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Ent 1009225 Bk 1596 Pg 21  
Date: 21-Oct-2009 09:47 AM Fee \$167.00  
Cache County, UT  
Michael Gleed, Rec. - Filed By SP  
For MCKAY DEV HYRUM LLC

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
(WITH BYLAWS)**

**ELK MOUNTAIN  
PLANNED UNIT DEVELOPMENT**

**Hyrum City, Cache County, Utah**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS for ELK MOUNTAIN PLANNED UNIT DEVELOPMENT (together with all amendments, supplements, and other modifications hereto, the "**Declaration**") is made on the date evidenced below by McKay Dev Hyrum, LLC, a Utah limited liability company ("**Declarant**"), in its capacity as the owner and developer of the Elk Mountain Planned Unit Development in Hyrum, Utah.

**RECITALS:**

A. Declarant is the owner of certain real property in Hyrum, Cache County, Utah, which is set forth and described on **Exhibit A**, attached hereto and made a part hereof (the "**Property**").

B. Declarant is developing on the Property, in phases, a planned unit residential development to be known as Elk Mountain Planned Unit Development (the "**Project**") pursuant to the Preliminary Plat Map (the "**Development Plan**") approved by Hyrum City (the "**City**"), Utah. The Project will contain a variety of unattached single-family residential units and attached multiple-family residential units and will be developed in an estimated four (4) phases. It is intended that the Project will also contain recreational amenities and common areas in the form of Common Elements (as defined below), which are intended to be used and enjoyed by the Owners (as defined below) pursuant to the provisions of this Declaration.

C. In furtherance of the Development Plan for the Project, Declarant intends to adopt the provisions of this Declaration for the benefit of the Property, and all subsequent phases thereof, all of which shall run with the title to the Property.

D. In addition, Declarant has created or will create the Elk Mountain Home Owners

Association (the "*Association*") to which Declarant in due course will delegate and assign (1) the powers of owning, maintaining and administering the Common Elements, (2) the duties of administering and enforcing this Declaration, and (3) the duties of collecting and disbursing the assessments and charges hereinafter created in connection with the operation, maintenance, repair and replacement of the Common Elements and the functions and obligations of the Association created hereunder.

## ARTICLE 1 GENERAL

1.1 **General Purposes.** Declarant intends to develop the Project as a neighborhood having various unattached single-family residential units, attached single-family town-home residential units, recreational open space, and other community amenities. Declarant intends that this Declaration establish and provide for the continued maintenance of the Project as an attractive and desirable residential community.

1.2 **Densities.** The densities for the Project are generally defined in the Development Plan and may be further set forth in one or more Development Agreements between Declarant and the City as the Project progresses.

1.3 **Association.** Declarant has or will create the Association as a Utah non-profit corporation. The Members of the Association will be the Owners (including Declarant) of Lots (as defined below) and Units (as defined below) within the Project. Declarant intends to delegate and assign to the Association the powers of owning, maintaining and administering the Project's Common Elements, the duties of administering and enforcing this Declaration, and of levying, collecting and disbursing the assessments and charges hereinafter created. In the event that the non-profit status lapses or expires, the Board of Trustees shall have the unilateral authority to reincorporate the Association.

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1.4 **Declaration.** In order to further the general purposes stated above, Declarant hereby declares that all of the Property, and all subsequent phases thereto, shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, and liens provided, referred to or incorporated herein, all of which shall run with such properties and all of which shall burden, benefit, and be binding upon Declarant, all other persons or entities having or acquiring any right, title or interest therein, and their respective successors, assigns, heirs, devisees and personal representatives.

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

Lot No. \_\_\_\_ as identified on the Plat recorded in the Office of the Cache County Recorder as Entry \_\_\_\_, Map # \_\_\_\_ contained within Plat" \_\_\_\_ " [Project name] \_\_\_\_, Hyrum City, Cache County, Utah (as such Plat may have heretofore been amended or supplemented), SUBJECT TO the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of Elk Mountain Home Owners Association, as recorded in the Office of the Cache County Recorder as Entry \_\_\_\_ (as said Declaration may have heretofore been amended or

supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Elements described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).

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

1.6 **Right to Develop and Market.** Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant's rights to develop and market the Project and to exercise the rights reserved by Declarant as herein provided. Such rights reserved to Declarant include, but are not limited to the right to maintain a reasonable number of promotional, advertising, and/or direction signs, or similar items at any place or places on the Property, provided that any such item is of a size and in a location as is reasonable and customary and shall be of professional quality.

## ARTICLE 2

### DEFINITIONS

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2.1 Unless otherwise expressly provided herein, capitalized words and phrases used in this Declaration shall have the following meanings:

(a) **"Additional Land"** shall mean and refer to the following described real property located in Cache County, Utah, as described on the attached **Exhibit "B."**

(b) **"Articles"** shall mean the Articles of Incorporation of Elk Mountain Home Owners Association, as such Articles may be amended from time to time.

(c) **"Association"** shall mean Elk Mountain Home Owners Association to be formed by Declarant pursuant to the laws of the State of Utah.

(d) **"Board"** shall mean the Board of Directors of the Association, appointed by Declarant during the Declarant Control Period or elected by the Owners following the Change of Control Date in accordance with the Articles and Bylaws of the Association. The Board of Directors may also be referred to as the "Board of Trustees."

(e) **"Bylaws"** shall mean the Bylaws of the Association, as such bylaws may be amended from time to time.

(f) **"Capital Improvement Assessment"** shall mean the charge against each Owner and the Owner's Lot or Unit for the purposes specified this Declaration.

(g) **"Change of Control Date"** shall mean the date on which Declarant's Class B voting rights terminate pursuant to the provisions of this Declaration.

(h) **"City"** means Hyrum City, Cache County, Utah.

(i) **"Common Assessment"** shall mean the charge against each Owner and the Owner's Lot or Unit for the purposes specified in this Declaration.

(j) **"Common Elements"** shall mean all the real property, Improvements, facilities and equipment owned or managed by the Association, or owned by another person subject to a lease, license, easement or other arrangement in favor of Declarant or the Association, for the benefit of all of the Owners. The Common Elements within the Project shall include without limitation the parks, community open space, any roads not dedicated to and accepted by the City, and any other areas within the Project clearly intended as and identified as common area or Association property, which areas may be specified in the Development Plan and, where applicable, in other separately recorded documents identifying Common Elements or specifying an interest of the Association with respect to any Common Elements. Common Elements shall also include any communications systems, electronic networks or cable TV systems operated, leased, or subscribed to by the Association for the benefit of all Owners within the Project.

(k) **"Common Expenses"** shall mean the expenses (including allocations for Reserves) incurred or assessed by the Association in fulfilling its duties.

(l) **"Declarant"** shall mean McKay Dev Hyrum LLC, a Utah limited liability company, and its successors and assigns to whom it assigns, in whole or in part, the rights of Declarant hereunder by an express written assignment.

(m) **"Declarant Control Period"** shall mean the period commencing on the date on which the Association is formed and ending on the Change of Control Date.

(n) **"Declaration"** shall mean this Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements, as amended from time to time.

(o) **"Design Guidelines"** shall mean the design guidelines adopted by Declarant in accordance with this Declaration, as amended from time to time.

(p) **"Design Review Committee"** shall mean the Design Review Committee for the Project created by this Declaration.

(q) **"Development Agreement"** shall mean any agreement executed by and between the City and Declarant pertaining to the development of any portion of the Project

(r) **"Development Plan"** shall mean the preliminary plat for the Project approved by the City as the same may be amended from time to time, including without limitation the final Plat. The Development Plan is not intended to set forth the final approved configuration of all elements of the Project.

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(s) **"Director"** shall mean a member of the Board.

(t) **"Dissolution"** shall mean acts or non-acts by the Association that cause the voluntary or involuntary dissolution of the Association.

(u) **"Guest"** shall mean any family member, tenant or invitee of an Owner, or any family member, tenant or guest of such a person.

(v) **"Improvements"** shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, and related fixtures and equipment.

(w) **"Lot"** shall mean a residential Lot within the Project as shown on a recorded Plat and intended for either single-family or multiple-family residential use. Lots shall include both Pad Lots and Yard Lots

(x) **"Managing Agent"** shall mean any person or entity appointed or employed as an agent to manage the Common Elements.

(y) **"Member"** shall mean a member in the Association through ownership of a Lot or Unit within the Project.

(z) **"Mortgage"** shall mean any mortgage or deed of trust or other conveyance of a Lot or Unit given to secure a loan from an institutional lender in the business of making or holding residential real estate loans, provided that the loan is used to finance the purchase of the Lot or Unit and the lien and security interest for such loan will be void and reconveyed upon the repayment of such loan, and further provided that such lender is not affiliated in any way with the Owner of the Lot or Unit.

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(aa) **"Mortgagee"** shall mean a person to whom a Mortgage is made and shall include the beneficiary of a deed of trust. The term **"First Mortgagee"** shall include any Mortgagee who, by virtue of the Owner's Mortgage holds a first and prior lien upon any Lot or Unit superior to the lien of any other Mortgagee.

(bb) **"Mortgagor"** shall mean a person who mortgages the Owner's Lot or Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a deed of trust.

(cc) **"Owner"** shall mean the person, including Declarant, holding title of record to any Lot or Unit as reflected in the Public Records (including contract purchasers under executory contracts of sale), but excluding those persons having such interest merely as security for the performance of an obligation. For purposes of membership in the Association (i.e., voting) and being obligated to pay assessments levied against Lots and Units by this Declaration, the term shall refer to owners of Lots and Units.

(dd) **"Pad Lots"** shall mean a Lot within the Project upon which an attached structure designed and intended for use and occupancy by two or more separate living units sharing a common wall is constructed, together with all improvements located on the Lot concerned which are used in conjunction with such residences.

(ee) **"Pad Lot Common Area"** shall mean the common area containing the landscaping and improvements immediately surrounding the Pad Lots, as such area is shown

on the Plat or other map adopted by the Board, which area is for the exclusive use and enjoyment of the Owners of the Pad Lots.

(ff) **"Plat"** shall mean a recorded subdivision plat, as amended from time to time, covering residential Lots, Units, and/or Common Elements within the Project.

(gg) **"Project"** shall mean Elk Mountain Planned Unit Development as it exists at any time.

(hh) **"Property"** shall mean the real property described on Exhibit A attached hereto, and as supplemented or annexed, the property described on Exhibit B.

(ii) **"Public Records"** shall mean the Office of the County Recorder of Cache County, Utah.

(jj) **"Reserves"** shall mean those reserves anticipated and described in this Declaration.

(kk) **"Rules and Regulations"** shall mean the Rules and Regulations for the Project's Common Elements adopted by the Board and as amended from time to time.

(ll) **"Special Assessment"** shall mean the charge against each Owner and the Owner's particular Lot for the purposes specified in this Declaration.

(mm) **"Specific Assessment"** shall mean the charge against a particular Owner and the Owner's Lot for the purposes specified in this Declaration.

(nn) **"Supplemental Assessment"** shall mean the charge against a particular Owner of a Pad Lot and such Owner's Pad Lot for the purposes specified in this Declaration.

(oo) **"Supplemental Declaration"** shall mean a subsequent Declaration filed in accordance with Declaration to add/annex additional property into the project.

(pp) **"Termination Assessment"** shall mean the assessment made by the City pursuant to the provisions herein against each Owner upon the Dissolution of the Association or Transfer of all or part of the Common Elements to ensure that such Owners have provided the City with adequate funds to care for and maintain any Common Elements abandoned by the Association.

(qq) **"Transfer"** shall mean any voluntarily or involuntarily abandonment, surrender, assignment or other form of transfer by the Association of any portion of or all of the Common Elements

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(rr) **"Unit"** shall mean either a single-family or multiple-family residential dwelling unit on the Property, whether attached or unattached, and constructed upon a numbered Lot or space reflected on a recorded Plat.

(ss) **"Yard Lots"** shall mean a Lot within the Project upon which an unattached structure which is designed and intended for use and occupancy as a single-family residence is or is to be

constructed, together with all improvements located on the Lot which are used in conjunction with such residence.

### ARTICLE 3

#### EXPANSION OF PROJECT

3.1 **Right to Expand/Add Additional Land.** There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project the Additional Land or a portion or portions thereof. Notwithstanding any provisions of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Lot Owners, Mortgagees, or the Association) and shall be limited only as specifically provided in this Declaration. Any given portion of the Additional Land shall be deemed added to the Project and, subject to the terms of this Article 3, to the jurisdiction of the Association at such time as a duly approved subdivision plat and a supplement to this Declaration containing the information required by this Article have been recorded with respect to the portion of the Additional Land concerned.

After the recordation of such Supplemental Declaration and Plat, title to each Lot thereby created within the portion of the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to the Common Areas shall be vested in and held by Declarant, and none of the other Lot Owners or the Association shall have any claim or title to or interest in such Lot, such Lot's appurtenant nonexclusive right and easement of use and enjoyment to the Common Elements, and such Lot's appurtenant exclusive right and easement of use and enjoyment to Limited Common Elements, if any, associated with such Lot. In addition, after the recordation of a supplement to this Declaration and a new plat for the Additional Land being added, each Lot thereby created within the portion of the Additional Land concerned, as with all other Lots previously existing, shall have an equal, undivided, nonexclusive and appurtenant right and easement of use and enjoyment of the Common Elements and Facilities of the Project, as supplemented.

3.2 **Rights and Statements Respecting Additional Land.** Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of the Project by the addition thereto of the Additional Land or a portion or portions thereof:

(a) All of the Additional Land need not be added to the Project. Rather, a portion or portions of the Additional Land may be added to the Project at any time (within the limits herein prescribed) and from time to time. Est. 1009225, Bk. 1596 Pg. 27

(b) There are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to the Project or relative to the order in which particular portions of the Additional Land can be added to the Project.

(c) There are no limitations or requirements (other than zoning and subdivision restrictions as they may exist or be modified from time to time by the City or

County) relative to the layout, design, size, location, density, permitted uses, legal structure, or other characteristics of the Lots, Living Units, Common Elements, and Limited Common Elements to be created on any portion of the Additional Land added to the Project.

(d) In conjunction with the addition to the Project of a portion of the additional Land, Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, rights-of-way and/or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, such of the Additional Land as has the not been added to the Project.

**3.3 Procedure for Expansion.** The supplements to this Declaration by which additions to the Project of any portion of the Additional Land is accomplished shall be executed by Declarant; shall be in recordable form, shall be filed for record in the office of the County Recorder of Cache County, Utah, on or before twenty (20) years from the date that this Declaration is recorded; and shall contain the following information for that portion of the Additional Land which is being added to the Project:

(a) Data sufficient to identify this Declaration and the plat respecting that portion of the Additional Land being added to the Project.

(b) The legal description to identify this Restated and Amended Declaration and the plat respecting that portion of the Additional Land being added to the Project.

(c) Any amendments, supplements or replacements to the standards and restrictions set forth in this Declaration.

(d) A Statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, as said Declaration may be amended or supplemented.

(e) A statement that Declarant agrees to convey by Quit Claim Deed to the Association, at or prior to the time it first conveys to an Owner a Lot located on the portion of the additional Land being added to Project, good and marketable title to all Common Elements situated in that portion of the Additional Land being added to the Project, free and clear of all monetary liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

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(f) Such rights-of-way and/or easements as are being reserved by Declarant.

(g) A description of any Limited Common Elements being created within the portion of the Additional Land concerned and a statement as to whether the Association or the Owner of the Lot concerned is to maintain such Limited Common Elements.

(h) Such other matters as Declarant may deem to be necessary, desirable or appropriate. Upon the recordation of any Supplemental Declaration contemplated above, it shall automatically supplement this Declaration and any supplements previously recorded. At any



point in time, the Declaration for the Project shall consist of this Declaration, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

**3.4 No Obligation to Expand.** Except to the extent specifically indicated herein, this 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: (i) the addition to the Project of any or all of the Additional Land; (ii) the creation or construction of any Lot or other improvement; (iii) the carrying out in any particular way or within any particular time of any development or addition to the Project which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Additional Land. Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done nor relative to the Additional Land or any portion thereof shall be binding as to such of the Additional Land as is never added to the Project. Further, if and when all or any part of the Additional Land is developed without adding the same to the Project before a lot therein is sold, or is made a part of any other subdivision, or planned unit development, that is not made a part of the Project, then such part of the Additional Land shall automatically cease to be Additional Land under this Declaration.

**3.5 Owners' Obligation Concerning Expansion of Project or Development of the Additional Land.** Each Owner, by acquiring his interest in the Project, agrees not to inhibit or oppose Declarant's future development of each portion of the Additional Land (whether or not added to the Project) and the obtaining of necessary approvals therefor. Without limiting the scope of the immediately foregoing sentence, no Owner shall oppose such development in public meetings, by petition, or by legal actions.

## ARTICLE 4

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### THE ELK MOUNTAIN HOME OWNERS ASSOCIATION

**4.1 Association.** The Elk Mountain Home Owners Association may do such things as are within its powers and as may reasonably be required to maintain the Project and its Common Elements as an attractive and desirable residential community. The Members of the Association shall be the Owners, including Declarant, of Lots and Units within the Project. The duties and powers of the Association shall relate to the Project as a whole and to the ownership and use of the Common Elements, their care, maintenance and upkeep, including the imposition of assessments therefor upon the Owners and their Lots and Units.

**4.1.1 Sub-Associations.** If deemed necessary to facilitate the operations of this Declaration or if deemed necessary and for the benefit of any Additional Land added hereto, one or more sub-association may be created by amendment to this Declaration or pursuant to the Supplemental Declaration adding property to the Association. In the absence of an express provision to the contrary, the stricter of any conflicting use restrictions shall control. Members may be required to pay an additional assessment unique for their own sub-association, if so established in a Supplemental Declaration.

**4.2 Duties and Powers of Association.** The Association, acting through the Board, shall have the powers and duties as provided herein and in the Articles and Bylaws and such

additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of this Declaration.

**4.3 Operation and Maintenance.** The Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Elements. Without limiting the foregoing, the Association shall as needed operate, manage, regulate, maintain, repair and replace:

(a) Any surface, subsurface, or above-surface Common Elements, including roads, parks, trails, sidewalks or other Common Elements situated on or crossing any portion of the Project or which is the subject of an easement or license in favor of Declarant and/or the Association over property that is not a part of the underlying Property within the Project but for such easement or license;

(b) The Pad Lot Common Area and the exteriors of the Units constructed on the Pad Lots in a manner that maintains such Units in a good and attractive condition and state of repair and ensures compliance of each such Unit with this Declaration and the Design Guidelines (as defined below); *provided, however*, that the cost of the maintenance and repair of exteriors of such Units and the Pad Lot Common Area (i.e., the cost of the maintenance of the landscaping and improvements located on the common area immediately surrounding the Pad Lots) shall be borne by the Owner(s) of the Pad Lots through Supplemental Assessments levied by the Association against the Pad Lots as set forth in this Declaration;

(c) The landscaping of the areas surrounding the serpentine walk along the area south of 300 South Street in Hyrum adjacent to the Project. The Association's rights and duties under this subsection shall include the right to make all decisions related to the landscaping of such areas and the obligation to install and maintain the landscaping of such areas; and

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(d) The maintenance associated with fences, and areas enclosed by fences, on a Pad Lot or on the Pad Lot Common Area is addressed in Section 8.14(g) below.

**4.4 Health and Safety.** Neither Declarant nor the Association have any obligation to provide services for the maintenance of health and safety within the Project.

**4.5 Administration and Enforcement.** The Association shall have the power to:

(a) Grant easements or rights-of-way required by utilities to serve the Common Elements.

(b) Employ or contract with a manager to perform all or any part of the duties and responsibilities of the Association, and delegate its power to committees, officers and employees.

(c) Take such actions as may reasonably be necessary or desirable to comply with and enforce the Rules and Regulations, including the levying and collection of reasonable fines.

(d) Contract with such persons as may reasonably be necessary or desirable to effectuate the purposes of this Declaration, including, without limitation, attorneys, accountants, and contractors to collect and dispose of solid waste and refuse, to maintain the landscaping, to provide security services, and the like, all with respect to the Common Elements.

(e) Take such actions as may reasonably be necessary or desirable to enforce the terms and provisions of the Articles, the Bylaws, or this Declaration, including the levying and collecting of fines.

(f) Collect such assessments and enforce such liens as may be reasonably necessary or prudent to maintain the Common Elements in the judgment of the Board or the City.

(g) Suspend a member's voting rights for any period of assessment delinquency; suspend a members use of the Common Elements for any period of delinquency; and collect rent from a tenant in the event the Owner becomes delinquent pursuant to applicable Utah law.

**4.6 Insurance.** The Association shall maintain such policy or policies of liability, fire and hazard insurance with respect to the Common Elements and personal property owned by the Association as required herein.

**4.7 Assessments.** The Association shall levy and collect all assessments as provided herein.

**4.8 Telecommunications Systems and Access.** Within the Project, the Association may provide for cable television facilities and services; other telecommunications systems and access to communications programming, including Internet access via cable or telephone facilities; other audio or video program services; and other telecommunications devices as the Board may deem appropriate bearing in mind the demand of Owners therefor and the costs of delivery thereof. If the Association decides to provide such services, Owners may not reduce their assessment obligation even if they do not desire or need such services.

**4.9 Membership in the Association.** Every Owner, upon acquiring title to a Lot or Unit in the Project, shall automatically become a Member of the Association and shall remain a Member until such time as the ownership of the Lot or Unit giving rise to such membership ceases, for any reason, at which time the successor Owner of the Lot or Unit shall become the successor Member with respect to such Lot or Unit.

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**4.10 Membership Appurtenant.** Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of a Lot or Unit. Ownership of a Lot or Unit shall be the sole qualification for membership in the Association, and such membership shall not be transferred, pledged, or alienated in any way except upon the transfer of title to the Lot or Unit giving rise to such membership, and then only to the successor in interest of such title. Any attempt to otherwise transfer a membership shall be null and void, and will not be reflected upon the books and records of the Association.

**4.11 Title to the Common Elements.** Declarant hereby agrees that it will convey or

assign (where Declarant owns less than the title) all of its right, title and interest in and to the Common Elements to the Association, free and clear of all encumbrances and liens, except for the following:

- (a) conditions, restrictions and reservations of easements set forth in this Declaration or any Plat;
- (b) liens for taxes and assessments;
- (c) the terms of other easements and reservations interests in Declarant's chain of title, excluding financial liens; and
- (d) any public rights of record.

The Declarant shall delay the conveyance of the title or assignment of rights as set forth in this Declaration until after the recording of applicable Plats or entitling documents in the Public Records and completion of construction of any Common Elements as required by this Declaration.

**4.12 Taxes on Common Elements.** Real estate taxes or assessments levied or assessed against or upon the Common Elements shall be paid by the Association and shall constitute a portion of Common Expenses unless the applicable taxing or assessing authority is willing to prorate the same equally to each Owner's Lot or Unit. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments for the Common Elements on the Owner's Lot or Unit.

**4.13 Damage or Destruction to Common Elements.** Damage to or destruction of all or any portion of the Common Elements shall be handled in the following manner:

- (a) If the insurance proceeds are sufficient to effect total restoration in the event of damage or destruction to any Common Element, then the Association shall cause such Common Element to be repaired and reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Element to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Capital Improvement Assessment against each of the Owners and their Lots and Units, in accordance with the provisions of this Declaration.

## **ARTICLE 5**

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### **EASEMENTS AND THIRD PARTY RIGHTS**

**5.1 Easements Reserved by Declarant.** As to the Property, Declarant hereby reserves to itself and its assigns the following easements:

- (a) **Construction Easements and Related Rights.** Declarant hereby reserves for the benefit of Declarant and its assigns the right from time to time:

(i) to construct, maintain, repair and replace any Improvements necessary or required for the full development of the Project on the Property owned by Declarant; on the Common Elements; and on portions of Lots outside of the building areas of Lots or Units which may be designated on a Plat;

(ii) to establish and use nonexclusive perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Elements for uses including, but not limited to access roads, paths, sidewalks and trails, clubhouse, pool, playgrounds, mailbox structures, sprinkler systems and other landscaping changes, improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals), ponds, drainage facilities, monuments, recreational areas and amenities, parking areas, conduit installation areas, storage facilities for supplies and equipment, earth walls and other roadway supports, lights, and signage;

(iii) to create other interests, reservations, easements, exceptions and exclusions for the best interest of the Association and for the benefit of any Owner or all Owners *provided* that any such action taken and any easement, lease, permit or license, interest, reservation, exception or exclusion established does not unreasonably impair the use of the Lots or Units designated on a Plat; and

(iv) to construct and maintain offices, prefabricated structures, booths or other structures for administrative, sales and promotional purposes relating to the Project during its development and marketing.

(b) **Landscaping and Drainage Easements.** Declarant hereby reserves for itself and its assigns an easement across the Property (except the portions thereof occupied by Improvements) and within all Common Elements:

(i) to re-vegetate, beautify or maintain portions of the Property located adjacent to road rights of way;

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(ii) to beautify and maintain portions of the Property to the extent necessary, in Declarant's judgment, to mitigate through landscaping, any potential visual impact of the Project;

(iii) to re-vegetate portions of the Property in order to control erosion, to beautify the Property or to restore the Property to a natural condition after damage by natural or man-made causes;

(iv) to preserve, improve, maintain, restore and re-vegetate natural and man-made storm drainage ways across the Property, including the building areas of the Property which include drainage ways, and to convey water in those drainage ways; and

(v) to construct, operate, maintain, repair and replace storm detention and water quality structures on the Property, including within the building areas of

Lots or Units where necessary to adequately control surface water.

(c) **Easements for the Benefit of Owners.** Declarant hereby reserves for the benefit of all the Owners, the following described perpetual non-exclusive easements over all portions of Lots located outside of any building areas designated on the Plats, for the use and enjoyment of the Lots and Units in accordance with this Declaration: Easements, including any necessary access rights, for the installation, maintenance and repair of utilities and services; for drainage over, across and upon adjacent Lots for water from normal use of adjoining Lots, and for the construction, maintenance and repair of earth walls, slopes, retaining walls and other supports, *provided* that any such action taken or any other use of such easements does not unreasonably impair the use of the Lots affected thereby. Declarant also reserves any other easements referred to on any Plat as reserved by Declarant for the use and enjoyment of the Owners.

5.2 **Easements for Benefit of Association.** Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement over, upon, across, above, under and through the Property and each portion thereof to exercise any right held by or obligation imposed upon the Association under this Declaration or any other Association documents. Notwithstanding the foregoing, the Association shall not enter upon any Lot or Unit without reasonable prior notice to the Owner of the Lot or Unit, except in cases of emergency.

5.3 **Other Easements.** The Property shall be subject to the following easements in addition to those created in this Declaration:

(a) **Easements on Plats and of Record.** The Property shall be subject to all easements shown on any Plat, and to all easements of record.

(b) **Easements for Parking.** Temporary guest or recreational parking shall be permitted within the Common Elements only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association is hereby empowered to establish "parking" and "no parking" areas within the Common Elements, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle, provided that the Association shall not reduced the number of community parking spaces shown on the final Plat approved by the City without the written consent of the City.

(c) **Easements for City and County Public Service Use.** Declarant hereby reserves and covenants for itself and all future Owners within the Project, easements for any City, county, state and federal public services, and for public utilities, including but not limited to, the right of the police to enter upon any part of the Property for the purpose of enforcing the law.

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(d) **Cable Television, Internet Service, and Similar Utilities.** Declarant hereby reserves easements in, upon, over, across and through the Property for the installation of a cable television system, internet service, or similar utilities, together with the right to grant and transfer such easements.

**5.4 Nature of and Creation of Easements.** Unless otherwise set forth herein, any easement reserved in this Declaration shall be deemed to be nonexclusive, and each easement in favor of an Owner shall be deemed to be appurtenant to and for the benefit of the Lot or Unit owned by such Owner. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect upon recordation of this Declaration in the Public Records whether or not referred to, reserved and/or granted in any instrument of conveyance.

**5.5 Limitation on Easement.** Each Owner's appurtenant right and easement of use and enjoyment respecting the Common Elements shall be subject to the following:

(a) The right of the Association to govern by reasonable Rules and Regulations the use of the Common Elements so as to provide for the enjoyment of the Common Elements in a manner consistent with the collective rights of all of the Owners;

(b) The right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property within the Project, to enjoy access and rights of ingress and egress over and across any open area contained within the Common Elements for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Elements to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; *provided* that such dedication or transfer must first be approved by the affirmative vote or written consent of a majority of all outstanding Member votes.

**5.6 Rights of City to Enforce Declaration.** Notwithstanding any provision to the contrary, the City shall be an intended third-party beneficiary of this Declaration and shall have the right to enforce the provisions of this Declaration as if the City constituted the Board if the Board fails to take action reasonably requested by the City to maintain the Common Elements within thirty (30) days written notice to the Board from the City, provided that the City shall not have the right to enforce this Declaration as the Board if within 30 days after receiving written notice from the City the Board begins to take action reasonably necessary to address the maintenance issues specified by the City in the written notice and continues with such action without any unreasonable interruption or delay until such maintenance action is completed. In addition, any costs incurred by the City or Declarant enforcing the Declaration, including without limitation the reasonable attorneys' fees of the Association's legal counsel in collecting assessments to pay for necessary maintenance, shall be borne by the Association as a Common Expense and shall be collected through a Special Assessment, except that such Special Assessment shall not require any vote of the Members or Board and shall be payable in such manner and at such times as the City or Declarant, as applicable, may reasonably determine after consulting with the Board in good faith to the extent reasonably practicable.

## **ARTICLE 6**

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### **OWNERS' RIGHTS AND OBLIGATIONS**

**6.1 Owners' Easements of Enjoyment.** Every Owner and the Owners' Guests shall

have a non-exclusive right and easement of ingress and egress and of enjoyment in, to and over the Common Elements, which right and easement shall be appurtenant to and shall pass with fee title to the Owner's Lot or Unit, subject to the rights of the Association as set forth in this Declaration, the Articles and Bylaws, including the right of the Association to suspend the voting rights and rights to use the Common Elements (except, if necessary for ingress and egress to the Owner's Lot or Unit) by an Owner for any period during which any assessment against the Owner's Lot or Unit remains unpaid and delinquent or another material violation of this Declaration continues to exist, and for a period not to exceed 30 days for any single infraction of the Rules and Regulations. The Common Elements shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Owners of Lots and Units set forth herein and in the Rules and Regulations.

**6.2 Exemption from Liability.** No Owner shall be exempt from personal liability for assessments to be levied by the Association, nor shall the Lot or Unit owned by such Owner be released from the liens and charges thereof by waiver of the use and enjoyment of the Common Elements or the facilities thereon or by abandonment of the Owner's Lot or Unit.

**6.3 Maintenance Obligations of Owners.** It shall be the duty of each Owner to abide by the provisions of the Declaration regarding Design Review Committee approval and the maintenance, repair and upkeep of the Owner's Lot or Unit in a neat, sanitary and attractive condition. It shall also be the duty of each Owner to pay any and all assessments legally assessed pursuant to this Declaration for the maintenance of the Common Elements and the other purposes set forth herein.

**6.4 Maintenance and Repairs.** Subject to those duties and responsibilities of the Association set forth in this Declaration, Owner shall, at the Owner's own cost, maintain the Owner's Unit in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Project.

The painting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Design Review Committee pursuant to its procedures. All repainting/staining of the exteriors of the Units located on the Pad Lots shall be performed at the direction of the Association pursuant to Section 4.3(b). The repainting/staining and other maintenance of the exteriors of the Units located on the Yard Lots shall be performed by or at the direction of (and at the expense of) the Owners of the respective Yard Lots, and all of such Units shall be maintained in a good and attractive condition and state of repair and in compliance with this Declaration and the Design Guidelines. No Owner shall openly or wantonly neglect his Lot or Unit or fail to take all reasonable steps to keep the same in a good and attractive condition and state of repair at all times.

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**6.5 Owners Insurance.** Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall be responsible to procure and maintain in force hazard insurance and liability insurance with respect to the Owner's Lot and Unit as is customary in projects such as the Project and which may be consistent with such Owner's personal circumstances and must include coverage for contents, improvements and betterments to said Lot and Unit.



6.6 **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Common, Special, Specific, or Supplemental Assessments or any other assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Association from time to time.

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

## ARTICLE 7

### DESIGN REVIEW

7.1 **Design Guidelines.** Subject to the City's ordinances and building codes, Declarant intends to develop all of the Lots and to construct all of the Common Elements. Such development and construction shall be completed pursuant to the Development Plan, any Development Agreement, and Declarant's plans and specifications.

Design and construction of the Lot and Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria adopted by the Design Review Committee referred to as "**Design Guidelines**" as may be amended from time to time by the Design Review Committee. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All original construction by Declarant pursuant to the Design Guidelines, as they may be amended from time to time, shall be and is hereby approved. All Design Guidelines, however, must be approved by the Board. All builders and owners, including individual builders of one or more lots obtained from the Declarant, shall comply with and are bound by the design restrictions herein.

7.2 **Unit Quality and Size.** Notwithstanding the foregoing, the size and quality material restrictions for the Units constructed within the Project as set forth in the Design Guidelines shall not be reduced except with the approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. Unless the City provides a written rejection of a proposed change within fourteen (14) days of the written notice from the Design Review Committee requesting a specific change to the Design Guidelines, such change shall be deemed to be approved by the City.

7.3 **Design Review Committee.** The Design Review Committee (the "**Committee**") shall consist of an uneven number of persons of not less than three nor more than five members, who need not be Owners. The members of the Committee shall be appointed by Declarant during the Declarant Control Period and thereafter by the Board, and the members of the Committee may be members of the Board. The Committee may utilize professional consultants including an architect, a landscape architect, and a civil engineer. The Committee shall have and exercise all of the powers, duties and responsibilities set out in this Declaration and shall meet on such schedules as may be established by its chairman. A majority of its members shall constitute a quorum and the majority of its members present at the meeting shall be sufficient to approve action. Actions may also be approved by unanimous written consent of all Committee members. The Board may serve as the

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Committee upon its own motion.

**7.4 Approval by Design Review Committee.** Except for original construction by Declarant, no Improvements of any kind, including, without limitation, residence dwellings, ponds, parking areas, mail boxes, fences, walls, garages, driveways, antennae, satellite dishes, flag poles, curbs, and covered walks shall ever be erected, altered, refinished or repainted (unless of the same finish or color as the original), or removed from any lands within the Property, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on any lands comprising the Property, unless the complete plans and specifications therefor ("*Plans and Specifications*") complying with the Design Guidelines requirements are approved by the Committee prior to the commencement of work.

The Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design and existing structures within the Project; the building bulk or mass of any buildings or structures within the Project, their location with respect to topography, existing trees, finished grade elevations, and harmony of landscaping with the natural setting and surroundings; and shall ascertain whether the Improvements conform to the Design Guidelines then in effect, under this Declaration.

**7.5 Approval Procedure.** Two copies of the complete Plans and Specifications must be submitted to the Committee for approval or disapproval by it in writing within 30 days after submission, *provided* that Plans and Specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 10 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Article, as to which respects it shall be deemed disapproved. The Committee shall disapprove Plans and Specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Article 6. In the event of a conflict between the Design Guidelines and the applicable regulations or ordinances of the City or any other governmental entity having jurisdiction, the latter shall prevail.

**7.6 Construction.** Once begun, any construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the common areas in the vicinity of the activity, *provided* that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. The Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect construction or other activities authorized for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

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**7.7 Fee.** The Committee may charge such a reasonable fee or fees for its review of Plans and Specifications as shall be determined from time to time by the Board. Such fee or fees shall be reasonable in relation to the work performed and shall be applied uniformly.

7.8 **Variances.** The Committee has the authority to deviate from the requirements contained in the Design Guidelines in extenuating circumstances, when to do otherwise would create an unreasonable hardship or burden for an Owner. The Committee does not, however, have authority to allow deviation from the requirements of the City.

7.9 **General Standards.** The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Project conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines and this Declaration.

7.10 **Ultimate Responsibility.** Each Owner shall at all times conform and comply with all approved Plans and Specifications for the Improvements on such Owner's Lot or Unit and otherwise conform and comply in all respects with the Design Guidelines and this Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction.

7.11 **Written Records.** The Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument, which records shall be maintained for a minimum of five years after the approval or disapproval.

7.12 **Procedure for Appeal.** In the event Plans and Specifications submitted to the Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; *provided, however, a* written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Committee to properly apply the Design Guidelines or provisions of this Article shall be received by the Board not more than 30 days following such disapproval or deemed disapproval. Within 30 days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Committee properly applied the Design Guidelines, or the provisions of this Article. In the event the Board fails to render such decision within said 30 day period, such disapproval or deemed disapproval of the Committee shall be deemed to have been affirmed by the Board.

7.13 **Non-Liability of Design Review Committee Members.** Neither Declarant, the Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all Plans and Specifications submitted to it solely on the basis of compliance with the Design Guidelines, any applicable provision of this Article, aesthetic considerations, and the overall benefit or detriment that would result to the immediate vicinity of the proposed construction or alteration and the Project generally. The Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building or other codes.

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7.14 **Variance in Event of Reconstruction.** Any Owner whose Lot or Unit has suffered damage may apply for approval to the Committee for reconstruction, rebuilding, repainting or repair of the Owner's Lot or Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in compliance with the then applicable Design Guidelines.

## ARTICLE 8

### RESTRICTIONS ON ALL PROPERTY

Violation of any restriction contained herein or of a rule promulgated by the Board is subject to a fine in an amount established by the Board from time to time.

8.1 **Zoning Regulations.** No lands within the Property shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to this Declaration or any applicable Development Agreement or City Ordinance.

8.2 **No Mining, Drilling or Quarrying.** No Owner shall conduct mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, or on the surface of the Property.

8.3 **No Business Uses.** The Lots and Units within the Project shall be used exclusively for residential living purposes. No Lots or Units within the Project shall ever be occupied or used for any commercial or business purposes; *provided, however*, that nothing in this Section shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lot or Unit owned by Declarant as a sales model, or (b) any Owner or the Owner's duly authorized agent from renting or leasing said Owner's Lot or Unit for residential use or, (c) any home business use authorized and licensed by the City pursuant to the City's home occupation ordinance, and approved by the Association prior to the Owner's application to the City.

8.4 **Leasing Restrictions.** No lease of any Unit shall be for less than the whole thereof. Individual room rentals and dormitory type rentals are not permitted. All leases shall be subject to the provisions of this Declaration whether or not stated therein and shall be for a minimum term of six (6) months. Whether stated in the lease agreement or not, the Association shall be deemed an intended third-party beneficiary to any lease agreement and shall have standing to enforce the lease agreement and bring an action for the violation thereof in the event a landlord fails to do so upon cause shown and notice given.

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8.5 **Restriction of Signs.** With the exception of a sign no larger than two feet by three feet for the Owner to advertise the Owner's Lot or Unit for sale, no signs or advertising devices shall be permitted on any Lot or Unit, including, without limitation, commercial, political, informational or directional signs or devices, except signs approved in writing by the Design Review Committee in accordance with its Design Guidelines as to size, materials, color and location: (a) as necessary to identify ownership of the Lot or Unit and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of

danger; and (e) as may be required by law. Any approved signs shall be located as approved by the Design Review Committee. The Design Review Committee may develop comprehensive sign regulations. The Declarant may erect such signs in a size and color as it deems appropriate for the advertising and sale of Lots and Units within the Project.

**8.6 Restrictions on Animals.** No animals other than ordinary household pets (*i.e.*, ordinary, non-exotic pets that live inside the Unit) may be kept or allowed to remain on any Lot or in any Unit. Such ordinary household pets may not be kept or allowed to remain outside of the pet owner's Unit unless and until written authorization is obtained from the Board, and no more than **two (2)** ordinary pets shall be allowed in any Unit. The Board, in its sole discretion, shall have the right to revoke such authorization at any time in its sole discretion and shall have the power to require any Owner or Guest to remove any animal or other pet belonging to them which is not disciplined or which constitutes an undue annoyance or a danger to other Owners, their Guests, or others. At all times while a pet is outside of its owner's Unit, the pet must be accompanied by a responsible individual and must be placed on a leash capable of controlling such pet. Any defecation left by any pet in or on any common area within the Development shall be immediately removed and disposed of by such pet's owner or custodian in a manner allowed by applicable laws and regulations. The Board may adopt further rules and regulations restricting animals and pets as it deems necessary from time to time. Violation of any pet or animal restriction or rule is subject to a fine or fines imposed against the responsible Lot Owner.

**8.7 Underground Utility Lines.** All water, gas, electrical, telephone, and other permanent utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

**8.8 Service Yards.** Service yards or storage areas on any Lot shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring Lots and Units, access roads and area surrounding the Property. Such yards or areas not part of original construction shall be approved in advance by the Design Review Committee pursuant to its procedures and the Design Guidelines.

**8.9 Maintenance of Property.** All Lots and Units and all improvements on any Lot or Unit shall be kept and maintained by the Owner thereof in clean, safe, attractive and sightly condition, in good repair.

**8.10 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Lot or Unit nor shall anything be done or placed on any Lot or Unit which is or may become a nuisance or cause significant embarrassment, disturbance or annoyance to others.

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**8.11 No Hazardous Activities.** No activities shall be conducted on any Lot or Unit and no improvements shall be constructed on any Lot or Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace if such is permitted by City ordinances.

**8.12 No Unsightliness.** No unsightliness shall be permitted upon any of the Property.

Without limiting the generality of the foregoing: (a) any unsightly structures, facilities, equipment, tools, boats and vehicles other than operating automobiles shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the Property; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on the Property, except in approved service yards meeting the requirements of Section 8.08 and any requirements of the Design Guidelines and the Design Review Committee; (e) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted on Lots or Units if visible from buildings, Lots, Units, or areas surrounding the Property.

**8.13 No Annoying Lights, Sounds or Odors.** No light shall be emitted from any Lot or Unit which is unreasonably bright or causes unreasonable glare or does not comply with the Rules and Regulations or Design Guidelines; no sound shall be emitted from any Lot or Unit which is unreasonably loud or annoying, including without limitation, speakers, horns, whistles, bells or other sounds devices, except security and fire alarm devices used exclusively to protect the Property or improvements thereon; and no odors shall be emitted from any Lot or Unit which are noxious or offensive to others.

**8.14 Restrictions on Fences and Enclosures.** In order to maintain, as nearly as possible, a park-like feeling in the Project, the following shall apply:

- (a) There shall be no front yard fencing.
- (b) The type and location of all fencing must be approved in writing by the Design Review Committee prior to installation.
- (c) Except as specifically provided for in this Declaration, there shall be no chain link fencing.
- (d) Lot border delineation shall be achieved by landscaping and berming whenever possible.
- (e) Enclosures for pets may be erected upon the written approval of the Design Review Committee. Pet enclosures may be chain link and shall be no higher than six (6) feet.
- (f) The type of fencing used to separate the back of the Lots along 300 South from the Common Element walkway and landscaping along 300 South shall be the type approved by the City as set forth in a diagram executed by the City and included in the Design Guidelines.
- (g) Pad Lot Fencing. Fencing on Pad Lots or Pad Lot Common Area may be permitted by the Declarant or the Board from time to time in their discretion. All costs of

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installation or removal of any such fence, including the cost of modifications to landscaping and sprinkler lines, shall be the responsibility of the Benefitting Owner. All such fences shall be of a uniform depth, width and height. All such fences shall contain at least one gate and the Board and its agents and designees shall at all times have full rights of access to and through the fenced enclosure. Additionally, the Benefitting Owner must obtain prior written approval from the ACC to plant, landscape, or alter the landscaping as installed and maintained within a fenced enclosure at the time of conveyance.

(1) Benefitting Owner. For purposes of this subsection 8.14(g), the term "Benefitting Owner" shall mean a Pad Lot Owner whose Lot enjoys the benefit and exclusive use of the area enclosed by a fence.

(2) Maintenance. In any case where such a fence is installed, the Benefitting Owner shall be responsible for all maintenance of landscaping and improvements within the area enclosed by such fence, including sprinkler lines, fixtures, and accessories. The Association shall maintain the fence itself, however, if the needed repairs and/or maintenance is caused by the neglect or fault of the Owner, their tenants, guests or invitees, then the Owner shall be responsible for such repairs and maintenance. The Board shall be the sole determiner of whether such fault or neglect exists on a case by case basis. Otherwise, the general maintenance and repair of fences shall be a maintenance obligation of the Association as provided herein.

(3) Additional Assessment Required. Benefitting Owners shall be uniformly charged a Specific Assessment on a monthly basis to contribute to the ongoing and future maintenance, repair and replacement requirements of the fences in the community. This additional assessment amount shall be added to and become a regular part of such Owner's monthly assessment. The amount of the additional assessment amount shall initially be ten dollars (\$10) per month and may be modified from time to time by the Board as needed to meet current and projected fence repair and replacement needs.

(4) No Separate Property Right Created. Any area enclosed by a fence shall retain its original status as Common Area, Limited Common Area, or a Lot, as the case may be, as it is designated on the applicable Plat and shall not be deemed to be part of a Lot or an interest in real property by virtue of its being enclosed by a fence. The Benefitting Owner shall merely enjoy a license to enjoy such enclosed area for his or her exclusive use but no further property right is created by this subsection (g).

(5) Additional Requirements. The Board or ACC may adopt rules from time to time further regulating, clarifying or otherwise expanding the provisions of this Subsection (g) and may impose additional requirements for an Owner to obtain approval to install a fence.

**8.15 Planned Unit Development.** No Lot shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units.

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**8.16 Septic Tanks.** No septic tank shall be installed upon the Property.

**8.17 Garbage Cans.** The Board is authorized to adopt rules regulating and restricting the maintenance and placement of garbage cans on Lots.



8.18 **Rules and Regulations.** No Owner shall violate the Rules and Regulations adopted from time to time by the Association. No such rules shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot or Unit by the Owner thereof.

8.19 **Drainage Preservation.** No Owner may alter or obstruct the established drainage pattern of runoff water or storm drainage into, from or across the Owner's Lot or any other Lots in the absence of specific approval by the Design Review Committee and the City. For purposes of this Declaration, "*established drainage*" on any Lot is defined as the drainage pattern and facility in existence at the time that such Lot is conveyed to a purchaser by Declarant whether or not any Improvements are constructed thereon.

8.20 **Trails.** No Owner shall have the right to alter or obstruct the maintenance, use or enjoyment of any trail adjacent to any Lot or Unit.

8.21 **Parking.** Parking of vehicles shall be allowed only in parking areas shown on Plats or as approved by the Design Review Committee or the Board. Moreover, to ensure that parking on streets does not unduly narrow or negatively affect the amount of roadway available for traffic and emergency vehicles, parking shall only be allowed on one side of the street as designated by the Board from time to time, which parking side and areas may change from time to time at the discretion of the Board. Parking shall not be permitted on any roadway for a period of more than twenty-four (24) hours without express permission from the Board. Violation of any parking rule or restriction is subject to a fine imposed against the responsible Lot Owner and/or towing at the car owner's expense.

8.22 **Protection of Vegetation; Landscaping.** No tree or other vegetation with a four inch diameter or greater trunk as measured from at least 3" above the natural soil line shall be removed without the prior approval of the Design Review Committee pursuant to the Design Guidelines. Vegetation shall be placed and maintained on all Lots and in the common areas of the Project as provided in the Design Guidelines or in landscaping plans approved by the Design Review Committee. Landscaping of street-facing yards (which shall include yards that face collective drives) on a Yard Lot must be completed within twelve (12) months after a Certificate of Occupancy is issued with respect to the Unit on such Yard Lot, and landscaping of all portions of a Yard Lot outside of a Unit must be completed within three (3) years after the date such Yard Lot is sold by the Declarant. Unlandscaped Lots, or portions of Lots, must be kept free from weeds and other vegetation overgrowth so as to not become unsightly, as determined by the Board, and the Board may remedy such violations and charge the cost back to the Owner as a regular assessment or impose fines as it deems fit. Landscaping shall include automatic sprinkling systems and at least two (2) trees of a minimum of two (2) inches in diameter (measured twelve (12) inches above grade level) planted in each street-facing yard on each Yard Lot. The species of such trees shall be approved by the Design Review Committee.

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8.23 **Excavations.** No excavation shall be made on lands subject to any Plat without the approval of the Design Review Committee and any governmental entity with jurisdiction over such activity.

8.24 **Occupancy.** No Lots or Units shall be used for human occupancy, either



temporarily or permanently, until a Certificate of Occupancy is issued by the City. Units shall only be occupied by a single family. A single family is defined as one individual, or two (2) or more persons related by blood, marriage, or adoption, living together in a single dwelling unit and maintaining a common household. A family may include four (4), but not more than four (4), nonrelated persons living with the residing family. The term "family" shall not be construed to mean a group of nonrelated individuals, a fraternity, club or institutional group. The foregoing definition of "family" is intended to mirror the definition of "family" in Cache County Code § 17.07.020 and shall automatically change to reflect subsequent changes or amendments thereto.

8.25 **Flagpoles.** Other than reasonable height limitations and quality construction requirements for flagpoles as set forth in the Design Guidelines, the Association shall not attempt to prohibit any Owner from displaying any flags of the United States of America, its branches of service, the State of Utah, or the City of Hyrum.

## ARTICLE 9

### INSURANCE

9.1 **Hazard Insurance.** The Association shall procure and maintain a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the structural Common Elements, if any, owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements or coverage as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and
- (b) Such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

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9.2 **Fidelity Coverage.** The Association shall maintain fidelity coverage against dishonest acts on the part of managers, Directors, employees or volunteers responsible for handling funds collected and held for the benefit of the Association and the Members. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1 & 1/2) times the Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

9.3 **Liability Insurance.** The Association shall maintain a comprehensive policy of public liability insurance covering the Common Elements. Such insurance policy shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Coverage shall have limits of liability of not less than \$1,000,000 per occurrence for personal injury and/or

property damage.

9.4 **Other Insurance and General.** The Association shall also maintain Worker's Compensation Insurance as required by law and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Association, Board and any manager, from liability in connection with the Common Elements. Such insurance policies shall have severability of interest clauses or endorsements, which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners. Premiums for all insurance carried by the Association are Common Expenses.

9.5 **Unit Owners Policies.** Each Unit Owner shall be responsible to purchase and maintain in force appropriate hazard, content and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances and such Owner's insurance shall be primary in the event of any loss to a Lot or improvements thereon. The Association will not be required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy. Unit Owners required insurance is also addressed in Section 6.5 above.

9.6 **Other Insurance Provisions.** All insurance required pursuant to this Article shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article to the contrary, any insurance required to be obtained by the Association pursuant to this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Elements or risks being insured.

## ARTICLE 10

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### ENFORCEMENT

10.1 **Remedies and Enforcement.** Declarant, the Association, any Owner, any Mortgagee, and the City pursuant to this Declaration, shall have the right to enforce this Declaration, the Design Guidelines and the Articles and Bylaws by appropriate proceedings at law or in equity, including the right to assess fines pursuant to the terms of this Declaration or to bring a proceeding to enjoin a violation thereof; *provided, however*, that (i) the Association shall have the exclusive right to enforce the liens and remedies provided herein with respect to the levy, collection, and enforcement of liens for Common Assessments, Capital Improvement Assessments and Specific Assessments, and (ii) each of the Association, Declarant, and the City pursuant to this Declaration have the right to enforce the liens and remedies provided herein with respect to the levy, collection, and enforcement of liens for Special Assessments.

10.2 **Attorneys Fees and Costs.** Any and all costs to enforce this Declaration, the Design Guidelines, the Articles, Bylaws, or Rules and Regulations, including without limitation all reasonable attorneys' fees, shall be paid by the Owner causing such enforcement action by any violation of Declaration, Design Guidelines, Articles, Bylaws, or Rules and Regulations, and such costs shall be deemed to be a Special Assessment against such Owner that does not require any vote of the Members, and shall be collectible as such.

10.3 **Nuisance.** Any act or omission resulting in a breach of this Declaration, the

Design Guidelines, or the Articles or Bylaws is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such act or omission and may be exercised by Declarant, the Association, or any Owner.

**10.4 Cumulative Remedies.** All rights, options, and remedies of Declarant, the Association, or any Owner for the enforcement of this Declaration, the Design Guidelines, the Articles or Bylaws shall be deemed cumulative and none of such rights, options, or remedies shall be deemed exclusive.

**10.5 Waiver.** The failure to enforce any of the covenants contained in this Declaration, the Design Guidelines, the Articles, or Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

**10.6 Fines.** At the sole but reasonable discretion of the Board, in addition to other legal remedies available to the Association, any violation of this Declaration or the Rules and Regulations of the Association adopted pursuant to this Declaration by an Owner or the invitee of an Owner shall subject such Owner to the monetary fines set forth in this Section. Any fines assessed by the Board pursuant this Section shall be deemed to be Specific Assessments.

(a) **First Offense** - A written notice will be delivered to the Owner and/or resident committing the violation requesting that the violation be stopped or cured. If the offense is not corrected within 3 days from the date such notice is placed in the mail or personally delivered, then the offender will be fined as follows: \$25 per day for the first week the violation continues; \$50 per day for the next week; and \$100 per day for each day thereafter.

(b) **Second Offense** - For the second offense of the *same violation* within any twelve month period, a \$25.00 fine will be assessed to the Owner, along with any additional expenses incurred (e.g., repairs, towing, or other actions to stop the violation). In addition, if the offense is not corrected within 3 days of written notice of the fine, then the offender will be fined: \$50 per day for the first week the violation continues; \$75 per day for the next week; and \$100 per day thereafter.

(c) **Third Offense** - For the third offense of the *same violation* within any twelve month period, a \$100.00 fine will be assessed to the Owner, along with any additional expenses. In addition, if the offense is not corrected within 3 days of written notice of the fine, then the offender will be fined: \$100 per day for the first week the violation continues; and \$250 per day thereafter.

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(d) **Additional Offenses** - For any additional offenses of the *same violation* within any twelve month period, a \$250.00 fine will be assessed to the Owner, along with any additional expenses. In addition, if the offense is not corrected within 3 days of written notice of the fine, then the offender will be fined \$250 per day for each day that the violation continues.

(e) Upon the cure or cessation of the violation, the Board may waive all or part of the fine in its sole discretion without waiving the right to collect fines against other owners

or subsequently imposed against the same Owner. The Association may enforce payment of these fines through court proceedings or enforcement of a Special Assessment lien on the Lot of an Owner liable for the fine, wherein the Lot may be sold through the exercise of a power of sale pursuant to the remedies set forth in this Declaration. The fines are not exclusive of other remedies available to the Association and may be levied and enforced in addition to other remedies, including injunctive relief or other causes of action. The Association shall have the right to seek an injunction to enjoin any violations of this Declaration or the Rule and Regulations promulgated thereunder. Any person liable for a fine hereunder shall be liable for all costs of the Association in attempting to enforce this Declaration and collect such fine, including without limitation reasonable attorneys' fees.

(f) The time periods, dollar amounts and other terms set forth in this Section 10.6 may be altered, changed, clarified or amended from time to time by formal resolution adopted by the Board in its sole but reasonable discretion. Such resolution shall be sent to all members of record at the time of its adoption.

## **ARTICLE 11**

### **RIGHTS OF MORTGAGEES**

**11.1 Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property, except for the foreclosure of a lien for failure to pay an assessment after at least thirty (30) days written notice to the record holder of any Mortgage. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall materially alter or affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment, provided that such protection of Mortgagees shall not be construed to prevent the Association from amendments providing for increased maintenance of the Common Elements, construction of new Improvements on the Common Elements, or making new assessments for the same.

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**11.2 Preservation of Common Elements.** The Common Elements shall remain substantially of the same character, type and configuration as when such Common Elements became part of the Project. Unless the Association shall receive the prior unanimous written approval of (a) all First Mortgagees of Lots, (b) the Owners of all Lots, *and* (c) the City, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Elements in a way that is likely to reduce the value and utility of the Common Elements to the Owners, except no such consent shall be required to grant reasonable easements for

utilities and similar or related purposes or as otherwise contemplated in this Declaration.

**11.3 Notice of Certain Matters Potentially Affecting Security.** The Association shall give written notice to any Mortgagee of a Lot specifically requesting from the Association such notice whenever:

- (a) There is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within thirty (30) days after default occurs; or
- (b) Damage to the Common Elements from any one occurrence exceeds One Hundred Thousand Dollars (\$100,000.00); or
- (c) There is any condemnation or taking by eminent domain of any material portion of the Common Elements.

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

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

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

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

**11.8 Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 10, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

**BYLAWS**  
**OF**  
**ELK MOUNTAIN HOME OWNERS ASSOCIATION**

**THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES 12, 13, AND 14. THE MISCELLANEOUS PROVISIONS OF ARTICLE 14 OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAW PROVISIONS AND THE OTHER PROVISIONS IN THIS DECLARATION.**

**ARTICLE 12 BYLAWS**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

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

12.2 **Voting Rights.** The Association shall initially have three (3) classes of voting rights, votes of both classes being of equal value as to all matters except for determining the presence or absence of a quorum at Association meetings, in which case such determination shall be made as if there were no Class B voting rights.

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(a) **Class A.** Each Owner of a Yard Lot, including Declarant, whether or not a Unit has been constructed on such Lot, shall be entitled to one Class A vote for each Yard Lot in which such Owner holds the interest required for Association membership.

(b) **Class B.** Declarant shall be the only person entitled to Class B voting rights which shall entitle Declarant to two (2) votes for each Class A or Class C voting right outstanding at the time (including those to which Declarant is entitled). The Class B votes of Declarant shall be in addition to the Class A and C voting rights held by Declarant by virtue of Declarant's ownership of Yard Lots or Pad Lots respectively, and Declarant's Class A and Class C voting rights shall not be affected in any way by the Class B rights of Declarant. Class B voting rights shall terminate and become a nullity on the Change of Control Date.

(c) **Class C.** Each Owner of a Pad Lot, including Declarant, whether or not a Unit has been constructed on such Lot, shall be entitled to one Class C vote for each Pad Lot in which such Owner holds the interest required for Association membership.

(d) Upon termination of the Class B voting rights, each owner of a Lot, including without limitation Declarant, whether a Yard Lot or a Pad Lot, and regardless of whether a Unit has been constructed on the Lot, shall have equal voting rights as to all matters except as otherwise provided herein, such that each Lot Owner shall be entitled to one vote for each Lot owned. The Change of Control Date shall occur upon the satisfaction of each and all of the following conditions precedent:

(i) the expiration of (A) 90 days following the date on which ninety-five percent (95%) of the total outstanding Class A and Class C voting rights as authorized in the Project (including all Additional Land) pursuant to the Development Plan are held by parties other than Declarant or its affiliates or subsidiaries or (B) ten (10) days after surrender of the Class B voting rights by Declarant in a writing to the Association has been recorded in the Cache County Recorder's Office;

(ii) a period of at least two consecutive calendar years have passed in which all assessments levied by the Association have been collected in full from at least ninety-five percent (95%) of the Owners owing such assessments, such that less than five percent (5%) of Owners have an uncollected balance after the end of the calendar year;

(iii) the balance of the Reserve for maintenance of the common elements exceeds twenty-five percent (25%) of the average total expenditures of the HOA for the last two calendar years; *and*

(iv) the City has failed to provide Declarant with written notice that a default exists pursuant to this Declaration or a Development Agreement or City Ordinance applicable to the Property after a written notice of a proposed Change of Control Date has been sent to the City at least thirty (30) days, but no more than ninety (90) days, prior to the Change in Control Date.

**12.3 Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot or Unit, the vote relating to such Lot or such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot or such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Lot or Unit unless an objection is made at the meeting or in writing by another Owner of the same Lot or Unit, in which event no vote will be counted with respect to such Lot or such Unit except to determine the presence or absence of a quorum.

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**12.4 Voting.** Unless a greater than simple majority of the membership is specified as being required in the Articles, the Bylaws or elsewhere in this Declaration, such as the unanimous vote of all members required to terminate and dissolve the association, the vote or

approval of the Members shall require the approval of a simple majority of all eligible and outstanding Members' votes present in person or by proxy at a meeting of the Members at which a quorum is present. Any instance where voting on a matter is permitted or required herein, such vote may be carried out without a meeting through mail-in ballot sent to all member and the approval of a majority of the votes actually cast shall be sufficient to approve such matter, except where a higher threshold is required herein.

**12.5 Records of Ownership.** Every Owner shall promptly cause to be duly filed of record in the Public Records the conveyance document (or in the case of a contract buyer, a copy of the sales contract or notice of interest) to him of his or her Lot or Unit and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots and Units. Any Owner who mortgages his or her Lot or Unit or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Public Records regarding the Owners and Mortgagees of Lots and Units.

**12.6 Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

**12.7 Annual Meetings.** Annual meetings of the membership of the Association shall be held each year on such month, day and time as is set forth in the notice therefor; *provided, however*, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Board of Directors, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

**12.8 Special Meetings.** The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least twenty-five percent (25%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by a majority of the Owners present, either in person or by proxy.

**12.9 Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than thirty (30), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

**12.10 Quorum.** Except as provided in this Declaration, Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; *provided, however*, that such Owners collectively be entitled to cast at least thirty percent (30%) of the total Association votes eligible to vote. Ent 1009225 Bk 1596 Pg 52

**12.11 Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the



meeting to a time not less than 48 hours nor more than 60 days from the time the original meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required at the immediately preceding meeting.

**12.12 Officers.** The Association shall have a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The Board may, if needed, appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which the new Board has been elected; *provided, however*, that until the Board is elected by the Owners as provided in these Bylaws, the officers will be appointed by Declarant.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary shall have charge of such books and records as the Board may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

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**12.13 Initial Composition of Board; Declarant Control.** Declarant alone shall have the right to select the initial Board of Directors in Declarant's sole discretion, which Board shall be composed of three Directors, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the termination of the Class B voting rights on the Change of Control Date as provided in this Declaration, at which time the Association shall proceed to elect members of the Board in accordance with the Association's Bylaws as set forth in Section 12.14 below.

**12.14 Board of Directors; Owner Control; Composition, Election, Vacancies.** The Association, through its Board of Directors, is responsible for the maintenance of any Common Elements, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Project to the benefit and general welfare of the Owners. Subject to the provisions of these

Bylaws, the Board shall be composed of at least three (3) but not more than five (5) Directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner).

The number of Directors shall be determined by the vote of the members at the first meeting of the Association after the Change in Control Date. At the first meeting of Owners to elect a Board of Directors, one shall be elected to a three-year term, one to a one-year term, and the remainder to a two-year term, unless the Association has voted to have five (5) Directors, in which case one of the remainder shall be elected to only a one-year term in such first meeting.

If the Board is comprised of only 3 Directors, the Director elected to the three-year term must be an Owner of a Yard Lot, and the Director elected to the two-year term must be an Owner of a Pad Lot. If the Board consists of more than 3 Directors, then the three-year term and one of the two two-year terms shall be allocated to and occupied by Owners of Yard Lots and the other two-year term and at least one of the one-year terms shall be allocated to and occupied by Owners of Yard Lots, such that at all times at least two Directors shall be Owners of Pad Lots and at least two Directors shall be Owners of Yard Lots. Subject to the foregoing requirement that certain Directors must be Owners of Yard Lots or Pad Lots, as Directors' terms expire, new Directors shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Directors from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Director they were appointed to replace, subject to the requirement that certain Directors must be Owners of Yard Lots or Pad Lots as set forth above in these Bylaws.

**12.15 Indemnification of Board.** Each of the Directors shall be indemnified and held harmless by the Lot and Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being or having been a member of the Board.

**12.16 Board Meetings, Quorum, Board Action.** The Board may establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority of those Directors attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by written consent shall require the unanimous consent of all current Directors.

## **ARTICLE 13 BYLAWS**

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### **DUTIES AND POWERS OF THE ASSOCIATION**

**13.1 Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the City and for the maintenance and improvement of the Project:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Elements conveyed to it,

whether by Declarant or by others, *provided* the same is free and clear of liens and encumbrances.

(c) The Association shall maintain, repair and replace as necessary any and all Common Elements, including without limitation any roads within the Project that have not been dedicated to and accepted by the City.

(d) The Association shall maintain all landscaping and plantings upon the Common Elements of the Project.

(e) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Elements, *provided* that the Association shall have the right to contest or compromise any such taxes or assessments.

(f) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Elements, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable and as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon 30 days' written notice thereof; and the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive periods of one year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

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

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(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, the Bylaws or any Rules and Regulations promulgated by the Board, or to enforce by injunction, fine, or otherwise all of the provisions of the Declaration, the Bylaws and such Rules and Regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the

maintenance, repair, operation or administration of the Common Elements and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Elements, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

- (i) Construction, maintenance, repair and landscaping of the Common Elements on such terms and conditions as the Board shall deem appropriate;
- (ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;
- (iii) Such utility services related to the Common Elements as the Board may from time to time deem necessary or desirable;
- (iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
- (v) Fire, police and such other protection services as the Board may deem desirable or the benefit of the Owners or any portion of the Project; and
- (vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) Pursuant to 16-16(a)-716 of the Utah Revised Non-Profit Corporation Act and notwithstanding anything herein to the contrary, the Association will not cause a Dissolution and/or a Transfer without first obtaining (i) a vote of at least 90% of the Owners in each Class of voting rights approving a Dissolution and/or a Transfer, and (ii) the prior written consent of the City of Hyrum, whereby the City of Hyrum consents to a Dissolution and/or a Transfer.

**13.3 Association Rules and Regulations.** The Board from time to time, upon thirty (30) days notice to the Owners, and subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable Rules and Regulations governing, among other things: (a) the use of the Common Elements; (b) the use of any streets, driveways or parking areas owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Project; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Project. Notwithstanding the foregoing, the Board shall not adopt rules exclusively applicable to the Pad Lot Common Area without a majority vote of the Class C voting rights.

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

## ARTICLE 14 BYLAWS

### ASSESSMENTS

14.1 **Assessments.** The Association shall have the right and duty to levy and collect Common Assessments, Special Assessments, Capital Improvement Assessments and Specific Assessments as provided in this Declaration and this Article. The Board may require that payment of any of such Assessments, except Specific Assessments, be made to, and collected by the Association in monthly or periodic bulk payments as directed by the Board in its discretion.

14.2 **Common Assessments.** The Common Assessments levied by the Association shall be used to promote the common benefit, recreation and welfare of the Owners; to meet obligations imposed on, incurred or assumed by the Association; to cover costs, including overhead and administrative costs, for the operation of the Association; and the operation, management, maintenance, repair, and replacement of the Common Elements; *provided, however*, that Common Assessments shall not be used to meet the obligations imposed on the Association related to the maintenance of the exteriors of the Units located on the Pad Lots or the maintenance or repair of the Pad Lot Common Areas. The Common Assessments shall also be used to establish adequate Reserves for maintenance, repair, and replacement of the Common Elements. Except for the Initial Common Assessment and Transfer Common Assessments, Common Assessments shall be levied against each Lot and Unit and the Owner thereof and shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; *provided, however*, the Common Assessments for the first fiscal year of the Association shall be based upon such portion of the fiscal year as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such times as the Association, in the sole discretion of the Board, may determine.

(a) **Basis of Common Assessments.** The total Common Assessments shall be based on advance estimates of cash requirements by the Association to provide for payment of all estimated Common Expenses growing out of or connected with the operation of the Association and the operation, management, maintenance, and repair of the Common Elements, which estimates may include, among other things, expenses of snow removal, taxes, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, construction of improvements, repairs and maintenance, wages for Association employees, compensation of a manager, legal and accounting fees, the creation of reasonable Reserves, surplus and/or sinking funds for the replacement of capital items and other purposes, repayment of any loans used for the other purposes herein, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners.

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Common Assessments shall be made on the basis of the Association's fiscal year (which may be a calendar year). Notice of the proposed assessment for any such year shall be mailed to each Owner not later than 30 days after the beginning of the fiscal year, together with an operating budget for the upcoming fiscal year. In making advance estimates of cash requirements, the Board shall take into account the estimated collections from the Initial Common Assessment provided for in subsection 14.2(c) below. Except for the Initial Common Assessment and Transfer Common Assessment, which are assessed at a rate equal

to 1/2% of the combined value of the Lot and Unit pursuant to subsections 14.2(c)-(d) below, Common Assessments shall be assessed at a uniform rate for all Lots.

(i) The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Common Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

(ii) The failure of the Association to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date twenty (20) days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 14.01.

(b) **Reserves.** Common Assessments may include reasonable amounts, as determined by the Board, collected as Reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Elements, or for any other purpose as determined by the Board. All amounts collected as Reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected. Said amounts shall be segregated from and not commingled with any other funds of the Association. Such Reserves shall be deemed contributions to the capital account of the Association by the Members. The Reserves shall at all times exceed the amount required for the Change of Control Date as set forth above.

(c) **Transfer Common Assessment.** Although the Association shall use the regular monthly collections of Common Assessments to fund the Association's budget and pay for the Association's costs and obligations, upon each and every transfer of title for a Unit, the new Owner of such Unit shall pay a lump sum Common Assessment at the time of such transfer (the "*Transfer Common Assessment*") equal to one-hundred ninety dollars (\$190), or (ii) an amount determined by the Board as adequate to ensure that such Unit will fulfill its Common Assessment obligations over the two-year period following such transfer after taking into account the proposed budgets, past budgets and expenses, and general history of Common Assessment collections within the Project. The Transfer Common Assessment shall be paid contemporaneous with the recording of any document transferring any part of legal title for the Unit, except that no Transfer Common Assessment is due for the conveyance of title to a trustee under a deed of trust to secure a loan from an institutional third-party lender. The Owner of any Unit that has paid a Transfer Common Assessment shall receive a credit against future monthly Common Assessments equal to the amount of the Transfer Common Assessment.

(d) **Loans.** The Association may take out loans upon commercially reasonable terms to meet the obligations of the Association from time to time, and the Common Assessments shall be sufficient to service and pay off such loans according to their terms.

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**14.3 Supplemental Assessment.** In addition to the Common Assessments, Supplemental Assessments shall be levied by the Association against the Pad Lots in the same manner as, and

according to the same terms and conditions applicable to, the Common Assessments, *provided* that Supplemental Assessments shall be used to meet the obligations imposed on the Association related to the maintenance of the Pad Lot Common Areas and the exteriors of the Units located on the Pad Lots. Supplemental Assessments shall be assessed at a uniform rate for all Pad Lots. The intent of this Section 14.3 is to cause the Association to allocate and assess the expenses incurred (or expected to be incurred) by the Association related exclusively and solely to Pad Lots to the Owners of such Pad Lots (and not the Owners of the Yard Lots) in the same manner as Common Assessments are calculated and assessed for the other expenses related to the Common Elements (including assessing and collecting amounts to be held as Reserves), and this Section 14.3 shall be interpreted and applied in a manner consistent with such intent.

**14.4 Special Assessments.** If and when required, Special Assessments may be levied to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise provided in the Articles, Bylaws, or in this Declaration, such as a Special Assessment mandated by the City or Declarant as stated above, a Special Assessment shall require the affirmative vote of a majority of Members. Special Assessments shall be payable in such manner and at such times, including installments over time, as the Board may determine, or as the City or Declarant may determine pursuant to this Declaration.

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**14.5 Capital Improvement Assessments.** If and when required, a Capital Improvement Assessment may be levied for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement of or upon the Common Elements, including fixtures and personal property related thereto; *provided, however*, that any such assessment in excess of One Hundred Thousand Dollars (\$100,000) in any one year shall require the affirmative vote or written consent of a majority of all outstanding Member votes. Capital Improvement Assessments shall be levied against each Lot and Unit and shall be payable in such manner and at such times, including installments over time, as the Board may determine.

**14.6 Specific Assessment.** In addition to the Common Assessment and Supplemental Assessment and any Special Assessment or Capital Improvement Assessment authorized pursuant to this Article, the Board may levy at any time Specific Assessments (a) on every Lot especially benefited (i.e., benefited to a substantially greater degree than any other Lot or Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Elements made on the written request of the Owner of the Lot or Unit to be charged; (b) on every Lot wherein the Owner, occupant or guest of an Owner of which shall violate this Declaration or the Rules and Regulations or otherwise cause any damage to the Common Elements necessitating repairs; and (c) on every Lot or Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration or upon the written request of the Owner of the Lot or Unit to be charged.

The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement, which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots or Units benefited.



**14.7 Creation of Lien and Personal Obligation of Assessment.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Common Assessments, Special Assessments, Capital Improvement Assessments, Specific Assessments, or other assessments levied as provided herein. Each such assessment, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot or Unit and shall be a continuing lien upon the Lot or Unit against which the assessment is made.

It shall have priority over any declaration of homestead recorded after the date on which this Declaration is recorded in the Public Records and shall continue until paid in full or otherwise satisfied. In a voluntary conveyance of a Lot or Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot or Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor, and each such assessment, together with interest, late charges, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Unit at the time when the assessment fell due.

**14.8 Termination Assessments.** Upon any Dissolution or Transfer, unless waived in writing by the City, each Lot Owner shall be assessed an amount calculated by the City (the *Termination Assessment*) as reasonably necessary to maintain the Common Elements in perpetuity. Such Termination Assessment shall be paid to the City within thirty (30) days of written notice from the City stating the amount of the Termination Assessment. The amount of the Termination Assessment must be a reasonable estimate of the total perpetual costs of maintaining the Common Elements. The City shall have the right to use the remedies set forth in Section 14.16 below to collect the Termination Assessments.

**14.9 No Offsets or Abatement.** All assessments shall be payable in the amount specified by the assessment, and no offsets or abatements against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association is not properly exercising its duties and powers as provided in this Declaration, or (b) an Owner has made or elects to make no use of the Common Elements.

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**14.10 Uniform Rate of Assessment.** All Common Assessments (except for the Initial Common Assessment), Special Assessments, and Capital Improvement Assessments authorized by this Article, shall be assessed and allocated among the Owners of the Lots or Units at a uniform rate for all Lots and Units. Furthermore, all Supplemental Assessments shall be assessed and allocated among the Owners of the Pad Lots at a uniform rate for all Pad Lots. Notwithstanding the foregoing or any provision to the contrary, until the earlier of (i) the date a Lot has been both fully improved with a Unit and occupied for the first time for residential purposes or (ii) the Change of Control Date, the Board shall have the sole discretion to waive all or part of the Common Assessments, Supplemental Assessments, and Special Assessments otherwise applicable to a Lot without a Unit, provided that such waiver is made on a uniform basis for all such Lots without Units, or in the Board's discretion, for Lots with Units that have yet to be occupied. The Board shall be allowed to make a distinction between Lots with occupied Units and other Lots on the basis that unoccupied Lots may not create expenses related to the Common Elements to the same extent as occupied Units.



**14.11 Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect or from time to time hereafter.

**14.12 Limitations on Certain Increases in Common and Special Assessments.** The Board shall not in any fiscal year of the Association, without the affirmative vote or written consent of a majority of all outstanding Member votes, levy a Common Assessment per Lot or Unit which is more than fifty percent (50%) greater than the Common Assessment per Lot or Unit for the immediately preceding fiscal year. Nor shall the Board for any fiscal year of the Association, without the affirmative vote or the written consent of a majority of all outstanding Member votes, levy a Special Assessment against each Lot or Unit which, when aggregated as to all Lots and Units, exceeds fifty percent (50%) of the Common Expenses of the Association for such fiscal year. Notwithstanding the foregoing, the Board may increase Common Assessments and Special Assessments which are subject to the foregoing limitations in an *"emergency situation"* which is defined as either of the following: (a) an extraordinary expenditure necessary to operate, repair or maintain the Common Elements where there exists a threat to personal safety, (b) an extraordinary expenditure necessary to repair or maintain the Common Elements that could not have been reasonably foreseen by the Board in preparing its budget, or (c) written demand by the City to maintain or repair any of the Common Elements. However, prior to the imposition and collection of an assessment under clause (b) of the preceding sentence, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the assessment.

**14.13 Date of Commencement of Assessments.** Common Assessments and other assessments shall commence on the first day of the month following the conveyance of the Common Elements and associated Improvements to the Association.

**14.14 Reports to Members.** The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause to be distributed a copy of each such statement to each Member. The Board shall also prepare and distribute to each Member with the delivery of notice of each new proposed Common Assessment as required pursuant to Section 13.02(a), a written, itemized estimate of the Common Expenses to be incurred by the Association during such new year in performing its functions under this Declaration as well as expected income and any surplus from the prior year's assessments. Similar reports shall be delivered to the Owners of the Pad Lots with respect to each new proposed Supplemental Assessment.

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**14.15 Excess Funds.** At the end of any fiscal year of the Association, the Board may determine that all excess funds of the Association, over and above the amounts used for any purpose, may be retained by the Association and used for Reserves, or to reduce the following year's Common Assessments.

**14.16 Remedies for Non-payment of Assessments.** Any installment of a Common Assessment, Special Assessment, Capital Improvement Assessment, Specific Assessment, Termination Assessment, or other assessment not paid within 10 days after the due date shall bear interest from the due date of such installment to the date paid at the rate of eighteen percent

(18%) per annum. If any installment of an assessment is not paid within 10 days after it is due, the Owner responsible therefor shall be required to pay a late charge often percent (10%) of the amount of the delinquent installment.

The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Unit, or do both if a deficiency is left after foreclosure. The lien against the Lot shall include, and the Owner shall be responsible for, any and all costs and charges incurred in connection with the collection of delinquent Assessments, and such related costs and charges shall include without limitation reasonable attorney's fees, court costs and every other expense incurred in enforcing any assessment hereunder. Failure to promptly enforce any remedy granted pursuant to this Section shall not be deemed a waiver of any such rights. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or by abandonment of the Owner's Lot or Unit.

(a) **Notice of Default.** No action shall be brought to enforce any assessment lien herein, unless at least 30 days have expired following the date a Notice of Default is deposited in the United States mail, postage prepaid, to the Owner of the Lot or Unit, and a copy thereof has been recorded by the Association in the Public Records. Said Notice of Default must recite a good and sufficient legal description of the Lot or Unit, the record Owner or reputed Owner thereof, the amount claimed (which may include interest and late charges as provided in this Article, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association, City, or Declarant, as the case may be, as claimant. Such Notice of Default shall be signed and acknowledged by an officer of the Association, City, or Declarant, as the case may be.

(b) **Foreclosure Sale.** Any sale provided for above may be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot or Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(c) **Curing of Default.** Upon the timely curing of any default for which a Notice of Default was recorded by the Association, an officer of the Association shall record in the Public Records an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the cost of preparing and recording such release.

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(d) **Certificate as to Indebtedness.** A certificate executed and acknowledged by any officer of the Association stating the indebtedness secured by the liens created hereunder upon any Lot or Unit shall be conclusive upon the Association and the Lot or Unit Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith.

(e) **Cumulative Remedies.** The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to, and not in substitution for, all other

rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**14.17 Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot or Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all Assessments respecting such Lot or Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

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

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

## ARTICLE 15

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### GENERAL PROVISIONS

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

15.2 **Successors and Assigns.** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, the City, each Owner, and their respective heirs, personal representatives, successors and assigns. This Declaration shall run with and be binding upon the Property and each Lot thereof

15.3 **Limited Liability.** Neither Declarant, the Association, the Board, the Design Review Committee nor any member, agent or employee of any of the same shall be liable to any party for any injury, damage, loss, cost or expense suffered by reason of any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without notice.

15.4 **Duration of Declaration.** All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration that executed by (i) all of the Owners of the Lots and Units, (ii) all First Mortgagees then subject to this Declaration, and (iii) the City.

15.6 **Use of Funds Collected by the Association.** All funds collected by the Association, including assessments and reserves paid by Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for not-for-profit purposes of the Association in managing, maintaining, caring for, preserving and architecturally controlling the Property and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Member (other than as a result of the Association's managing, maintaining, caring for, preserving and architecturally controlling the Property and other than as a result of expenditures made for other permitted purposes set forth in this Declaration).

15.7 **Amendment.** This Declaration may be revoked or amended as follows:

(a) The Declarant may unilaterally amend this Declaration at any time until the Change in Control Date (which includes that there will be no Additional Land added), except that any change to the rights of the City hereunder shall not be made without the written consent of the City. Consent of the Members of the Association shall not be required until after the Change in Control Date.

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(b) Subsequent to the Change in Control Date, this Declaration and amendments thereto may be amended by the affirmative vote or written consent of not less than sixty-seven percent (67%) of each Class of outstanding Member votes, except that any change to the rights of the City hereunder shall not be made without the written consent of the City.

(c) An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded in the Public Records. An amendment which requires the affirmative vote or written consent of the Members shall be effective when executed by the President, Secretary, and attorney of the Association (who shall each certify in writing that the amendment has been so approved) and recorded in the Public Records.

(d) Notwithstanding the foregoing, any provision of the Articles, the Bylaws, or this Declaration, which expressly requires the approval of a specified percentage or specified percentages of the voting power of the Association or first Mortgagees for action to be taken under said provision, can be amended only with the affirmative vote or written consent of not less than the same percentage or percentages of the voting power of the Association and/or first Mortgagees.

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

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed; and

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant, (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

**15.9 No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project or the Property to the public, or for any public use.

**15.10 Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in any Lot or Unit in the Project shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained, referred to or incorporated herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Lot or Unit.

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**15.11 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation and construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. The term

"person" shall refer to a person or entity. The terms "recorded and recordation" shall refer to recording in the Public Records. The word "shall" is deemed to be imperative and the word "may" is deemed to be permissive. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

**15.12 Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision of this Declaration.

**15.13 Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

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

**15.15 Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, the City, and all parties who heretofore acquired or hereafter acquire any interest in a Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots, all Units or in the Common Elements shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration.

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

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[signature page follows]

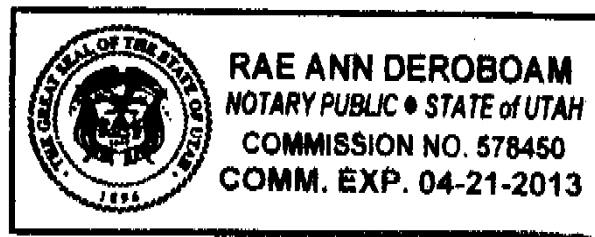
IN WITNESS WHEREOF, Declarant has executed this Declaration this 20 day of OCTober, 2009.

MCKAY DEV HYRUM, LLC

By: [Signature]  
Title: MANAGER

STATE OF UTAH )  
COUNTY OF Weber ) :SS.

Ronald G. Hales personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same. Subscribed and sworn to before me on this 20 day of OCTober, 2009.



Rae Ann DeRoboam  
NOTARY PUBLIC

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### **EXHIBIT A – LEGAL DESCRIPTION**

Lots 126 through 175 (inclusive), ELK MOUNTAIN PHASE 1-A, according to the official plat thereof on record with the Cache County Records Office.

Lots 114 – 125 (inclusive), ELK MOUNTAIN PHASE 1-B, according to the official plat thereof on record with the Cache County Records Office.

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**EXHIBIT B – ADDITIONAL LAND**

*ALL OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 10  
NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN.*

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