."

T. Declarant hereby declares that all of the Project shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Project. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Project and shall be binding upon all persons having or acquiring any right, title, or interest in the Project, or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Project.

U. Declarant has the right pursuant to Article III, Section 44 of the Original Summerlane at The District Declaration to amend and restate said Declaration.

### **COVENANTS, CONDITIONS, AND RESTRICTIONS**

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

#### **I. DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys' fees, fines, late fees, default interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

2. Additional Land shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference.

3. Articles of Incorporation shall mean and refer to the Articles of Incorporation of SUMMERLANE HOMEOWNERS ASSOCIATION on file or to be filed with the Utah Department of Commerce.

4. Assessment shall mean and refer to any amount imposed upon, assessed or charged a Lot Owner or Resident at the Project.

5. Association shall mean and refer to SUMMERLANE HOMEOWNERS ASSOCIATION, the Utah nonprofit corporation that is created by the filing of the Articles of Incorporation.

6. Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

7. Building shall mean and refer to any of the structures constructed in the Project which consist of more than one Dwelling Unit.

8. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

9. Business Use and Trade shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in full or part-time; b) such activity is intended to or does generate a profit; or c) a license is required therefor.

10. Bylaws shall mean and refer to the Bylaws of the Association.

11. Capital Improvement shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

12. Common Areas shall mean and refer to all real property in the Project owned by the Association including but not limited to the following items:

(a) The real property shown on the Plat Map which is not dedicated to the public or part of a Lot;

(b) All Common Areas specifically designated as such in the Plat Map;

(c) All Limited Common Areas designated as such in the Plat Map;

(d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Lot Owners, such as telephone, electricity, gas, water, cable television, and sewer, including the main gas lines and water lines running through the Buildings;

(e) The Project's outdoor grounds; landscaping; open spaces; pool; clubhouse; furnishing, supplies and equipment for the benefit of all Members; exterior lighting; common fencing; sidewalks and parking spaces; roadways not otherwise dedicated to the public; and walking trails (sometimes hereafter referred to as "Common Facilities" or "Facilities");

(f) All portions of the Project not specifically included within the individual Lots; and

(g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

13. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; (e) Expenses declared as common expenses by the Declaration; and (f) the Association's proportionate share of the cost of maintaining, repairing and replacing improvements that must be replaced on a periodic basis, and operating the Recreation Amenity (collectively, "maintenance").

14. Community shall mean and refer to the Project.

15. Community Standard or Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Board from time to time.

16. Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association incurred in taking corrective action against an Owner, including without limitation actions taken pursuant to Sections 29, 36, and 54.

17. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements, and Bylaws for Summerlane At The District.

18. Dwelling or Dwelling Unit shall mean and refer to an individual living unit constructed upon a Lot.

19. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

20. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

21. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an "eligible vote".

22. Guest shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.

23. Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

24. Limited Common Area shall mean that portion of the property owned by the Association shown on the Plat as dedicated to the exclusive use and enjoyment of the Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant, and as further provided for herein.

25. Lot shall mean and refer to a separate physical part of the Property intended for independent use as shown on the Plat Map, including, when the context requires, the Dwelling Unit constructed thereon, one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, the ground located underneath the Lot and the air space above. Mechanical equipment and appurtenances located within any one Lot or Dwelling, or located without said Lot or Dwelling but designated and designed to serve only that Lot or Dwelling, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall windows and window frames, doors and door frames, and trim. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Lot or Dwelling or serving only the Lot or Dwelling, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Lot or Dwelling, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Lot or Dwelling is located shall be deemed to be part of the Lot. Each Lot shall be assigned a separate "parcel" or "tax identification" number by the appropriate governmental agency.

26. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.

27. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.0%) percent of the total eligible number.

28. Manager shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

29. 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.

30. Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

31. Mortgagee shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

32. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

33. Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) seven (7) years from the effective date of this Declaration, or (b) the Declarant executes and records a written Waiver of his right to control.

34. Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

35. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

36. Phase shall mean and refer to a particular stage or area of development within the Project so designated by the Declarant.

37. Plat Map shall mean and refer to the plat map (or maps) of "SUMMERLANE AT THE DISTRICT" on file in the office of the County Recorder of Salt Lake County, as amended or supplemented from time to time.

38. Project shall mean and refer to SUMMERLANE AT THE DISTRICT.

39. Project Documents shall mean and refer to the Declaration, Bylaws, Rules and Regulations, and Articles of Incorporation.

40. Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to this Declaration.

41. Recreation Amenity shall mean and refer to the swimming pool, clubhouse and other recreational amenities subject to the Recreation Declaration.

42. Recreation Association shall mean and refer to the District Recreation Association, consisting of its three (3) members -- the Summerlane Homeowners Association, Promenade Homeowners Association, and Promenade Townhomes Owners Association acting or taken as a group in accordance with the Recreation Declaration. The Summerlane Homeowners Association may not be removed as a member of the Recreation Association without (a) its prior express written consent and (b) the prior express written consent of the other two (2) members.

43. Recreation Declaration shall mean and refer to that certain Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The District Recreation Amenity was recorded in the office of the County Recorder of Salt Lake County on July 31, 2009 as Entry No. 10766469 in Book 9750 at Pages 8134-8149 of the official records.

44. Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, all-terrain vehicle (ATV), off-road vehicle (ORV), commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

45. Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

46. Resident shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

47. Residential Lot shall mean and refer to a Lot to be used for residential purposes, primarily for the construction of a Dwelling.

48. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable to (i) aid it in administering the affairs of the Association, (ii) insure that the Property is maintained and used in a manner consistent with the interests of the Owners, (iii) regulate the use of the Lots, Common Areas and Limited Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) establish penalties and monetary charges for the infractions of the Project Documents, as such may be amended from time to time.

49. Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

50. Single Family Residence shall mean and refer to both the architectural style of a Dwelling and the nature of the residential use permitted.

51. Trust Deed for Assessments shall mean the deed of trust created by this Declaration in Article III, subsection 36(i) to further secure the Owner's obligations to pay Assessments and to



provide the Association with the power of non-judicial trust deed foreclosure provided for in Utah Code Ann. §57-1-19, *et seq.*, as amended from time to time.

## II. SUBMISSION

The real property described with particularity on Exhibit "A", attached hereto and incorporated herein by this reference, is hereby submitted to the Declaration, and sometimes referred to herein as the Property.

The Property is hereby made subject to, and shall be governed by the Declaration, and the covenants, conditions and restrictions set forth herein.

The Property is SUBJECT TO the described easements and rights of way.

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.

TOGETHER WITH the non-exclusive right to use and enjoy the Recreation Amenity.

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 reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Plat Map or otherwise existing; an easement for each and every Common Area and Common Facilities, including all equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Area and Common Facilities, including all equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

## III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. Description of Improvements. The significant improvements contained in the Project include residential Lots, Buildings, Dwelling Units, Common Area, Limited Common Area, private roadways, private alleys, parking, landscaping and view corridors, walking trails, and play areas, , to the extent the same are actually constructed by Declarant in Declarant's sole discretion. There will be a variety of residential Dwelling Unit models in the Project. The Project will also contain other improvements of a less significant nature. In addition, the Owners will have the non-exclusive right

to use the Recreation Amenity. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Plat Maps for the entire development.

2. Description and Legal Status of the Property. The Plat Map shows the type and location of each Lot and its Lot Number, which are reserved for the exclusive use of a Lot or Lot Owners, and the Common Areas and Facilities in the vicinity. The Common Area shall be deeded to and owned by the Association. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. Membership in the Association, Classes of Membership and Voting Allocations. Membership in the Association is mandatory and may not be partitioned from the ownership of a Lot. Each Lot Owner by virtue of his accepting a deed or other document of conveyance to a Lot is deemed a member of the Association. The Association shall have two classes of membership – Class A and Class B – described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(1) One Vote. Each Lot shall have one (1) vote;

(2) Subject To Assessment. No vote shall be cast or counted for any Lot not subject to assessment;

(3) Multiple Owners. When more than one (1) person or entity holds such interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise it.

(4) Leased Lot. Any Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to five (5) votes per Lot owned. The Class B Control Period shall terminate and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (the “Event” or “Events”):

(1) Four (4) months after one hundred percent (100%) of the Dwelling Units constructed upon the Lots in the Project, as expanded, have been sold and closed; or

(2) Not later than twenty-one years after the death of all lives in being on the effective date of this Declaration; or

(3) Election. When, in its sole discretion, Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot owned. After the occurrence of such event, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

Section 3 may not be amended without the prior written consent of the Declarant.

4. Incorporation of the Association. The Association shall be in the form of a corporation. This provision allows the Board of Directors to unilaterally re-file the articles of incorporation or organization of the Association if its status has been suspended or dissolved for any reason.

5. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of [Lot No. \_\_\_\_\_] contained within SUMMERLANE AT THE DISTRICT [Phase No. \_\_\_\_\_ (if applicable) ], as the same is identified in the Plat Map recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Salt Lake County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions, and Restrictions of SUMMERLANE AT THE DISTRICT recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been supplemented).

Regardless of whether or not the description employed in any such instrument is in the above-specified form, 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. Membership in the Association and the non-exclusive right to use and enjoy the Recreational Amenity shall not be separated from the Lot to which they appertain; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use shall automatically accompany the transfer of the Lot to which they relate.

6. Rights of Owners. Except as may be specifically set forth in the Project Documents, neither the Board nor the Members may adopt any Rules and Regulations in violation of the

following provisions, though where not specifically provided for otherwise the following provisions may be altered by an amendment to this Declaration if permitted by law:

- (a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.
- (b) Flags, Signs, Religious and Holiday Displays. The Association may not prohibit the display of a U.S. flag inside a Dwelling, Unit, Lot or Limited Common Area, if the care of the flag and display is consistent with federal law. The Association may control and restrict the display of a flag in the Common Area. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.
- (c) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Declaration limits residency in a Dwelling to a Single Family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair share use of the Common Area.
- (d) Activities Within Lots. No rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create any unreasonable sound or annoyance.
- (e) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area and Limited Common Area, from adopting generally applicable rules for use of Common Area and Limited Common Area, or from denying use privileges to those who abuse the Common Area, violate Project Documents, or fail to pay assessments. This provision does not affect the right to increase the amount of Assessments.
- (f) Alienation. Subject to the restrictions found in Section 7 herein, no rule shall prohibit the leasing or transferring of any Dwelling, or require consent of the Association or Board for leasing or transferring of any Lot.
- (g) Reasonable Rights to Develop. No rule, amendment to this Declaration, or action by the Association or Board shall unreasonably impede Declarant's right to develop in

accordance with the Master Plans, including, but not limited to, the rights of the Declarant as set forth herein.

(h) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such and which was in compliance with all Rules and Regulations in force at such time unless otherwise required to be removed by law. The limitations in this subsection shall apply to Rules and Regulations only; they shall not apply to amendments to this Declaration.

(i) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by any Person. The Project shall be used only for residential purposes, except as expressly set forth below, and the Common Areas and Limited Common Areas shall only be used in a manner consistent with the residential nature of the Project.

(j) Mandatory Association. Each purchaser of a Lot by virtue of his acceptance of a deed or other document of conveyance shall automatically become a Member of the Association.

(k) Joint or Common Utility Easements with Neighboring Subdivisions, Projects or Developments. The Declarant for itself and/or its successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for gas, water, power, sewer, storm drain systems or the like under, over, across or through the Project.

(l) Easements and Rights of Way. Declarant hereby grants and conveys to the Association and each Owner and Resident, as well as their family members, tenants, guests and invitees, the non-exclusive and perpetual right to use and access the roads, trail, and common sidewalks for vehicular and pedestrian traffic. In addition, every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area and Facilities, including the Recreation Amenity. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions: (1) The right of the Association to limit the number of guests, occupants and residents; (2) The right of the Association to suspend the voting privilege; and (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. During the Period of Declarant's Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant. Subject to the Project Documents, each Owner shall be entitled to the exclusive ownership and possession of his Lot, to the exclusive use of Limited Common Area appurtenant to the Owner's Dwelling Unit, to use the Common Areas, and to membership in the Association as set forth herein.

(m) Rules and Regulations. The Board of Directors may adopt, amend, modify, create, expand, or enforce rules and regulations as well as architecture and landscape design criteria. The rules, however, are subject to:

- (1) Any express provisions, restrictions and limitations in the Declaration;
- (2) The Business judgment rule; and
- (3) The right of Owners to reasonable and fair notice and to disapprove.

Before it adopts or changes a rule or regulation, the Board of Directors must provide the Owners within fifteen (15) days of its meeting advance reasonable and fair notice of its intention. Reasonable and fair notice is not required in an emergency. The governing board must provide an open forum at a board meeting and provide Owners with a chance to be heard. The Owners may, within sixty (60) days, and by a vote of at least a majority of the total ownership at a special meeting called for this purpose disapprove the proposed rule or regulation.

(n) Equal Treatment; Rule Limitations.

(1) The rules must treat similarly situated people the same, although the rules may vary according to the type of service provided.

(2) The rules may not violate the right of Owners to display religious and holiday signs inside their dwelling, although the rules may define the time, place, and manner of displays visible from outside the Dwelling, Unit or Lot.

(3) The rules may not regulate the content of political signs, although the Rules may define the time, place, and manner of displays visible from outside the Dwelling, Unit or Lot.

(4) The rules may not interfere with an Owner's determination of the composition of his or her household, although they may legally require the occupants to be members of a single housekeeping unit and may limit the total number of occupants permitted in a Dwelling, Unit based its size, configuration and a fair use of the common areas.

(5) The rules may not interfere with activities within a Lot or Dwelling Unit if the activity is legal. Limits may be made if the activities are not considered typical for a residential neighborhood, or if the activities create an additional expense for the association, or if the activities are dangerous or pose a health concern, or if the activities constitute a nuisance, create unreasonable noise or traffic, or are unsightly or annoying, or create secondary smoke issues.

(6) If federal, state or local law permits, rules may be adopted regulating use or behavior inside a Dwelling, Unit or Lot, including by way of illustration but not limitation smoking, rentals, noise, traffic and nuisance.

(7) The rules may address a variety of matters such as user fees, the availability of the Common Area and Facilities, the denial of access and use of recreational amenities to trespassers, violators, misusers or abusers, the transfer of lots, rental terms, the disposal of personal property, etc.

(8) The rules may regulate the maintenance and use of the Common Area and Facilities, late fees, accruing interest, indemnity, etc.

(9) No rule may be in conflict, inconsistent or incongruent with the Declaration and Bylaws. If any provision of this subsection is held to be illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This subsection will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this subsection will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this subsection. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this subsection, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

(o) Restrictions and Limitations of Use. The use of the Lots is subject to the following limitations and restrictions:

(1) Parties Bound. All provisions of the Project Documents, including without limitation the Declaration, Bylaws, and Rules and Regulations shall be binding upon all Owners, Residents and Permanent Residents, and their family members, guests, visitors, invitees, and employees.

(2) Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his Lot, appurtenant Limited Common Area or the Common Areas;

b. The storage of any item, property or thing that causes any Lot, Limited Common Area or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Lot, Limited Common Area or in the Common Areas that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot, Limited Common Area or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

g. Creating or allowing an unreasonable amount of noise or traffic in, on or about any Lot, Limited Common Area or the Common Area, especially after 10:00 p.m. and before 8:00 a.m.; and

h. Violation of U.C.A., Section 78-38-9 (1999) (i.e., drug houses and drug dealing; gambling; group criminal activity; prostitution; weapons; parties), as it may be amended or supplemented from time to time.

(3) Signs; Unsightly Work and Unkempt Conditions. No "For Sale" or "For Rent" or other signs or banners are permitted in the Common Area or so as to be visible from the street, unless approved in writing by the Board. Activities which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Project.

(4) Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting of graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, slingshots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.

(8) Trees, Shrubs and Bushes. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the



Common Areas. The Board may alter or remove any objects planted or placed in violation of this subsection.

(9) Energy Conservation Equipment. Except in compliance with U.C.A. Section 17-27a-610 or 10-9a-610 (as the case may require), as such may be amended from time to time, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project, and such installations must be approved by the Board in advance.

(10) Business Use. No Business Use or Trade may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

(11) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

a. The parking Rules and Regulations adopted by the Board from time to time;

b. The parking areas are not designed for Recreational, Oversized, or Commercial Vehicles (as defined in Article I herein) and the Board has the right to make Rules and Regulations restricting or prohibiting their use within the Project. All such vehicles shall be parked in garages or outside the Project, except for purposes of loading and unloading. Eighteen-wheelers may not be parked within the Project.

c. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, Recreational, Oversized, or Commercial Vehicle or any other transportation device of any kind may be parked or stationed (except for purposes of loading or unloading), in such a manner so as to create an obstacle or potentially dangerous situation, or along any street or road, or in front of any parking amenity, sidewalk, walkway, driving lane, Building or Lot, or in an unauthorized portion of the Common Area.

d. Residents may only park their motor vehicles within their driveways, garages, or in other designated Common Areas.

e. No parking is allowed in "red zones," "fire lanes," or unauthorized areas.

f. Visitors or guests shall park their motor vehicles in Common Areas designated for “guest” or “visitor” parking. Owners, Residents and Occupants shall not park in “guest” or “visitor” spaces.

g. No Owners or Residents shall disassemble, assemble, repair or restore any vehicle of any kind in, on or about any Lot, Limited Common Area or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

h. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Building, driving lane, parking space, driveway, garage, entry, exit, or parking area.

i. All parking areas shall be used solely for the parking of motor vehicles used for personal transportation. Disabled or inoperable vehicles, motor vehicles not currently licensed or registered, or vehicles with more than \$1,000 damage may not be stored in the street, driveway, or other place so as to be visible to the general public or Residents of the Project. j.

No garage may be used or altered so that it parks less than the number of motor vehicles for which it was originally designed.

k. The nature of the intended use of a garage as a parking garage for motor vehicles may not be changed or altered without the prior express written consent of the Board.

l. Vehicles parked in violation of this Declaration or parking Rules and Regulations adopted by the Board may be immobilized, impounded, and towed **WITHOUT ADDITIONAL NOTICE** and at the Owner’s sole expense. By virtue of bringing a motor vehicle on to the Property, the driver agrees to indemnify, save and hold the Association, Board and members of the Board harmless from any loss, damage or claim caused by or arising out of the immobilizing, impounding, or towing of a motor vehicle pursuant hereto.

(12) Bicycles. Bicycles in the Common Areas must be parked or stored in the bicycle racks or storage areas designated by the Board.

(13) Aerials, Antennas, and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals (“Permitted Devices”) shall be permitted, provided that any such Permitted Device is located within the Lot or another location approved by the Board. Permitted Devices attached to a Building or mounted on the patio, balcony, or deck must extend no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna or dish. The Board may adopt Rules and Regulations establishing a preferred hierarchy of alternative

locations and requiring screening of all Permitted Devices, so long as such Rules and Regulations do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, it is the intent of this document to at all times comply with the applicable federal, state and local laws, and regulations adopted by the FCC – as they may be amended from time to time. DO NOT INSTALL AN ANTENNA OR SATELLITE DISH OUTSIDE YOUR LOT OR IN THE COMMON AREA WITHOUT FOLLOWING THE PROVISIONS OF THIS SECTION. Antennas or Satellite dishes installed by an Owner or resident in violation of this section may be removed by the Board without further notice or warning and at the owner's sole risk and expense.

(14) Window Coverings. No-aluminum foil, newspapers, reflective film coatings, sheets, bedspreads, or any other similar materials may be used to cover the exterior windows of any residential structure on a Lot. Sunshades are not allowed on the exterior of any Building.

(15) Windows. All windows and window units in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction.

(16) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Lot are allowed; however, the Board may adopt Rules and Regulations regarding restrictions on size and weight of pets. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied or tethered in the Common Area, or left unattended in the Limited Common Area. The Board may establish Pet Rules and charge a pet deposit and/or a registration fee.

(17) Wildlife. Capturing, trapping or killing wildlife within the Property is prohibited, except in circumstances posing an imminent threat to the safety of persons or pets using the Property.

(18) Vegetation. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.

(19) Lubricants, Oil and Gas. Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials (as may be determined in the Board's reasonable discretion and as defined by applicable law) anywhere within the Property is prohibited.

(20) Electronic Transmitters. No electronic or radio transmitter of any kind, other than garage door openers, shall be located or operated in or on the Property without the prior consent of the Board.

(21) Erosion, Dust or Pollen. Behavior which causes erosion or unreasonable amounts of dust or pollen is prohibited.

(22) Driveway, Entry, Deck, Patio and Balcony. The Board may adopt reasonable Rules and Regulations to regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Project, including by way of illustration but not limitation a regulation limiting items on the patio to "patio furniture"; prohibiting clotheslines and the hanging of clothes and other items over the railings; planters and plants; and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view.

(23) Insurance. Nothing shall be done or kept in, on or about any Lot or in the Common Areas or Limited Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Board, but for such activity, would pay.

(24) Laws. Nothing shall be done or kept in, on or about any Lot or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(25) Damage or Waste. No damage shall be caused to, or waste of, the Common Area and Facilities or a Limited Common Area by any Owner or Resident, or their family members, guests or invitees; and each Owner and Resident shall indemnify and hold the Board and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, or their family members, guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(26) Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Area and Facilities or Limited Common Area shall be done or permitted by any Owner without the prior, express written consent of the Board. Structural alterations within the footprint of the Building or Roof as shown on the Plat Map may be authorized by the unanimous consent of the Board (and governmental agency responsible for the issuing of all building permits, licenses, etc.), and the additional approval of the other Lot Owners shall not be required.

7. Lease Restrictions and Limitation of Unit Ownership. Owners may lease, rent or otherwise grant occupancy rights to their Units subject to the following restrictions: No owner shall be permitted to lease or rent his Unit for short term, transient, hotel, vacation, seasonal or corporate purposes, which for purposes of the Section shall be deemed to be any rental or lease with an initial term of less than six (6) months; daily or weekly rentals, and rentals for less than thirty (30) days, are prohibited; and no owner may lease or rent individual rooms to separate persons or less than his entire Unit without the written consent of the Board of Directors. The Association or Board may require that Owners use lease forms or rental agreements approved by the Board (or include specific terms protecting the Association in their leases or rental agreements), and may impose a review or administration fee on the lease or rental of any Unit.

8. Easements.

(a) Grant of Easement. Declarant hereby reserves to itself and grants to the Association, a non-exclusive, perpetual right-of-way and easement over, across and through the Tract, together with the right to use, operate, maintain, repair and replace the Common Areas and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

(b) Common Use of Easement. Said easement is to be used in common by the Association, Declarant and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein.

(c) Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Association and Owners.

(d) Improvements. Improvements, including Buildings, Units, Common Areas and Facilities, Limited Common Area and Restricted Limited Common Space constructed as subsequent phases of the Project may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment necessary to repair, maintain and operate such improvements is hereby granted.

(e) Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Building and Unit he is occupying and to any Limited Common Area and Restricted Limited Common Space appurtenant to his Unit, and he shall have the right to the horizontal, vertical and lateral support of his Unit.

(f) Declarant's Easement. The Declarant hereby reserves to itself, and its affiliates and assignees, an exclusive easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities for use by the Association and Owners.

(g) Construction Easements. The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Areas and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Buildings and Units. The Owners by acceptance of a deed or other document of conveyance to a Unit do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their property until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners. Declarant's construction activities pursuant to the easement granted hereunder shall not be considered a violation of the Use Restrictions.

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

(i) Support, Maintenance and Repair. The Declarant hereby reserves to itself and hereby grants to the Association a non-exclusive easement over, across, through, above and under the Lots, Buildings, and all other Common Area for the (i) location and installation of the main gas line(s), sewer line(s), water line(s) and/or any other utility service lines in the Buildings and (ii) the operation, regulation, maintenance, repair and replacement of said gas line(s), sewer line(s), water line(s), other utility service lines in the Buildings, and other Common Area and Facilities.

9. Liability of Owners and Residents For Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his negligence.

10. Encroachments. If any portion of Common Area or a Lot encroaches or comes to encroach upon other Common Area or a Lot as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

11. Board. The Association shall be managed by a Board comprised of three (3) Lot Owners who shall be duly qualified and elected, except that during the Period of Declarant Control the Board need not be comprised of Lot Owners.

12. Status and General Authority of Board. During the Period of Declarant Control, the Declarant reserves the right to appoint the members of the Board. Any instrument executed by the Board that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its name. The Board shall have, and is hereby granted, the following authority and powers:

(a) Access. The Board or Manager shall have the right to have access to each Lot, Limited Common Area, Building and the Common Areas and Facilities, including the main gas and sewer line or lines located within the Buildings: (1) from time to time during reasonable hours and after reasonable and fair notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide reasonable and fair notice to the occupant of the Lot prior to entry. For purposes of this subsection the term "emergency" means an event or occurrence which threatens to cause substantial and imminent damage to person or property.

(b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.

(d) Standing. The power to sue and be sued.

(e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer, in accordance with the Utah Revised Nonprofit Corporation Act, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Eligible Votes of the Association Members.

(g) To Add or Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Eligible Votes of the Association Members.

(h) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with applicable law and this Declaration.

(i) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Board, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board meetings.

(j) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional Manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

(k) Sewer and Water Laterals. Pay all common sewer and common water bills.

(l) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.

13. Delegation of Management Responsibilities. The Board may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Board may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

14. Owners Meetings. The Association shall meet at least annually at a time and place set by the Board.

15. Lists of Lot Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Board shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (b) the name and address of each Resident; (c) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity; and (d) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such



person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah, and that the transferee has received a copy of the Declaration and Bylaws then in force. The Board may for all purposes act and rely on the information concerning Lot ownership in its records or, at its option, the records of the county recorder. The address of any Owner shall be deemed to be the address of the Lot owned by such person unless the Board is otherwise advised in writing.

16. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and Residents; there are Common Areas and Facilities and Recreation Amenity in the Project; in, near, or about the Project there are utility lines or utility substations; there are also improvements of a less significant nature. Notwithstanding anything contained herein or in any of the Project Documents, neither the Association, Board, Members of the Board, Officers of the Association, Manager, nor the Declarant shall be liable or legally responsible for, or in any manner a guarantor or insurer of the health, safety or welfare of any Owner or Resident of any Lot or his family members, tenants, guests, or invitees while at the Project, or for any property of any such Persons. Each such Person by accepting a deed or other document of conveyance to a Lot or coming onto the Property hereby assumes all risks associated with the use and enjoyment of the Project, including negligent acts. No provision of the Project Documents shall be interpreted as creating a duty of the Association, Board, Members of the Board, Officers of the Association, Manager, or the Declarant to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose. Each Owner by virtue of his acceptance of title to his Lot and each other Person having an interest in or lien upon, or making any use of, any portion of the Project (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, Board, Members of the Board, Officers of the Association, Manager, and the Declarant, and their employees, agents, contractors, subcontractors, successors, and assigns from or connected with the foregoing items.

17. Capital Improvements. All expenses for Capital Improvements shall be governed by and subject to the following conditions, limitations and restrictions:

(a) Board Discretion/Expenditure Limit. Any Capital Improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Board alone (the "Capital Improvement Ceiling").

(b) Expenditure Limit With Consent of Owners. Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the Eligible Votes of the Members.

(c) Improvements Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the Eligible Votes of the Members.

18. Recycling Programs. The Board may establish a recycling program and recycling center within the Project, and in such event all Residents of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

19. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. Project water charges and storm water fees shall be paid as a Common Expense.

20. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across any property, including any Lot, from adjacent Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

21. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations for the benefit of the Project, the Association, its Members and Residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

22. Relationship with Adjacent Projects. Adjacent to or in the vicinity of the Project are projects which have been or, in the future, may be developed as independent commercial or residential areas, or combinations thereof (including, but not limited to, rental apartments, retail or

other business areas). The Declarant or the Association may enter into an agreement to share costs and facilities with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in the manner set forth in this Declaration, the owners of real property adjacent to or nearby the Project shall not be entitled to vote on Association matters, and shall not be subject to assessments or other conditions or restrictions set forth in this Declaration.

23. Amenities Reciprocal Use Agreements. Declarant may cause the Association to, and the Association may from time to time, enter into amenities reciprocal use agreements (“Amenities Agreement(s)”) with other master planned communities. Persons associated with such other master planned communities shall be entitled to use the Association’s recreational facilities and other amenities, and the Members and their guests, as described in such agreements, shall be entitled to use the recreational facilities and other amenities in such other master planned communities to the extent specifically identified in the Amenities Agreement. The provisions of any Amenities Agreement entered into by the Board shall be subject to the approval of the Declarant, as long as the Declarant owns any of the Property. Amenities Agreements shall be subject to termination in the discretion of the Board, subject to the approval of the Declarant as long as Declarant owns any of the Project. All Members and their guests, as described in the Amenities Agreements, shall be entitled to enjoy the benefits of any Amenities Agreements to which the Association is a party, to the extent provided in the Amenities Agreement. In consideration for such rights, if any, each Member shall be responsible for user fees for the use of the facilities by such Member and such Member’s guests, in accordance with any applicable Amenities Agreement. Rights to use any or all recreational facilities and other amenities shall be subject to any priorities for use established under the Amenities Agreements and any rules and regulations established by the parties to such Amenities Agreements. The Association may enter into more than one Amenities Agreement and may amend Amenities Agreements for any purpose, including but not limited to, adding additional parties in accordance with the terms of such Amenities Agreements.

24. The Maintenance Responsibility of the Association. The Association shall maintain, replace, and keep in a state of good repair the following items (collectively “Area of Common Responsibility”):

- (a) all Common Area;
- (b) all landscaping, trees, bushes, shrubs, planting beds, flower beds, grass and other plant life in the Common Area and public utility easements;
- (c) all common water service and drainage facilities;
- (d) all common sidewalks and walkways;
- (e) all walls and fences which serve as common walls or fences for the Project or which separate any Lot from Common Area, whether or not located on a Lot;

- (f) all landscaping and irrigation systems in the Common Areas;
- (g) all common signage;
- (h) all private streets, roadways and rights-of-way and street lights within the Project (including all streets dedicated to the public if a majority of the Eligible Votes of the Members of the Association approves such maintenance);
- (i) all roofs and exterior surfaces;
- (j) all foundations, columns, girders, beams, supports, and main walls;
- (k) all driveways, entries, landings, patios, balconies, and decks;
- (l) all parking areas and storage spaces;
- (m) all installations of common utility services, such as power, gas, sewer and water, including the main gas and water line or lines running through the Buildings;
- (n) all sewer laterals and storm drain lines;
- (o) any other item designated as a common responsibility or responsibility of the Association herein; and

25. The Maintenance Responsibility of the Owners. Each Owner shall maintain, repair and replace his Lot, Dwelling Unit, and all other landscaping and physical improvements to his Lot not part of the Common Area of Responsibility (the "Area of Personal Responsibility"). This obligation includes by way of illustration but not limitation all glass, windows, window units, doors, and door units, subject only to the prior written consent of the Board who is obligated to maintain the integrity of the original architectural design, uniformity of appearance, and quality of construction. Each Owner or Resident shall keep his patio, balcony, deck, driveway, parking and storage spaces and all appurtenant Limited Common Area broom clean, tidy, and uncluttered in accordance with the Rules and Regulations adopted by the Board. With the express written permission of the Board, an Owner may at his or her sole expense install and maintain heat tape. Each Owner by acceptance of a deed or other document of conveyance to a Lot agrees to assume the risk of ice damming and any related water damage. An Owner may construct personal landscaping outside the boundaries of the Dwelling Unit and within the boundaries of the Limited Common Area appurtenant to the Lot, subject to advance written approval of the Board. The Board may adopt Rules and Regulations concerning the use of the Limited Common Areas.

26. Garbage Removal and Snow Removal. The Association shall arrange for garbage pick-up and removal. Lot Owners shall place their garbage in suitable plastic bags, sacks or containers and deposit them immediately into the designated dumpsters or garbage receptacles. The

Association shall arrange for snow removal from all common arterial sidewalks and walkways that lie within the Association's Area of Common Responsibility. The Association shall have the right, but not the obligation, to arrange for snow removal from any Limited Common Area. Each Owner or Resident is solely responsible for snow removal from his patio, balcony, deck, driveway, walkways, parking areas and other Limited Common Areas appurtenant to his Lot.

27. Standard of Care – Generally. The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition, consistent with the Community Wide Standard. If a dispute arises between a Lot Owner or a Resident as to the condition of a Lot, the decision of the Board shall be final and conclusive.

28. Standard of Care – Landscaping. All landscaping, if any, permitted by the Board in Limited Common Areas shall be maintained and cared for in a manner consistent with the Community Wide Standard and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Board from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed. In short, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

29. Neglect. If the Board determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(a) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner reasonable and fair written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board. The Owner shall have ten (10) days after receipt of notice within which to complete the maintenance, replacement or repair, or if the maintenance, replacement or repair is not capable of completion within such time period, to commence the maintenance, replacement or repair within ten (10) days.

(b) Emergency Situation. If the Board determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

(c) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(d) Costs and Expenses. Costs incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the Assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed

30. Changes to Areas of Personal or Common Responsibility. The Board may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior reasonable and fair written notice to the Lot Owners.

31. Alterations to the Common Area. Anything to the contrary notwithstanding and until the termination of the Period of Declarant's Control, the Declarant may make changes to the Common Area without the consent of either the Association or the Board. No Owner or Resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Building, Limited Common Area or Common Area or Facilities, including but not limited to the construction or installation of any additions, and the extension or enclosure of any existing structures (e.g., fencing, decks, patios, walkways or sheds, etc.) not shown on the approved plans and specifications, without the prior written consent of the Board.

32. Common Expenses. Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

(a) Declarant. During the Period of Declarant Control, the following shall apply: (1) The Declarant, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, shall pay no assessment unless a Dwelling Unit constructed on a Lot is occupied for a residence on a permanent or part-time basis, provided that Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners; (2) Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves; (3) In no event, however, shall the subsidy exceed the monthly or annual assessments; (4) This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these; and (5) The Declarant shall not be subject to Special or Individual Assessments.

(b) Purpose of Common Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board. In addition, the Assessments provided for herein shall be used for the general purpose of maintaining the Recreation Amenity.

(c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Board shall prepare and deliver to the Owners a proposed Budget:

(1) Itemization. The Budget shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s) and the Association's proportionate share of the cost of maintaining the Recreation Amenity) for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. The Budget shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, including the Recreation Amenity, and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas, including the Recreation Amenity, and replacement of those elements of the Common Areas, including the Recreation Amenity, that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(3) The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership to reject. If the new budget is disapproved, then the prior year's budget continues.

(d) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among, and the common expenses shall be charged to, the Lot Owners equally and uniformly.

(e) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Eligible Votes of the Members. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

(f) Payment of Assessments. The Board has the sole authority and discretion to determine how and when the Assessments are paid.

(g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges, including each Owner's share of the cost of maintaining the Recreation Amenity; provided, however, no first mortgagee or beneficiary under a first deed of trust

(but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the owner of record in the offices of the County Recorder of Salt Lake County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

(h) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the Eligible Votes of the Members of the Association, not greater than fifteen (15%) percent of the Assessment in any calendar year. Owners shall be given at least thirty (30) days reasonable and fair written notice of any changes.

(i) Reserve Analysis -- Reserve Fund.

(1) As used in this section, the term "reserve analysis" means an analysis to determine: (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and (b) the appropriate amount of any reserve fund.

(2) After the expiration of the Declarant's Period of Control, the Board of Directors shall cause a reserve analysis to be conducted no less frequently than every five (5) years; and review and, if necessary, update a previously conducted reserve analysis no less frequently than every two (2) years.

(3) The Board of Directors may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board of Directors, to conduct the reserve analysis.

(4) The Board of Directors may not use money in a reserve fund: (i) for daily maintenance expenses, unless a majority of the members of the Association vote to approve the use of reserve fund money for that purpose; or (ii) for any purpose other than the purpose for which the reserve fund was established.

(5) The Board of Directors shall maintain a reserve fund separate from other funds of the Association.

(6) This Subsection (4) may not be construed to limit the Board of Directors from prudently investing money in a reserve fund provided it is government insured.



(7) The Association shall: (a) annually, at the annual meeting of the Association or at a special meeting of the Association: (i) present the reserve study; and (ii) provide an opportunity for Unit Owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount; (b) prepare and keep minutes of each meeting so held and indicate in the minutes any decision relating to funding a reserve fund; provided, however, and anything to the contrary notwithstanding, the Association shall fund and maintain a reserve account sufficient to satisfy the requirements for certification by the US Department of Housing and Urban Development.

(8) Anything to the contrary notwithstanding, this subsection (i) does not apply to an Association during the Period of Declarant's Control.

(j) Statement of Assessments Due. Upon written request, the Board shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$35.00 for the issuance of such certificate.

(k) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which, insofar as it adversely affects the Association's lien securing unpaid Assessments, each Owner, by accepting a deed or other document of conveyance to a Lot, hereby subordinates and waives.

33. Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The Annual Assessment shall be payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment shall be based upon the Budget prepared by the Board. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board.

34. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

(a) Board Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) (the "Special Assessment Limit") per Lot in any one fiscal year, the Board may impose the special assessment without any additional approval.

(b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the Eligible Votes of the Members of the Association. The Board in its discretion may allow any special assessment to be paid in installments.

35. Individual Assessments. Individual Assessments shall be levied by the Board against a Lot and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible; (c) any other charge, fee, fine, dues, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

36. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10<sup>th</sup> day of the month in which they were due.

(a) Delinquent Accounts. Any Assessment not paid when due shall be deemed delinquent.

(b) Late Fees and Default Interest. The Board is hereby granted the authority to charge a late fee and default interest on the outstanding balance of any delinquent account in a sum and at a rate to be determined by the Board.

(c) Lien. If any Lot Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses, including his or her share of the cost of maintaining the Recreation Amenity, when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(d) Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclose the lien.

(e) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

(f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

(g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board

under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

(h) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(1) A Lot may be auctioned publically and sold through either a non-judicial foreclosure (like a bank foreclosing a deed of trust) or through judicial foreclosure. A court order of sale is required for a judicial foreclosure which includes a 6-month redemption period.

(2) For purposes of a non-judicial foreclosure, when a person accepts a deed or other document of conveyance to a Lot, it is considered the same, like a bank and a deed of trust, as conveying the Lot in trust to as trustee appointed by the Association to secure payment of all assessments and costs of collection.

(3) The Association must appoint a qualified trustee, by signing and recording in the office of the county recorder a written substitution of trustee form in order to foreclose upon a Lot non-judicially.

(4) At least thirty (30) days prior to starting its non-judicial foreclosure, the Association must send reasonable and fair written notice to the Owner informing him or her of the Association's intent to foreclose non-judicially and the Owner's right to demand judicial foreclosure. The notice must be in the form provided by the statute and sent by certified mail. The Owner may object to the non-judicial foreclosure by sending a written demand for judicial foreclosure. The Owner's objection and written demand must be sent within fifteen (15) days. The Owner's objection and written demand must also be sent by certified mail.

(5) The Association may not use a non-judicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure: (a) by U.S. mail, certified with a return receipt requested; (b) to the address stated in the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure under Subsection (4); and (c) within fifteen (15) days after the date of the postmark on the envelope of the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure.

(6) The Association must follow the provisions of the law applicable to the non-judicial foreclosure of deeds of trust.

(i) Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Lot and appurtenant Limited Common Area, and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, *et seq.*, as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, *et seq.*

(j) Discontinuance of Common Utility Service and Suspension of Common Facility Use. If an Owner fails or refuses to pay an Assessment when due, the Board may, after giving reasonable and fair written notice and an opportunity to be heard as provided for below, terminate an Owner's right;

- (1) to receive utility services paid as a Common Expense; and
- (2) of access and use of Recreation Amenities.

Before terminating utility services or right of access and use of the Recreation Amenity, the Manager or Board shall give reasonable and fair notice to the Owner in the manner provided in the Bylaws. The notice shall inform the Owner (i) that utility service or right of access and use of recreational facilities will be terminated if payment of the Assessment is not received within thirty (30) days; (ii) of the amount of the Assessment due, including any interest or late payment fee; and (iii) of the right to request a hearing as provided for in this Section. An Owner who is given notice may request an informal hearing to dispute the Assessment by submitting a written request to the Board within fourteen (14) days after the date on which the Owner receives the notice. The hearing shall be conducted by the Board in accordance with the standards provided in the Bylaws. If a hearing is requested, utility services or right of access and use of Recreation Amenity may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the Assessment due, including any interest or late payment fee, the Manager or Board shall immediately take action to reinstate the terminated utility services and right of access and use of recreational facilities.

37. Working Capital Fund. A Working Capital Fund shall be established by the Declarant. Each Lot's initial share of the Working Capital Fund shall be collected and transferred to the Board at the time of closing of the sale of each such Lot by Declarant and shall be equal to one month's assessment (the "Working Capital Payment"). Notwithstanding the foregoing, the contribution to the Working Capital Fund for each unsold Lot shall be paid to the Board at the time a certificate of permanent occupancy is issued and such Lot is first occupied for residential purposes.

With respect to each Lot for which the Declarant pays the contribution to the Working Capital Fund, the Declarant may, at its election, be reimbursed for such contribution by the buyer of such Lot at the time of closing. Thereafter, each time a Lot is sold and conveyed, the Board shall collect a Working Capital Payment at the time of the closing of the transaction. The purpose of the Working Capital Fund is to function as an impact or transfer fee, 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 Project. Sums paid into the Working Capital Fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

38. Future Lease Payments. If the Owner of a Lot who is leasing the Lot fails to pay an Assessment for more than sixty (60) days after the Assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner reasonable and fair notice of its intent to demand full payment from the tenant under this Section. The notice shall (i) provide notice to the tenant that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the Assessment is received within the time period provided in the Declaration, Bylaws, or Association Rules and Regulations; (ii) state the amount of the Assessment due, including any interest or late payment fee; (iii) state that any costs of collection, not to exceed One Hundred Fifty Dollars (\$150.00), and other Assessments that become due may be added to the total amount due; and (iv) provide the requirements and rights described in this Section. If the Owner fails to pay the Assessment due by the date specified in the notice, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to this Section. The Manager or Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (i) that due to the Owner's failure to pay the Assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due to the Owner; (ii) that until notification by the Association that the Assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (iii) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement. If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be (i) deposited in a separate account; and (ii) disbursed to the Association until the Assessment due, together with any cost of administration which may not exceed Thirty-Five Dollars (\$35.00), if paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association. Within five (5) business days after payment in full of the Assessment, including any interest or late payment fee, the Manager or Board shall mail a copy of such notification to the Owner.

39. Liability of Board. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he may be a party by reason of being or having been an officer or member of the Board. The officers

and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

40. Insurance. This section applies to all insurance policies for the Association and Owners issued or renewed after **July 1, 2011**, regardless of when the Association was formed.

(a) Property and Liability Insurance Required.

(1) The Association must maintain, to the extent reasonably available, property insurance on physical structures of all attached dwellings, Limited Common Area and Common Area.

(2) The Association must maintain to the extent reasonably available adequate Liability Insurance for the Common Areas and Facilities.

(3) If property or liability insurance is not available, then the Association must notify Owners within seven (7) days.

(4) The Association may but is not required to carry other types of insurance.

(5) An Owner's act or omission may not void a policy.

(b) Property Insurance. The Property Insurance, which shall include all Common Areas and Facilities, must be provided by blanket coverage (as opposed to a schedule listing each Building separately) and may not be less than 100% of the full replacement cost, which must be reviewed at each renewal.

(1) The Property Insurance shall include coverage for any and all fixtures, improvements, or betterments installed by an Owner, floor coverings, cabinets, heating and plumbing fixtures, paint, wall coverings, windows, and any item permanently attached to a dwelling.

(2) The Association is not required to insure a Unit if the Unit is not physically attached to another Unit.

(3) When the Association has a master policy of Property Insurance and the Owner also has Property Insurance, the Association's insurance shall be considered **primary**; provided, however, the Owner's insurance applies and the Owner's insurance policy is considered the primary coverage up to the amount of the master policy deductible. If the Owner has no insurance, the he or she is personally responsible for the loss up to the amount of the deductible.

(4) If two (2) or more Owners suffer loss in a single event, they are each responsible for payment of a portion of the Association's deductible based on the percentage of the loss they each suffered.

(5) If an Owner does not pay his or her share of the loss, the Association may levy an Assessment against the Owner and his or her Unit in a sum equal to his or her share of the loss.

(6) The Association must set aside in escrow an amount equal to the amount of the master policy deductible or \$10,000, whichever is less.

(7) The Association must give reasonable and fair notice to all Owners of their obligation to pay the Association's deductible. The Association shall also give notice of any change in the amount of the deductible. Failure to give such notice may require the Association to be responsible to pay what could have been assessed to the Owner.

(8) The Association is not required to submit a claim to the Association's insurance carrier if the Board of Directors determines that the amount of the claim is likely not to exceed the amount of the Association's insurance deductible.

(9) The insurer for the master policy shall adjust with the Association a loss covered under the association's policy.

(10) The Association receives insurance payments in trust for the owners and insurance proceeds received by the Association must first be disbursed for the repair or restoration of the damaged property.

(c) Liability Insurance. The Association shall obtain a public liability policy covering the Common Area and Facilities, sewer laterals, including the backup of sewer laterals, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have coverage limits common to this area for this kind of project in the opinion of an independent insurance agent but not less than a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection. The

Association may insure for more than this but not less. Each Owner is an insured person under the Association's liability policy that insures an owner's interest against liability arising from the Common Area or membership in the Association.

(d) Damage to a Portion of the Project- Insurance Proceeds. Repairs must be done within a reasonable amount of time. If the associated expenses to repair are in excess of the insurance proceeds, such costs will be considered a Common Expense.

(e) Miscellaneous.

(1) The Association may but is not obligated to purchase additional endorsements or coverage, including by way of illustration but not limitation, directors and officers insurance, a fidelity bond, earthquake insurance.

(2) For those rare situations that may occur, such as dealing with a project that is terminated and distributions to lien holders and Owners if the Project is destroyed, the provisions of the Utah Community Association Act shall in all instances govern and control.

(3) If any provision of this section is held to be in conflict, incongruent or inconsistent with the insurance provisions of the Community Association Act, or illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This section will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this section will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this section. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this section, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

41. Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

(a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated Restored Value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof which does not constitute Substantial Destruction.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or



conveyance in lieu of condemnation, and the excess of the estimated cost of Restoration over the funds available is twenty five (25%) percent or more of the estimated Restored Value of the Project.

(4) “Partial Condemnation” shall mean any other taking by eminent domain or grant or conveyance in lieu thereof which does not constitute Substantial Condemnation.

(5) “Substantial Obsolescence” shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of Restoration over the funds available is twenty five percent (25%) percent or more of the estimated Restored Value of the Project.

(6) “Partial Obsolescence” shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) “Restored Value” shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) “Estimated Cost of Restoration” shall mean the estimated costs of restoring the Project to its former condition.

(9) “Available Funds” shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

(b) Determination by Board. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board shall make a determination as to whether the excess of Estimated Cost of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board may retain and rely upon one or more qualified appraisers or other professionals.

(c) Restoration of the Project. Restoration of the Project shall be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67%) percent of the Project’s Eligible Votes of the Members and is further consented to by at least fifty-one (51%) percent of the Eligible Mortgagees.

(d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Board has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective membership interests in the Association. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Board may elect to make a Special Assessment in accordance with this Declaration to pay for the deficiency.

(g) Sale of Project. Unless Restoration is accomplished as set forth above, the Project may be sold in accordance with the Utah Revised Nonprofit Corporation Act, as the same may be amended from time to time, in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board equally to the Owners. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(h) Authority of Board to Represent Owners in Condemnation or to Restore or Sell. The Board, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

(i) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

(j) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

(k) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Lot Owners who

represent at least sixty-seven (67%) percent of the Eligible Votes of the Members of the Association and by at least fifty-one (51%) percent of the Eligible Mortgagees.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by at least sixty-seven (67%) percent of the Eligible Mortgagees. However, implied approval may be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives reasonable and fair notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

42. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Lots which collectively hold the required percentages, subject to the following conditions:

(a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained;

(b) Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and

(c) Compliance with Statutes. Any such consent in lieu must also comply with the requirements of the Utah Revised Nonprofit Corporation Act, as amended from time to time.

43. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value, including by way of illustration but not limitation the security interest in a Lot and its appurtenant interest in the Association, the Common Area and Facilities, and/or the non-exclusive right to access and use the Recreation Amenity. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Board or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for the lien of any Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Board or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative Rules and Regulations concerning the Project, as well as the books, records, and financial statements of the Board and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board shall provide, or be deemed to provide hereby, that:

(1) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

(2) No contract may be for an initial term greater than two (2) years.

(e) Eligible Mortgagee Designation. Upon written request to the Board or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee, Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees. If reasonable and fair notice is given to a

Mortgagee or other creditor, then a legal presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection.

44. Amendment. Anything to the contrary notwithstanding, while the Declarant is in control of the Association and prior to the termination of the Period of Declarant's Control, the Declarant may amend the Declaration or Plat Map without any additional consent or approval required. After transition, the affirmative vote of at least sixty-seven percent (67%) of the Eligible Votes of the Members of the Association shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required for any amendment which would terminate the legal status of the Project; and the consent of at least fifty-one (51%) percent of the Eligible Mortgagees shall be required to:

- (1) redefine any Lot boundaries;
- (2) convert Lots into Common Areas or vice versa;
- (3) reduce the hazard or fidelity insurance requirements;
- (4) impose prohibitions on the leasing of Lots;
- (5) authorize a decision by the Association of fifty (50) or more Lots to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- (6) restore or repair the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (7) partition or separate from a Lot the non-exclusive right to access or use the Recreation Amenity; or
- (8) authorize any proposed amendment to provisions that expressly benefit mortgage holders, insurers or guarantors.

Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

Any Eligible Mortgagee who does not deliver to the Board or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project as a Planned Unit Development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

45. Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration. Until the Declarant has sold all of its Lots or seven years from the date of recording of this Declaration, whichever first occurs (the "Sale's Events Period"), neither the Owners, the Association nor the Board shall interfere with the completion of improvements and sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

(a) Sales Office and Model Dwellings. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Dwellings at any one time. Such office and/or models may be one or more of the Lots owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

(b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

(c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Until 120 days after the expiration of the Sale's Events Period, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

46. Limitation on Improvements by Association. Until the expiration of the Sale's Events Period, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or

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

47. Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

(a) Lots. Each Lot which an Owner has contracted to purchase and the Building within which such Lot is contained or is to be contained, and the appurtenant Limited Common Area, shall be substantially constructed and ready for use or occupancy (as the case may be); and

(b) Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor lighting, other Common Area improvements shown on the Plat Map, and utility lines and conduits adjacent to the Lot or Building in which a Lot is located, and necessary for its use.

48. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Buildings in the Project, title to which is vested in Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

49. Expansion of the Project.

(a) Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional Lots and/or Units. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire until such time as the Declarant has sold all of the Lots and/or Units in the entire Project, as expanded, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior thereto. Such right may be exercised without first obtaining the consent or vote of Owners and shall be limited only as herein specifically provided. Such Lots and/or Units shall be created on any or all portions of the Additional Land.

(b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots and/or Units, together with supplemental Map or Maps containing the same information with respect to the new Lots as was required on the Map with respect to the Phase 1 property. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots and/or after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Davis County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots and/or Units in the Project rights to use the new Common Area added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot and/or Unit in the Project as it existed, interest so acquired by the Owner of the Lot and/or Unit encumbering the new Common Area added to the Project as a result of such expansion.

(d) Declaration Operative on New Lots. The new Lots and/or Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots and/or Units therein shall be subject to the incidents of common ownership with all the provisions and protective covenants pertaining to a planned unit development as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Davis Recorder.

(e) Other Provisions Concerning Expansion. If the Project is expanded, then it is further provided that:

(1) All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Lots and/or Units created must be restricted to residential housing and limited to one family per Dwelling Unit.

(2) Portions of the Additional Land may be added to the Project at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Plat Map, as amended and supplemented. The Association shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:  
a. The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

b. Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings, Lots and Units will



be comparable to the Phase 1 facilities on a per Lot and/or per Unit basis and will be of a similar quality of materials and construction in Phase 1.

c. Whether any Lots and/or Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Lots and/or Units will be constructed of an equal or better quality of materials and construction than the Lots and/or Units in Phase 1.

d. Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

(5) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (a) the submission of any portion of the Additional Land to the provisions of this Declaration; (b) the creation, construction, or addition to the Project of any additional real estate; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Project, in whole or in part, or any property.

(5) This Section 46 may not be amended without Declarant's express prior written consent.

50. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right (as a Class B Member) to select the Members of the Board and may elect to transfer the management of the Project to a Board elected by the Owners. Upon the termination of the Period of Declarant's Control, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Thereupon, the Owners shall call a meeting to elect the Members of the Board to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Board.

51. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

52. 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 the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

53. Enforcement and Right to Recover Attorneys Fees. The Board of Directors may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent. Should the Association or Board be required to take action to enforce the Declaration, Bylaws or any administrative Rules and Regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue. In addition, the Board may impose the following sanctions after reasonable and fair notice and the opportunity to be heard:

- (a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any of the recreational facilities; provided, however, nothing herein contained shall authorize the Board to limit ingress or egress to or from a Lot;
- (d) exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;
- (e) exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);
- (f) requiring an Owner at his sole expense to remove any structure or improvement in the Limited Common Area or Common Area, and upon the failure of the Owner to do so, the Board or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass and the costs of correction shall be levied as an Individual Assessment against the Lot;
- (g) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

(h) levying Individual Assessments or Additional Charges to cover costs incurred by the Association to bring a Lot or Lot Owner into compliance.

54. Government Financing. Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes, and the termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the property, nor material amendment to the Declaration, or merger, may become effective, as to said Agencies, without their prior express written consent.

55. Remedies and Fines. In addition to other remedies set forth herein and by Utah law, to enforce the essential restrictive covenants set forth herein and in the Project Documents, the Board may suspend voting rights, suspend the privilege of using the Recreation Amenity, or assess a fine. Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and the Rules and Regulations is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her Residents, tenants and/or Guests. Fines levied against Residents, tenants, and Guests are the responsibility of the Owner, and such fines may be levied as an Individual Assessment against the Owner's Lot. The Board shall react to each material violation in the following manner:

(a) Fines imposed are final unless appealed in writing to the Board within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Board within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Board at the address so indicated in the notification of violation.

(b) Before assessing a fine under Subsection (a), the Board shall give reasonable and fair notice to the homeowner of the violation and inform the Owner that the fine will be imposed if the violation is not cured within the time provided in the Declaration, Bylaws, or Rules and Regulations, which shall be at least forty-eight (48) hours.

(c) A fine assessed under Subsection (a) shall:

(1) be made only for a violation of a restrictive covenant, or Rule and Regulation;

(2) be in the amount specifically provided for in the Declaration, Bylaws, or Association Rules and Regulations for that specific type of violation, not to exceed \$500.00; and

(3) accrue interest and late fees as provided in the Declaration, Bylaws, or Association Rules and Regulations

(d) Cumulative fines for a continuing violation may not exceed \$500.00 per month.

(e) An Owner who is assessed a fine under Subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Board. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(f) An Owner may appeal a fine issued under Subsection (a) by initiating a civil action within one hundred and eighty (180) days after:

(1) A hearing has been held and a final decision has been rendered by the Board under Subsection (e); or

(2) The time to request an informal hearing under Subsection (e) has expired without Owner making such a request.

(g) A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses as described herein.

56. Term. This Declaration, including its amendments and supplements, shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50.0%) of the Eligible Votes of the Members of the Association determines that this Declaration shall terminate.

57. Action of Members. Any action allowed or required to be taken by the Members under this Declaration may be taken (i) at a meeting where Members are represented in person, by proxy or by ballot, (ii) by written consent without a meeting, or (iii) by ballot as the Bylaws may allow.

58. Providing Payoff Information.

(a) The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit (the "Payoff Fee").

(b) The Association may not require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed \$50 without a change in the statute.

(c) If the Association fails to provide the payoff information requested within five (5) business days after the closing agent requests the information may not enforce a lien against that Unit for money due to the association at closing; provided, however, a request shall not be considered effective unless the request is conveyed in writing to the designated contact person for the Association on record with the State of Utah and contains: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; and (3) is accompanied by a written consent for the release of the payoff information: (a) identifying the person requesting the information as a person to whom the payoff information may be released; and (b) signed and dated by an Owner of the Unit for which the payoff information is requested.

57. Registration With The Department of Commerce.

(a) The Association shall register with the Utah Department of Commerce and pay the Registration Fee. The registration will include: (a) the name and address of the Association; (b) the name, address, telephone number, and, if applicable, e-mail address of the President of the Association; (c) the name and address of each member of the Board of Directors; (d) the name, address, telephone number, and, if the contact person wishes to use e-mail or facsimile transmission for communicating payoff information, the e-mail address or facsimile number, as applicable, of a primary contact person who will provide Association Payoff information.

(b) The Registration shall be updated within ninety (90) days after a change in any of the information provided.

(c) If the Association has failed to register or update its registration with the State of Utah may not record a notice of lien against a Unit or enforce a previous lien.

59. Production of Records. The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination by any Unit Owners at a convenient hour during the regular work week no later than fourteen (14) days after the Unit Owner makes a written request to examine the records.

60. Fair and Reasonable Notice. Notice given in accordance with the provisions of the Revised Nonprofit Corporations Act) shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, text message, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice.

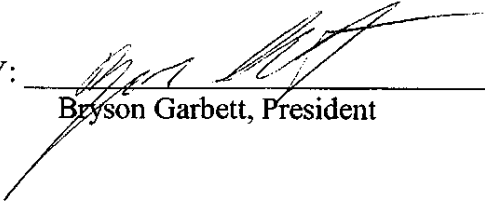
61. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the 30 day of June, 2011.

DECLARANT:


SUMMERLANE DEVELOPMENT, INC.  
a Utah corporation

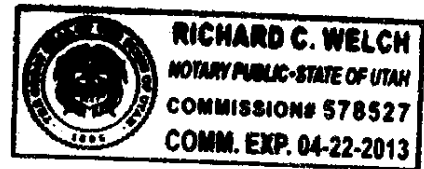
BY: \_\_\_\_\_

  
Bryson Garbett, President

STATE OF UTAH                    )  
  )ss:  
COUNTY OF SALT LAKE    )

On the <sup>th</sup>~~30~~ day of June, 2011, personally appeared before me Bryson Garbett, who by me being duly sworn, did say that he is the President of SUMMERLANE DEVELOPMENT, INC., a Utah corporation, and that the within and foregoing instrument was signed in behalf of said Company by authority, and said Bryson Garbett duly acknowledged to me that said Company executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The Land described in the foregoing document is located in Salt Lake County, Utah and is described more particularly as follows:

**SUMMERLANE AT THE DISTRICT, PHASE 1**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

**SUMMERLANE AT THE DISTRICT, PHASE 2**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

**SUMMERLANE AT THE DISTRICT, PHASE 3**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

**SUMMERLANE AT THE DISTRICT, PHASE 4**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

**SUMMERLANE AT THE DISTRICT, PHASE 5**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

**SUMMERLANE AT THE DISTRICT, PHASE 6**, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.



**EXHIBIT "B"**  
**LEGAL DESCRIPTION OF ADDITIONAL LAND**

Lot 1, SUMMERLANE SUBDIVISION NUMBER 2, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

TAX ID NUMBERS

27-20-178-155-0000  
27-20-181-029-0000

27-20-181-018-0000

27-20-181-019-0000

27-20-181-020-0000

27-20-181-021-0000

27-20-181-022-0000

27-20-181-023-0000

27-20-181-024-0000

27-20-181-025-0000

27-20-181-026-0000

27-20-178-059-0000

27-20-178-060-0000

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27-20-179-010-0000	27-20-179-054-0000	27-20-178-144-0000	27-20-182-006-0000
27-20-179-009-0000	27-20-179-002-0000	27-20-178-143-0000	27-20-182-007-0000
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