

MILLPOINT

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
MILLPOINT P.U.D.**

An Expandable Townhouse Project

WHEN RECORDED RETURN TO:
Starline Development, L.L.C.
3650 Augusta View Cove
Salt Lake City, UT 84044

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR MILLPOINT P.U.D. An Expandable Townhouse Project

This Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for MILLPOINT P.U.D. (the "Declaration") is executed by Starline Development, L.L.C., a Utah limited liability company (the "Declarant").

RECITALS

A. This Declaration affects that certain real property located in Salt Lake County, Utah described with particularity in Exhibit A below (hereinafter referred to as the "Property").

B. The Property is an area featuring unique and distinctive terrain;

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

D. By the terms of this Declaration, the Declarant intends to establish a community for persons 55 or older, to qualify for the age restriction exemption under the Fair Housing Act (Title VIII of the Civil Rights Act, 42 USC § 3601, *et seq.*) that allows communities to be operated for occupancy by persons 55 years of age or older, to satisfy those certain criteria set forth in The Housing for Older Persons Act (42 USC § 3607(b)(2)(C)) and to adopt certain age restriction rules and regulations and age verification procedures. It is assumed that each purchaser of a Residence in the Community will be motivated to preserve the Community through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration is designed to compliment local governmental regulations and where conflicts occur, the more restrictive requirements shall prevail.

E. It is desirable for the efficient management and preservation of value and appearance of the Community to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Community; maintaining and administering the Common Area and Facilities; maintaining, repairing, or replacing for the common benefit of the Owners all exterior elements of a Residence such as exterior doorways, windows, rain gutters, roof membrane, address signs and all other similar exterior structural improvements of the residences; maintaining, repairing or replacing for the common benefit of the Owners all landscape areas, walkways/trails, concrete improvements, fences and patios located on a Lot; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Community and the Owners. MILLPOINT P.U.D. Owners Association, Inc., a Utah nonprofit corporation, has or will be incorporated under the laws of the State of Utah for the purpose of exercising the aforesaid powers and functions.

F. Declarant has constructed or is in the process of constructing upon the Property a planned residential development which shall include certain Lots, Common Area and Facilities, including the right to use and easement of enjoyment of the Common Area and Facilities of MILLPOINT P.U.D., subject to the provisions of the Declaration. The construction will be completed in accordance with the plans contained in this Declaration and the MILLPOINT P.U.D. Plat.

G. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Property, together with an appurtenant undivided ownership interest in the Common Areas and

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Facilities, subject to this Declaration.

H. Declarant desires, by filing this Declaration, to submit the property and all improvements now or hereafter constructed thereon to the Community Association Act, Utah Code Ann., §§57-8a-101 et seq. (the "Act") as well as the provisions and protective covenants set forth herein.

I. The Project is to be known as "MILLPOINT P.U.D."

NOW, THEREFORE, for the reasons recited above, and for the benefit of MILLPOINT P.U.D. and the Owners thereof, Declarant hereby executes this Declaration and declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The said covenants, conditions, restrictions and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals.

ARTICLE 1 DEFINITIONS

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

1. The term Act shall mean and refer to the Community Association Act, §§57-8a-101 et seq., Utah Code Ann., that declarant desires to, by filing this Declaration, to submit the Property and all improvements now or hereafter constructed thereon to.

2. The term Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

3. The term Additional Land shall mean and refer to additional real property annexed to the Project.

4. The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of MILLPOINT Owners Association, Inc. on file or to be filed with the Utah Department of Commerce.

5. The term Assessment shall mean and refer to any amount imposed upon, assessed or charged an Owner or Lot.

6. The term Association shall mean and refer to MILLPOINT Owners Association, Inc.

7. The term Board of Trustees shall mean and refer to the governing board of the Association commonly referred to as the Board of Directors.

8. The term Builder shall mean the owner and/or Declarant of the Buildings or Lots.

9. The term Building shall mean and refer to any of the structures constructed on any Lot in MILLPOINT.

10. The term Building Exterior Assessment shall mean and refer to any amount

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imposed upon, assessed or charged an individual Owner for the maintenance, repair or replacement of the building exterior surfaces of his Lot, which is not considered a Common Expense.

11. The term Bylaws shall mean and refer to the Bylaws of the Association.

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

13. Common Area and Facilities or Common Areas shall mean and refer to all of the Property not privately owned or dedicated to the City, owned in common by the Owners including but not limited to the following items:

(a) The real property and interests in real property submitted hereby, including the entirety of the Property and all improvements constructed thereon, excluding the individual Lots and any land dedicated to the City;

(b) All Common Areas and Facilities designated as such in the P.U.D. Plat;

(c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners, such as electricity, gas, water, and sewer;

(e) The Project's outdoor grounds including landscaping, open and green space, entry, pavilion, set tables, Bocce Ball, Trail, Putting Green, and/or monument;

(f) The roadways, pathways, driveways, fences or gates, grounds, landscaping, lawns, shrubs, trees, and gardens; and,

(g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of the Owners. Provided, however, utility installations such as electricity, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

14. The term Common Expense shall mean and refer to all sums lawfully assessed against the Owners pursuant to the Act and this Declaration.

15. The term Community shall mean and refer to MILLPOINT P.U.D.

16. The term Community Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in MILLPOINT as determined by the Board of Trustees from time to time.

17. The term Community Expense shall mean and refer to expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

18. The term County shall mean Salt Lake County, Utah.

19. The

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term Covenant to Share Costs shall mean and refer to any contract, agreement, declaration of easements, licenses and/or covenant to share costs executed by the Declarant or the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Owners and/or which obligates the Association to share the costs of maintaining certain real, personal, or mixed property described therein.

20. The term Declarant shall mean and include Starline Development, L.L.C., a Utah limited liability company, and its subsidiaries, successors and assigns.

21. The term Declarant Affiliate shall mean and refer to any Person directly or indirectly controlling. Controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

22. The term Declarant Control Period shall mean the period during which Declarant or any entity controlled or majority owned by Declarant owns any real property within the Property, whether such property has received final plat approval or not.

23. The term Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for MILLPOINT P.U.D., an expandable Townhouse project.

24. The term Default Assessment shall mean and refer to any amount imposed upon, assessed, or charged an individual Owner pursuant to the Governing Documents for failure to perform an obligation under the Governing Documents or because the Association has incurred an expense on behalf of the Owner.

25. The term Design Guidelines shall mean and refer to the architectural and engineering plans and specifications and guidelines (if any) prepared by the Declarant and approved by the City and/or County for the construction of the Buildings, Lots, and other physical improvements in the Project. The County and/or City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion.

26. The term Developer shall mean and refer to the Declarant.

27. The term Developmental Rights shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns, to develop and improve MILLPOINT.

28. The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Declaration.

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

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

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

32. The term Governing Documents shall mean and refer to this Declaration, Bylaws, Rules, and Articles.

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33. The term Guest shall mean and refer to a guest, visitor, or invitee of an Owner or the occupant of a Lot.

34. The term Individual Charge shall mean and refer to a charge levied against an Owner or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment. Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Person including:

a) The cost to repair any damage to any portion of the Property caused by the such Person; or

b) The cost to satisfy any expense to any other Owner or to the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Governing Documents; or

c) Any fines or other individual monetary charges. While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association also shall have all other remedies, both legal and equitable, described in the Governing Documents available against any Owner for nonpayment.

35. The term Land shall mean and refer to all of the real property subject to this Declaration.

36. The term Landscaping shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within MILLPOINT, as well as the appurtenant sprinkling and irrigation systems.

37. The term Lender shall mean and refer to a Mortgagee.

38. The term Lot(s) shall mean and refer to that portion of the Community intended for independent ownership and residential use and designated as a Lot on the Plat, which includes, but shall not be limited to any Residence, structure, building or improvements located on the Lot. Each Lot has been or shall be assigned a separate "parcel" or tax identification number by the appropriate governmental agency. The term shall also mean and refer to all mechanical equipment and appurtenances located (a) within any one Lot or (b) located without the Lot but designated and designed to serve only that Lot, such as electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall all decorated surfaces of walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum; all pipes, wires, conduits, or other utility lines or installations constituting a part of the Lot or serving only the Lot; and any structural members, exterior walls, foundations, roofs, parts, components or any other property of any kind, including fixtures or appliances within any Lot, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Residence.

39. The term Manager shall mean and refer to a Person appointed or hired by the Association or the Declarant to manage and operate MILLPOINT.

40. The term Map shall mean and refer to the P.U.D. Plat.

41. The term Member, unless the context clearly requires otherwise, shall mean and refer to the Owner of a Lot, whether or not constructed, and whether or not the Owner resides in the Lot, being thereby entitled to vote and otherwise participate in decisions made by the Association and which parties shall constitute the Owners, each of whom is obligated, by virtue of his ownership, to be a member of the Association.

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42. The term Membership shall mean and refer to the membership in the Association and the rights granted to the Members, including Declarant.

43. The term Mortgage shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

44. The term Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot, or any interest therein.

45. The term Occupant shall mean and refer to any Person other than an Owner who has actual use, possession or control of a residence, or any portion thereof, and shall include, without limitations, Persons, other than the Owner, who reside in any Residence.

46. The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Salt Lake County, Utah.

47. The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Lot, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

48. The term Period of Declarant's Control shall mean and refer to the period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) thirty (30) days after the date of closing on the sale of the last Lot; (b) six (6) years from the date of recording the Declaration; or (c) the Declarant executes and records a written waiver of his right to control.

49. The term Permittee shall mean a Guest, tenant, renter, lessee and non-occupant residents.

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

51. The term Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement; or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

52. The term Private Street shall mean and refer to a street not dedicated to the County or any city, state, or other governmental body politic, entity or agency.

53. The term Project shall mean and refer to MILLPOINT P.U.D.

54. The term Property shall mean and refer to all of the land or real estate, Improvements and appurtenances

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comprising the Project submitted to this Declaration.

55. The term Plat shall mean and refer to the recorded Plat for MILLPOINT P.U.D., on file or to be filed in the Office of the County Recorder.

56. The term Private Roads shall mean and refer to all the roads described on the Plat on file or to be filed in the Office of the County Recorder, which are expected to be called Lifestyle Lane, Lucky Penny Avenue, Walk About Way, Wooden Nickel Lane, and Sunny Day Way.

57. The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

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

59. The term Residence shall mean and refer to a Townhouse and shall be defined the same as "Townhouse" below.

60. The term Residence Number shall mean and refer to the number, letter or combination of name, numbers and letters that identifies only one Residence or Townhouse.

61. The term Resident shall mean and refer to any person living or staying at MILLPOINT. This includes but is not limited to natural person or persons residing in the Lot.

62. The term Rules shall mean and refer to the rules, resolutions, and/or regulations adopted by the Board of Trustees.

63. The term Single Family shall mean and refer to one of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel. An additional person or persons may also be allowed under appropriate circumstances, for example, as a caretaker or as domestic help, with the prior written consent of the Board of Trustees.

64. The term Single Family Residence shall mean and refer to both (a) the architectural style of a Building or Lot and (b) the nature of the residential use permitted.

65. The term Supplemental Declaration means and refers to any recorded declaration, except for this Declaration, covering Lots on the Property recorded by Declarant to subject all or any portion of the Additional Land to this Declaration as further described in Article 2 below, as such Supplemental Declaration may be amended from time to time.

66. The term Supplemental Plat means and refers to any recorded plat covering all or any portion of the Additional Land, recorded by Declarant in connection with a Supplemental Declaration, to subject the property described therein to this Declaration as further described in Article 2 below.

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67. The term Total Votes of the Association shall mean and refer to the total number of votes appertaining to all Lots at MILLPOINT.
68. The term Townhouse shall mean and refer to any dwelling unit situated upon a Lot and attached to one or more dwelling units in which each unit has its own principal access to the outside, no unit is located over another unit, and each dwelling unit is separated from any other unit by one or more common Party Walls, designed and intended for separate, independent residential use and occupancy.
69. The term Tract shall mean and refer to all of the real estate submitted to this Declaration.
70. The term Trustee shall mean and refer to each voting member of the Board of Trustees of the Association.
71. The term Use Restrictions shall mean and refer to the use restrictions governing the Project set forth herein, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.
72. Visible From a Neighboring Property shall mean with respect to any object, that such object is or would be visible to an individual six feet (6') tall, standing at ground level on any portion of the neighboring property.
73. Voting Group shall mean and refer to a group of Owners designated by the Declarant as a "voting group."

ARTICLE 2 SUBMISSION AND DECLARANT'S RIGHTS

2.1 Property Subject to the Act and this Declaration. The Declarant hereby submits the Property described in Exhibit A, to the Act and this Declaration, together with all appurtenances thereto, to be known collectively as MILLPOINT P.U.D., and the Declarant hereby declares that MILLPOINT and every part thereof is and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied, and otherwise transferred in any manner, subject to the provisions of the Act and this Declaration. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of ownership, and are further declared to be for the benefit of the Property and every part thereof, and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as an equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Property, however such interest may be obtained.

All present and future Owners, Permittees, and Mortgagees shall be subject to and shall be obligated to comply with the provisions of this Declaration.

Acceptance of a deed of conveyance, entering into a lease or rental agreement, taking possession of a Lot, accepting a mortgage on one of the Lots, or entering the Project shall constitute an agreement that the provisions of the Declaration, and all amendments thereto, are accepted and ratified by such Persons, and all of such provisions shall be deemed and taken to bind any Person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, lease, or rental agreement thereof.

2.2 No Condominium. Declarant, and each Owner by acceptance of a deed to a Lot, hereby agree, acknowledge and understand that the Property is not, by execution and recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the "Condominium Act"). This Declaration does not constitute a declaration as provided for in the Condominium Act and the provisions of the Condominium Act shall not be applicable to the Property or any portion thereof, including without limitation all or a portion of the Additional Land made subject to this Declaration by the recordation of one or more Supplemental Declarations and Supplemental Plats.

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2.3 The Buildings and Facilities. MILLPOINT P.U.D. consists of fifty (50) Lots and Residences as depicted on the Plat. Declarant reserves the right to adjust the location of each Residence in order to facilitate proper planning in the sole and exclusive discretion of the Declarant, subject to the terms and provisions contained herein.

2.3.1 Common Areas. Common Areas consist or will consist of any landscape feature & Project signs or monuments; trails; exit and/or entrance gate; mailboxes; Private Roads; Recreation Facility Areas and any improvements made thereon, including, but not limited to Pavilions with tables, chairs, barbeques, putting greens, bocce ball courts, horse shoe pits and putting greens; open areas and green space; and, all other common elements as denoted on the Plat or described in Article 1 of this Declaration.

2.4 Additional Land and Right to Expand. Declarant reserves the right to subject all or a portion of the Additional Land to this Declaration by the recordation of one or more Supplemental Declarations and Supplemental Plats without the prior consent of any other party or Owner. Declarant shall identify in each Supplemental Declaration the Additional Land, specify the number of additional Lots and Residences to be added to the Community, and the number of votes and Assessments to be allocated to the Additional Land based upon the formulas described in this Declaration, as may be unilaterally amended by the Supplemental Declaration. The owner of such Additional Land, if different from the Declarant, shall also execute the Supplemental Declaration and Supplemental Plat, the subject Additional Land shall be deemed added to the Property pursuant to the terms and provisions of this Declaration. The Supplemental Declaration may modify any of the covenants, conditions and restrictions otherwise applicable to the Additional Land in the Supplemental Declaration where such changes are deemed necessary in the sole and absolute discretion of Declarant to address a unique condition affecting or relation to the Additional Land that is the subject of the Supplemental Declaration or to more fairly allocate the benefits and obligations of membership within the Association. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Community in accordance with the provisions of this Section 2.4.

2.5 Reservation of Right to construct Residences and Improvements. Declarant intends, without obligation, to sell, convey and transfer the Lots to Owners at the time that such Lots are improved with Residences. In addition to the reservations of rights set forth in this Declaration, Declarant reserves the sole and exclusive right, without obligation, to construct and/or directly supervise the construction of all Residences and Improvements to be erected on the Common Area and the Lots which are a part of the Community. An Owner of a Lot other than Declarant or a Declarant Affiliate shall not have the right to independently construct a Residence or any other Improvement thereon, or approve or supervise the construction of any Residence or Improvement within the Community. Notwithstanding the foregoing intention to construct all of the Residences, Declarant reserves the right to sell, convey, transfer, assign or otherwise dispose of any Lot to a Declarant Affiliate or any other third party, without first constructing a Residence thereon, and to authorize such new Owner the right to independently construct a Residence or other Improvement thereon as Declarant shall determine in its sole and exclusive discretion.

2.6 Declarant's Disclaimer of Representations. Nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Declarant or any Declarant Affiliate shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any Property subject to this Declaration. Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Area, promotional or other materials.

2.7 Readjustment of Lot Line Boundaries. Declarant hereby reserves for itself, Declarant Affiliate and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines for purposes for proper configuration and final engineering of the Community; provided that any such realignment and adjustment does not affect any existing Residence or Improvement (other than landscaping) on the affected Lot. The authority to realign and adjust such Lot boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.7. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor

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realignment and adjustment of their respective Lot boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots in relationship to the development of the Community. Moreover, upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines. Any adjustments in property lines. Any adjustments of Lot boundary lines shall be done in accordance with the requirements of the City Subdivision Ordinance and Utah Law.

2.8 Development Plan. Notwithstanding any other provision of the Declaration to the contrary, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Property owned by the Declarant or changing the nature or extent of the uses to which such Property may be devoted.

2.9 Common Area Improvements. Declarant, so long as Declarant or a Declarant Affiliate owns a Lot within the Community, reserves the unilateral right to construct Improvements on any area of the Common Area and modify the location, type and nature of Common Area as it shall determine in its sole and exclusive discretion, including, without limitation, the right to construct or create garden plots, pavilions, recreational facilities, storage facilities, walking trails, picnic areas, covered porches, patios, or other Improvements thereon. Such construction and relocation right shall not be subject to the consent of the Owners, Boards, Mortgagees or any other person or entity. After the termination of Declarant's right under Section 2.18 below, the Board shall have the right to exercise such construction and relocation powers in connection with the Common Area upon the vote or written assent of two-thirds (2/3) of the approval procedures described in the Bylaws. In furtherance of this right, Declarant reserves for itself, and other it may designate, the right to inspect, monitor, test, redesign, and correct any Improvement or condition that may exist on any portion of the Community, including Lots and Common Area, and a nonexclusive easement of access throughout the Community to the extent reasonable necessary to exercise such right.

2.10 Right to Develop. Notwithstanding anything contained herein to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant's right to develop the Community and to exercise the right reserved by Declarant as hereinafter provided. Nothing in this Declaration shall be construed to require Declarant, or Declarant's successor or assigns, to develop any Lot or other Improvements in any manner whatsoever. Any right or any interest reserved or contained in this Declaration for the benefit for Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, Association, or other entity, only by written instrument executed by both Declarant and transferee or assignee and Recorded in the Office of the Salt Lake County Recorder, State of Utah. Upon such Recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

2.11 Declarant's Control. Notwithstanding anything herein to the contrary, Declarant, or a managing agent or some other person or persons selected by Declarant, may appoint and remove some or all of the members of the Board or some or all of the officers of the Association or may exercise the powers and responsibilities otherwise assigned by this Declaration or under Utah law to the Association, its officers, or the Board. The period of Declarant control as used in this Declaration and the other Community Documents shall have the same meaning as the "period of administrative control" defined under Utah Code Ann. § 57-8a-104(1). The right of the Declarant contained in this Section 2.11 shall terminate upon the first of the following to occur:

- 2.11.1 The expiration of fifteen (15) years from the date that this Declaration is Recorded;
- 2.11.2 After ninety percent (90%) of Lots have been conveyed by Declarant;
- 2.11.3 The date on which Declarant voluntarily relinquishes its control rights as evidenced by a Recorded notice.

**ARTICLE 3
NATURE AND INCIDENTS OF OWNERSHIP**

3.1 In addition to a fee simple interest in a Lot, each Owner shall be a member in the Association. Such membership is hereby declared to be appurtenant to the Lot.

3.2 Percentages of ownership, voting rights and the allocation of Common Expenses shall be equal and uniform among all Lots, irrespective of the size of each Lot.

3.3 Title to a Lot may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

3.4 The Common Areas and Facilities may not be separated or partitioned.

3.5 No Lot may be separated or partitioned from its corresponding membership interest in the Association.

3.6 Each Lot shall always be conveyed, devised, encumbered, and otherwise affected with its appurtenant interest in the Common Area, including the membership in the Association, The Lot and membership interest in the Association may never be separated from one another.

3.7 Common Area and Facilities shall be owned by the Association and shall be used in common by all the Owners in the Project, subject to the provisions of this Declaration. No Owner may bring any action for partition thereof.

3.8 Subject to the limitations contained in this Declaration, any Owner shall have the non-exclusive right to use and enjoy the Common Areas.

3.9 If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or a Lot. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Property or any part thereof.

3.10 Each Owner hereby appoints the Board of Trustees as his/her agent, to have access to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas or Areas of Common Responsibility, making emergency repairs therein necessary to prevent damage to the Common Areas or to another Lot. The Board of Trustees shall also have such right independent of any agency relationship. Damage to a Lot resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs at the insistence of the Board of Trustees or an Owner shall be a Common Expense; provided however, that if such damage is the result of negligence of the Owner of a Lot, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the Property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Board of Trustees by Assessment as provided herein.

3.11 Each Owner shall have a right of ingress and egress over, upon and across the Common Areas necessary for access to his Lot. Each Owner shall have a right to the horizontal and lateral support of his Lot, and such rights shall be pertinent to and pass with the title to each Lot.

3.12 The Board of Trustees shall have a non-exclusive easement to make such use of the Common Areas as

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may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain storage and maintenance facilities in Common Areas for use by the Board of Trustees and the right to perform maintenance and repairs on the exterior walls and structures of the Lots, together with their foundations and roofs.

3.13 Easements are reserved throughout the Property as may be required for utility and other services, including but not limited to performance of the Association's obligation to maintain and repair the exterior of the Lots.

3.14 All conveyances of a Lot hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to this Declaration, even though no specific reference to such easements appears in any such conveyance.

ARTICLE 4

DESCRIPTION AND CONVEYANCE OF A LOT

4.1 Every conveyance or contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the Building letter and Lot number shown on the Map, in substantially the following fashion:

Lot _____, according to the Official plat of the MILLPOINT P.U.D. as recorded in the office of the Salt Lake County Recorder, together with an undivided interest in and to the Common Area and Facilities as established and identified in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for MILLPOINT P.U.D. and on the recorded MILLPOINT P.U.D. Plat and subject to the provisions set forth in said Declaration.

Such description shall be construed to describe the Lot, together with the appurtenant rights in and to the Common Area and Membership in the Association, and to incorporate all the rights and limitations incident to such ownership contained in the Governing Documents.

4.2 Title to each Lot is hereby made subject to the terms and conditions of this Declaration which bind the Declarant and all subsequent owners, whether or not it be so expressed in the deed by which any Owner acquired a Lot. Regardless of whether or not the description employed in any such instrument is in the above-described form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

ARTICLE 5

ARCHITECTURAL AND DESIGN GUIDELINES

The Declarant has prepared Design Guidelines for the Project, which have been approved by the County/City. The County/City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion, and for this purpose the County/City is hereby designated a third party beneficiary of this agreement. The approved Design Guidelines shall apply to all construction activities of the Project. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property; provided, however the approved Design Guidelines may not at any time be changed, amended, or supplemented without the express consent of the County/City.

ARTICLE 6

BOARD OF TRUSTEES, TRUSTEE RIGHTS AND OBLIGATIONS

6.1 The business, Property and affairs of the Association shall be managed by a Board of Trustees. The initial number of Trustees on the Board of Trustees shall be three (3) and, until the rights of the Declarant are terminated as

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outlined herein, all Trustees, unless Declarant otherwise agrees in writing, will be appointed by Declarant. Thereafter, once Declarant's rights are terminated, the Board of Trustees shall be composed of at least five (5) Owners elected by the Association's Members as provided in the Bylaws. In the event a Board of Trustees seat is vacant, the remaining Board of Trustees members shall elect a replacement as provided in the Bylaws.

6.2 The Board of Trustees may exercise any right or privilege given to it expressly by this Declaration, or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

6.3 The Board of Trustees shall have the following rights and obligations set forth in the Bylaws:

6.3.1 The Board of Trustees may borrow money in accordance with the Bylaws in such amounts, and at such rates, upon such terms and security, and for such periods of time as necessary or appropriate as determined by the Board of Trustees.

6.3.2 Subject to the rights, power and authority of the Association, the Board of Trustees shall be responsible for: (1) the management and control of the Common Area and Facilities within MILLPOINT, and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; and (2) the repair or replacement of such Common Area and Facilities and Areas of Common Responsibility and shall have the right to contract for all goods, services, and insurance payments which are made for such repairs or replacement. The cost of such management, operation, maintenance, and repair by the Board of Trustees shall be a Common Expense.

6.3.3 The Board of Trustees may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Board of Trustees shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Board of Trustees or by any person or entity with whom or which it contracts. The Board of Trustees may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property; the enforcement of this Declaration, the Bylaws, or any Rules and Regulations. The Board of Trustees may arrange with others to furnish lighting, water, snow removal, grounds maintenance and other common services. The cost of such services shall be borne as provided in Article 7 of this Declaration and in the Bylaws.

6.3.4 The Board of Trustees may acquire and hold, for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Association.

6.3.5 The Board of Trustees may make Rules governing the use of the Lots and of the Common Area and Facilities within MILLPOINT, which Rules shall be consistent with the rights and duties established in this Declaration.

6.3.6 The Board of Trustees may suspend an Owner's voting rights for the period during which such Owner fails to comply with the Governing Documents. Notice of non-compliance will be sent to an Owner at least ten (10) days prior to any meeting at which action may be taken by the Board of Trustees. The Board of Trustees may also take judicial action against any Owner to enforce compliance with the Governing Documents, with other obligations, or to obtain damages for non-compliance, all to the extent permitted by law.

6.3.7 The Board of Trustees may fine or otherwise sanction an Owner or Permittee for a violation of the Governing Documents.

6.3.8 If for any reason the corporate status of the Association is suspended or dissolved, the Board of Trustees may unilaterally act to reinstate the corporate status of the Association. Any such expiration or invalidation shall not relieve any Owner from paying assessments and abiding by all restrictions, covenants, and conditions contained in this Declaration.

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ARTICLE 7 ASSESSMENTS

7.1 Each Owner of any Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenant and agree with each other and with the Association to pay to the Association all Assessments, including by illustration but not limitation all Special, Individual or Default Assessments, and other fees, charges, levies and fines as provided in the Governing Documents. Anything to the contrary notwithstanding, the Declarant is not obligated to pay Assessments on Lots it owns or leases, including by way of illustration but not limitation any model Lots, unless such Lots are leased or occupied.

7.2 The total annual Assessments against all Lots shall be based upon advance estimates of cash requirements by the Board of Trustees to provide for the payment of each Owner's share of the Common Expenses and all estimated expenses growing out of or connected with the maintenance and operation of the Common Area and Facilities, among other things, is expenses of management; grounds maintenance; taxes and special assessments levied by governmental authorities until the Lots are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain; common lighting and heating; water charges; trash collection; repairs and maintenance; wages for Board of Trustees employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Board of Trustees for the benefit of the Owners under or by reason of this Declaration.

7.3 Each Lot shall be separately metered for culinary water, gas, sewer, electricity and cable. The costs for the above services to the Lots shall be paid by the individual Owners. Irrigation water for individual Lots shall not be separately metered and shall be the responsibility of the Association. Costs for irrigation water shall be paid by the Association from the Assessments paid by the Owners. Common utilities shall be considered a Common Expense. Culinary water, sewer, gas, electricity and garbage for Common Area and Facilities may be metered separately or in combination with individual Lots.

7.4 Expenses attributable to the Common Areas and Facilities as a whole shall be apportioned among all Lots not owned by the Declarant, except as otherwise provided, equally and uniformly.

7.5 Annual Assessments shall be made on a calendar year basis. The Board of Trustees shall give written notice of each annual Assessment not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. The first annual Assessment shall be for the balance of the calendar year remaining after the date fixed by the Board of Trustees. Each annual Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required.

7.6 In addition to Annual Assessments, the Board of Trustees may levy in any Assessment year a Special Assessment, payable over such a period as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Property or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Board of Trustees to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs of this Declaration. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective membership interest in the Association. Notice in writing of the amount of such Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

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7.7 All sums assessed to any Lot pursuant to this section, together with interest thereon as provided herein shall be secured by a lien on such Lot in favor of the Association. Such lien shall have such priorities as established by law.

7.8 To establish a lien for any unpaid Assessment, the Board of Trustees shall prepare a written notice of lien as set forth by statute. No notice of lien shall be recorded until there is a delinquency in the payment of an Assessment or other monetary obligation. Such lien may be enforced by judicial or non-judicial foreclosure by the Board of Trustees as provided by law. The lien shall also secure, and the Owner shall also be required to pay to the Board of Trustees any Assessments against the Lot which shall become due during the period of foreclosure sale or other legal sale. The Board of Trustees may bid on the Lot at foreclosure or other sale and may acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

7.9 A release of lien shall be executed by the Board of Trustees and recorded in the office of the County Recorder of Salt Lake County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

7.10 The Board of Trustees shall report to any Eligible Mortgagee of a Lot any unpaid Assessments remaining unpaid for longer than ninety (90) days.

7.11 The amount of any Assessment against any Lot shall be the personal obligation of the Owner thereof. Suit to recover a judgment of such personal obligation shall be maintainable by the Board of Trustees without foreclosing or waiving the lien securing the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot or any amenities.

7.12 Upon payment of a reasonable fee not to exceed twenty-five dollars (\$25) or other amount provided in the Act, whichever is higher, which fee shall not be assessed on a third-party, such as a title agent/company, who is requesting a statement, and upon written request of any Owner, or any Mortgagee, prospective Mortgagee or prospective purchaser of an Lot, the Board of Trustees shall issue a written statement setting forth the amount of unpaid Assessments, if any, with respect to such Lot; the amount of the current annual Assessment and the portion thereof which has theretofore been paid; and credit for advanced payments or prepaid items. Such statement shall be conclusive upon the Board of Trustees in favor of persons who rely thereon in good faith.

7.13 Subject to the provisions of Section 7.12, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments against the Lot up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

7.14 The Board of Trustees may elect to (a) terminate utilities and the right to use Common Areas and Facilities for non-payment of Assessments and/or (b) collect rents directly from a renter if the Lot Owner who is renting the Lot fails to pay any Assessment for a period of more than sixty (60) days after it is due and payable.

7.15 Anything to the contrary notwithstanding, any Mortgagee who obtains title to a Lot pursuant a voluntary conveyance shall be jointly and severally liable with the Trustor or mortgagor for all unpaid Assessments, late fees, default interest and collection costs, including a reasonable attorney's fee, against the Lot for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the Trustor or mortgagor the amounts paid by the grantee.

7.16 Any Assessment, fine, Individual Charge, or other monetary obligation shall bear interest at a rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

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7.17 A late fee in a sum to be determined by the Board of Trustees may be charged on any payment not paid within ten (10) days after its due date.

7.18 Notwithstanding any other provision of this Declaration to the contrary, prior to transfer of control of the Association pursuant to the terms herein, Declarant reserves for itself and all Declarant Affiliates (collectively referred to as the "Subsidizing Party"), in its sole and exclusive discretion, the right to subsidize the Association (rather than paying a full assessment share for each Lot it owns) for the amount by which (1) the actual cost and expense of operating and administering the Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies, all as provided in this Declaration, exceeds (ii) the total amount of Assessments levied against and collected from Owners other than the Subsidizing Party. The subsidy required of the Subsidizing Party may be in the form of cash or in the form of "in-kind" contributions of goods or services, or any combination of the foregoing, provided that the "in-kind" contributions directly reduce the costs and expenses of the Association.

ARTICLE 8

USE OF LOTS, PERMITTED USES AND RESTRICTIONS

8.1 No Lot or Residence thereon shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto, provided, however, that no Lot or Residence thereon may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, off-campus housing by unrelated students, or any similar type of lodging, care or treatment facility. The foregoing residential use restriction is subject, however, to any applicable current or future federal or Utah housing law that may now or in the future render such residential use restriction unenforceable in whole or in part, in which event such residential use restriction shall restrict use of the Community only to the extent permitted by law. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot.

8.2 The rental and initial sale of Lots and Residences by Declarant shall be restricted such that, when all fifty (50) Lots and Residences have been initially rented or sold by Declarant, at least forty (40) of those Lots and Residences ("Qualifying Residences"), the identity of which shall be determined exclusively by Declarant, shall have been rented or initially sold by Declarant either (1) to an individual who, at the time of such rental or initial sale, was at least 55 years of age, or (2) in the case of multiple purchasers of a Lot and Residence, to purchasers at least one of whom was an individual at least 55 years of age at the time of such rental or initial sale (collectively "Age 55 Criteria"). There shall be no minimum or maximum number of Qualifying Residents that may be rented as opposed to sold by declarant; provided, however, that, if and when Declarant sells a Lot and Residence that Declarant has been renting and whose inclusion was necessary to achieve a minimum number of Qualifying Residences, Declarant may sell that Residence only to a purchaser or purchasers meeting the Age 55 Criteria.

8.3 Following Declarant's conveyances of all Lots and Residences in the Community, at least eighty percent (80%) of the occupied Lots and Residences within the Community shall at all times, except as otherwise provided herein, be occupied by at least one (1) person not less than fifty-five (55) years of age. Each Owner hereby agrees and acknowledges that in the event he or she purchased a Qualifying Residence, he or she shall be bound by the Age 55 Criteria and the Owner's rental and sale of such Qualifying Residence shall be restricted by the Age 55 Criteria. For the purposes of this section dealing with the Age 55 Restriction, a Lot and residence is "occupied" when an Owner or Occupant has possession of the Lot and residence and has the right to actually use or control such Lot and Residence. In compliance with HOPA, the Association, shall (1) publish and adhere to the Age 55 Criteria policies and procedures that demonstrate the intent to operate this Community as a community for person who are 55 years of age or older as such intent is set forth herein; and (2) shall establish policies of age verification of each Owner or Occupant by reliable surveys and affidavits, which surveys and affidavits shall be of the type that may be admissible in administrative and judicial proceedings for the purposes of such verification, such as a driver's license, birth certificate, passport, immigration card or military identification. The only exception to the Age 55 Criteria as applied to the eighty percent of Lots and Residences

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is for a non-age qualifying surviving spouse of an age qualifies decedent Owner who had occupied the Qualified residence, until such time as the non-age qualified surviving spouse remarries at which time the exception expires.

8.4 There shall be no obstruction of Common Areas by Owners or Permittees without the prior written consent of the Board of Trustees. The Board of Trustees may, by Rules, prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all Owners or protecting the Lots or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas and Facilities without the prior written consent of the Board of Trustees, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas and Facilities except upon the prior written consent of the Board of Trustees.

8.5 Nothing shall be done or kept in any Lot or in the Common Area and Facilities which would result in the cancellation of the insurance on the Property or increase the rate of the insurance on the Property, over what the Board of Trustees, but for such activity, would pay, without the prior written consent of the Board of Trustees. Nothing shall be done or kept in any Lot or in the Common Areas and Facilities or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area and Facilities shall be committed by any Owner or any Permittee of any Owner, and each Owner shall indemnify and hold the Board of Trustees and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or a Permittee; provided, however, that any Permittee of the Declarant shall not under any circumstances be deemed to be a Permittee invitee of any other Owner.

8.6 Each Owner shall keep the exterior of his Lot and the adjacent Common Area and Facility in a clean, sanitary and attractive condition, and good state of repair. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Lots and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Lots, shall be prohibited in any Lot unless obscured from view of adjoining Lots and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board of Trustees.

8.7 No external items such as, but not limited to, satellite dishes, roof antennas, deck or patio furniture, television and radio antennas, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those provided in connection with the original construction for the Project, and any replacements thereof, and other than those approved by the Board of Trustees, and any replacements thereof, shall be constructed, erected or maintained on the Project without the prior written approval of the Board of Trustees. The Board of Trustees may adopt Rules regulating the location, type, color, and design of these external fixtures.

8.8 Only curtains, drapes, shades, shutters and blinds, which from exterior observation must be white, beige, grey, off-white, light earth tones or light to medium natural wood colors, may be installed as window covers. No window shall be covered by paint, blankets, rugs, foil, sheets, tint, film, or similar items. The Board of Trustees may adopt Rules regulating the type, color, and design of any window coverings that can be viewed from outside of the Lots.

8.9 No Owner or Permittee shall violate the Rules as adopted from time to time by the Board of Trustees.

8.10 No alterations, plumbing, electrical, or similar work within the Common Area and Facilities shall be done by any Owner or Resident without the prior written consent of the Board of Trustees, except emergency repair. No alterations, plumbing, electrical or similar work within a Lot that may affect the structural integrity of the Building or another Lot shall be done by any Owner or Resident without the prior written consent of the Board of Trustees, except emergency repair.

8.11 Notwithstanding anything herein to the contrary, until the Declarant has

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completed and sold all of the Lots, neither the Owners who have purchased Lots nor the Board of Trustees shall interfere with the completion of the contemplated improvements and sale of the Lots. The Declarant may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale, including but not limited to the maintenance of a sales office, the showing of the Lots, and the display of signs.

8.12 Similarly situated Owners and residents shall be treated similarly.

8.13 The rights of Owners and residents may display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot. Signs, symbols and decorations generally, such as wind chimes, wreaths, dream catchers, pinwheels and so forth, may be controlled by Rule and may not be installed or placed so as to be visible to or heard by other residents without the express prior written consent of the Board of Trustees.

8.14 No Rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Declaration limits residency in a Lot to a Single Family, as defined herein, and the Association shall generally limit the total number of occupants permitted in each Lot to not more than two per bedroom or as otherwise required by the County Fire Code and considering the size and facilities of the Lot and its fair share use of the Common Areas and Facilities.

8.15 No Rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot, or that create unreasonable sounds of annoyance.

8.16 No resident may operate a commercial trade or business in or from his Lot with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Lot. No commercial trade or business may be conducted in or from a Lot unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; (c) the business activity satisfies any home occupation Rules adopted by the Board of Trustees, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Board of Trustees. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

8.17 All motor vehicles, trailers, watercraft, bikes and other transportation devices of any kind as determined by the Board of Trustees shall be subject to and governed by the Rules adopted by the Board of Trustees.

8.18 No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish, or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

8.19 Satellite dishes, aerials, antenna, or systems may only be installed (1) in accordance with FCC regulations and, (2) after receiving permission from the Board of Trustees as to the location of the device or, if so provided for, in accordance with the written Rules or guidelines established for or by the Board of Trustees. The Board of Trustees may bar, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations or if they are dissatisfied with the location of such devices.

8.20 No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. Up to two (2) domestic pets as that term is defined by county ordinance per Lot are allowed. All pets must

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be properly licensed and registered. Pets may not create a nuisance. The following acts shall be considered a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Property and not in a cage or on a leash and under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; (8) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. The Board of Trustees may require pet registration and may charge a registration fee and/or pet security deposit.

8.21 No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or in any Lot, except one 2' x 2' "For Sale" sign may be displayed on the Lot or in a window of the Lot. No political signs are allowed, except that one 12" x 12" sign per Lot may be displayed in a window during the one month period prior to any general, special or primary election. Anything herein to the contrary notwithstanding, this signage restriction does not apply to and is not binding upon the Declarant, who is expressly authorized to employ and use whatever signs or signage it deems appropriate to market its Lots.

8.22 All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.

8.23 Personal property placed on a patio, deck or balcony shall be managed and controlled by Rules adopted by the Board of Trustees, as it may be modified from time to time and may, although the Board of Trustees is not obligated to do so, allow one table and one set of chairs. Clothes lines, the hanging or drying of clothes, swimsuits and towels, dream catchers, wind chimes, pinwheels, the storing of bicycles, tricycles, equipment, machinery, furniture, appliances, furnishings or other items which may be considered inappropriate or unsightly by the Board of Trustees in its sole discretion, shall not be allowed.

8.24 No air conditioning systems or Lots are allowed except those initially installed by the Declarant and replacements authorized in writing by the Board of Trustees. Window air conditioning units, swamp coolers or other similar refrigeration devices are not permitted.

8.25 Fencing, except that installed initially by the Declarant and its replacement authorized by the Board of Trustees, is not allowed. All replacement fencing must be approved in writing by the Board of Trustees in order to maintain quality of construction and the integrity of the original design scheme.

8.26 The driving, parking, standing, and storing of motor vehicles and trailers in, on or about the Project shall be subject to the following:

8.26.1 The parking Rules adopted by the Board of Trustees from time to time;

8.26.2 Each Lot has a driveway allocated to it as shown on the Plat. Each Lot may share a driveway with a Lot that runs alongside it. Each Owner and Owner's guests shall be limited to parking on the driveway that sits on the Owner's Lot only, irrespective of whether it shares a driveway with another Lot or not. Each Owner and Owner's guests shall have the right to use a neighboring Lot's driveway only for ingress and egress but shall not unreasonably interfere with the adjoining Lot Owner's access to and from his/her Lot.

8.26.3 The driveways are not designed for Recreational, Commercial or Oversized motor vehicles and the Board of Trustees has the right to make Rules restricting or prohibiting their use. Unless otherwise determined by the

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Board of Trustees, all Recreational, Commercial and Oversized Vehicles shall be parked outside the Project, except for purposes of loading and unloading.

8.26.4 No motor vehicle or trailer may be parked or stationed in such a manner so as to create a potentially dangerous situation.

8.26.5 No Owner may park on any of the Private Roads. Owner's guests may not park on the Private Roads for longer than twenty-four (24) hours. However, under no circumstances may any cars park on the Private Roads if the Association determines that it will interfere with snow removal.

8.26.6 No motor vehicle or trailer may be parked or stationed in such a manner so as to create an obstacle or hazard or so as to block, obstruct or impair access to a garage, walkway, driveway, Building, or Lot.

8.26.7 No motor vehicle or trailer may be parked or stationed in an unauthorized area.

8.26.8 Residents may not park their motor vehicles in red zones, fire lanes, or in violation of this Declaration or the Rules.

8.26.9 The parking of a motor vehicle or trailer that is in the Board's discretion, inoperable, unregistered, unsightly or damaged (e.g. apparently requiring repairs of \$1,000 or more) in a driveway or so as to be visible from the street or another Lot is prohibited.

8.26.10 No Owners or Residents shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility.

8.26.11 No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonable parked in the garage as originally designed and constructed.

8.26.12 Anything to the contrary notwithstanding, access to the Property by emergency vehicles must be maintained at all times.

8.26.13 Without further or additional notice, the Association may immobilize, tow, and/or impound motor vehicles and trailers parked, stationed or stored in violation of the Governing Documents, and at the owner's sole risk and expense.

8.27 No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other Residents to the quiet and peaceful enjoyment of their Lot. No Owner shall engage in activity within the Project in violation of the Governing Documents, or any laws, ordinances, or statutes of any local, county, state, or federal body. Any such violations shall be deemed a nuisance under this Section.

8.28 Leases, Rentals, and Rentals on a Short Term Basis.

8.28.1 The Board of Trustees shall have the authority to establish conditions as to the duration and use of such approval consistent with this section.

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8.28.2 Vacation, weekly, and/or other short term rentals, shorter than a period of 30 days, are not permitted.

8.28.3 The following Owners shall be exempt from any of the rental restrictions contained herein:

8.28.3.1 Use a Lot owner in the military for the period of the Lot owner's deployment;

8.28.3.2 a Lot occupied by a Lot owner's parent, child, or sibling;

8.28.3.3 a Lot owner whose employer has relocated the Lot owner for no less than two years;
or,

8.28.3.4 a Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:

(i) the estate of a current resident of the Lot;

(ii) the parent, child, or sibling of the current resident of the Lot;

8.28.4 Rentals shall be governed by the following provisions:

8.28.4.1 Lots may be leased/rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved by the Board. All leases shall be for a period of at least one month, except with written approval from the Board. The Owner must provide the tenant copies of the declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

8.28.4.2 Any Owners who sells or leases a Lot and Residence shall disclose in the advertisements, purchase and lease documents that the Community is a 55 and older age restricted community under HOPA. Any failure by an Owner to do the above shall not prevent the Association from enforcing the age restriction policies against any Owner, occupant and/or renter for non-compliance.

8.28.4.3 Owners are responsible for the actions and behavior of their tenants. Owners shall review the Declaration, Bylaws, and any Rules with their tenants to ensure compliance. A tenant's violation of the terms of the Declaration, Bylaws or Rules may result in a fine that is the responsibility of the Owner.

8.28.4.4 Use a professional rental management company, duly licensed and qualified in the State of Utah, which shall provide the following:

(i) 24-hour management services;

(ii) Have all necessary business and other licenses or permits required by the county or state; and,

(iii) Provide 24-hour professional rental management company assistance phone number to each customer renting.

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ARTICLE 9 EASEMENTS

9.1 The Declarant and the Association shall each have a right to regulate the use of the Common Area and Facilities through the Association's Rules and to prohibit access to such portion of the Common Area and Facilities. The Declarant and the Association shall each have a right to grant easements or licenses to Persons for the construction of Improvements in the Common Area and Facilities, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the Common Area and Facilities in the Community to Persons who are not Members.

9.2 If a Residence is leased or rented by its Owner, the Occupants of such Residence shall have the right to use the Common Area and Facilities during the term of the lease, and the Owner of such Residence shall have no right to use the Common Area and Facilities until the termination or expiration of such lease.

9.3 There is hereby created easements upon, across, over and under the Common Area and Facilities, the Lots and the Residences and any other property as may be depicted on the Plat for reasonable ingress, egress, installation, relocation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, cable, telephone, television, communication, internet and electricity. By virtue of these utility easements, it shall be expressly permissible for the providing utility company or the City to install and/or relocate and maintain the necessary equipment of the Common Area and Facilities, the Lots and the Residences and any other property as may be depicted on the Plat. If any utility company requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Common Area and Facilities, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board of trustees deems appropriate.

9.4 There are hereby created easements for private ingress and egress for pedestrian traffic over, through and across trails, sidewalks, paths, walks and lanes that from time to time pay exist on the Common Area and Facilities. There is also created an easement for private ingress and egress for pedestrian and vehicular traffic over, through and across such Private Roads as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and residences and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area and Facilities for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles personnel.

9.5 So long as declarant or a Declarant Affiliate owns a Lot within the Community, Declarant shall have and hereby reserves the following rights and easements for the benefit of itself and all Declarant Affiliates:

9.5.1 Declarant shall have the exclusive right and an easement to maintain sales or leasing offices, construction trailers, management offices and models throughout the Community and to maintain advertising, marketing and/or sale signs, banners and flags on the Property of any size, type or quality without limitation on the Common Areas and facilities, with respect to the sales of Lots, Residence or other property within the Community. Declarant reserves the right to place models, managements offices, and models and advertising, marketing and/or sale signs, banners and flags on any Lots or property owned by Declarant or a Declarant Affiliate and on any portion of the Community, including without limitation on the Common Area and Facilities, in such number, of such size and in such locations as Declarant deems appropriate;

9.5.2 Declarant shall have the right and an easement on and over the Common Area and Facilities and the Lots to construct all Improvements Declarant may deem necessary and to use the Common Area and Facilities and any Lots and other property owned by the Declarant or a Declarant Affiliate for construction or renovation purposes including the storage of tools, furniture, machinery, equipment, building materials, appliances, supplies and fixtures, and the

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performance of work respecting the Community;

9.5.3 Declarant shall have the right and an easement upon, over and through the Common Area and Facilities and the Lots as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration.

9.6 No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other Residents to the quiet and peaceful enjoyment of their Lot. No Owner shall engage in activity within the Project in violation of the Governing Documents, or any laws, ordinances, or statutes of any local, county, state, or federal body. Any such violations shall be deemed a nuisance under this Section.

9.7 The Lots are hereby made subject to the following easements in favor of the Association and its Board of trustees, officers, agents, employees and independent contractors:

9.7.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

9.7.2 For inspection, maintenance, repair and replacement of portions of the Common Areas and facilities accessible only from such Lot or Lots;

9.7.3 For correction of emergency conditions on one or more Lots or any portions of the Common Areas and Facilities accessible only from such Lot or Lots;

9.7.4 For the purpose of enabling the Association, the Board, or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Governing Documents;

9.7.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the Governing Documents;

9.7.6 For inspection, maintenance, repair and replacement of the landscaped areas, concrete improvements, fences, patios and driveways located on the Lots which the Association is obligated to repair, replace and maintain pursuant to the Governing Documents; and,

9.7.7 For inspection, maintenance, repair and replacement of the exterior elements of the Residences located on the Lots which the Association is obligated to repair, replace and maintain pursuant to the Governing Documents.

9.8 Each Owner, for each Lot that he, she or it owns, hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot. To the extent the Party Wall does encroach upon or overlap a Lot, the Owner of said Lot hereby grants to the adjoining Owner of the other Lot that shares a Party Wall an easement over and upon its Lot for the purposes of using, maintaining the Party Wall and carrying out the obligations set forth in the Governing Documents. By accepting a deed to a Lot, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall.

9.9 Each Owner who shares a driveway with an adjoining Lot, grants an easement to the adjoining Owner of the adjoining Lot to use the driveway located on the Owner's Lot for the sole purpose of ingress and egress so long

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as such use does not unreasonably interfere with the Lot Owner's access to and from his/her Lot.

ARTICLE 10 CAPITAL IMPROVEMENTS

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

10.1 Any Capital Improvement or Addition to the Project which costs twenty percent (20%) or less of the Total Annual Budget of the Association, and does not alter the nature of the Project, may be authorized by the Board of Trustees alone (the "Capital Improvement Ceiling"). A major repair or a major maintenance expense of the Common Areas or Areas of Common Responsibility shall not be considered a Capital Improvement or Addition.

10.2 Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of voting interests of the Association.

10.3 Any Capital Improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the total votes of the Association.

10.4 Emergencies and Livability of the Project. Notwithstanding anything to the contrary, in case of emergencies or Capital Improvements necessary to preserve the ability of people to comfortably live in the Lots, the Board of Trustees may authorize any necessary Capital Improvement.

10.5 Common Areas and Facilities Repairs and Replacements. The Association has the responsibility to repair, maintain, and replace the Common Areas and Areas of Common Responsibility whether by reason of normal wear and tear, damage, defect, etc. The cost of such repairs and replacements shall be covered by Assessments. No Owner approval is required to fulfill these Association obligations.

ARTICLE 11 OPERATION, MAINTENANCE AND ALTERATIONS

Each Lot and the Common Area and Facilities shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

11.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area and Facilities and all Improvements located thereon, except the Association may, without obligation, maintain areas which municipal authority or any utility company is maintaining or is obligated to maintain.

11.2 The Board of Trustees shall be the sole judge as to the appropriate maintenance of all Common Area and Facilities.

11.3 In addition to the foregoing maintenance obligations, the Association shall have the duty of maintaining and repairing the landscaped areas, concrete improvements, fences, patios and driveways located on a Lot and all other exterior elements of the Residences, including, without limitation, the common utility and other service lines constituting exterior elements and the structural integrity of exterior structural walls of residences, and the cost of said

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maintenance and repair shall be a Community Expense of all the Owners. The Board of Trustees shall not need the approval of the members to cause such maintenance or repairs to be accomplished, notwithstanding the costs thereof.

11.4 The Association shall through the Board of Trustees or its representatives, provide to the Owners the following services which shall be paid for via the Assessments:

- 11.4.1 Maintain the driveways, the landscaping, trails and sidewalks;
- 11.4.2 Provide snow removal services on the Private Roads, Trails, Sidewalks and driveways, unless the Board of Trustees determines that doing so is cost prohibitive or impracticable;
- 11.4.3 Administer and manage the Community;
- 11.4.4 Provide common utilities unless otherwise separately metered as is the case with electricity, cable, culinary water, and sewer;
- 11.4.5 Set aside reserves for future maintenance, repairs and replacements of all areas and Improvements that the Association is obligated as required by this Declaration;
- 11.4.6 Provide snow removal for roads, sidewalks and driveways;
- 11.4.7 Obtain the insurance required herein or under the Act;
- 11.4.8 Acting as attorney-in-fact in the event of damage or destruction; and,
- 11.4.9 Performing all other acts required by this Declaration, the Articles, the Bylaws.

11.5 Each Owner shall maintain, repair and replace his Lot in a safe, sanitary and attractive condition. Each Owner shall not do anything that would interfere with or prevent the Association from performing its maintenance obligations on such Lot and exterior elements of the residence as further described in this Declaration. The Owner shall be obligated to maintain and alter the interior elements and non-structural walls of the residence. All maintenance, repairs and replacements are subject to the approval of the Board of Trustees as to construction materials, quality of construction and installation, and uniformity of appearance. No Owner shall allow his Lot or the Common Area and Facilities adjacent thereto to detract from the health, safety or uniform appearance or design of the Project.

11.6 Each Owner shall repair and replace all Common Area and Facilities caused by Owner's own negligence, fault or reckless conduct.

11.7 Anything to the contrary notwithstanding, (a) the Association, as part of its Area of Common Responsibility, is responsible for providing, contracting and/or subcontracting for the care, maintenance, repair and replacement of the exterior surfaces of any Building in order to maintain quality of construction and uniformity of appearance and the cost of such care, maintenance, repair and replacement is a Common Expense of the Association however, (b) each Owner is responsible for the cost of any damage caused to the exterior surfaces as a result of the Owner's own negligence or intentional misconduct.

11.8 To protect, honor and preserve the integrity and aesthetics of the Project, all landscaping within the Project, including by way of illustration but not limitation, each Entry, Entry Monument, gates and the perimeter fencing, shall be maintained and cared for in a manner consistent with the (i) design scheme, standards of design, appearance and quality of construction originally established by Declarant and (ii) in accordance with any County landscaping maintenance plans or ordinances. All landscaping shall be maintained in a safe, sanitary, and aesthetic condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be mowed and edged; all trees, shrubs and bushes shall be pruned and trimmed. No landscaping may affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project established by the Declarant. The Board of Trustees may adopt, amend or repeal written landscaping Rules, guidelines, standards, controls and restrictions from time to time.

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11.9 If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Association, or Board of Trustees may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered an "Individual Assessment" against an Owner. An Individual Assessment hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses hereunder. Individual Assessments also include any expenses benefitting or attributable to fewer than all of the Lots and may be assessed exclusively against the Lots affected or benefitted as determined by the Board. Individual Assessments may, as determined by the Board, include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration, Bylaws, or Rules and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any Rules; (2) expenses relating to the cost of maintenance, repair, replacement of a Lot and/or Limited Common Area appurtenant to the Lot; and (3) expenses from benefits a Lot Owner has the choice of accepting or rejecting, which may, in the Board's discretion, include, but is not limited to, usage charges for cable, internet, and telephone services, and others that may be established by Board resolution.

11.10 The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas and Facilities without additional approval required, including without limitation the consent of the Board of Trustees or Members of the Association; provided, however, no Owner or Permittee may make any structural alterations to the Common Area and Facilities, without the express prior written consent of the Board of Trustees.

11.11 No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Owners being first had and obtained.

ARTICLE 12 **STORM DRAIN SYSTEM, SLOPE AND DRAINAGE CONTROL**

The Declarant shall establish a storm drainage system designed to serve MILLPOINT, which may but is not obligated to include, in whole or in part, landscaping, open space, retention or detention ponds, streets, driving lanes, parking areas, and other common or private areas (collectively "Subdrain System" or "Storm Drain System").

12.1 Maintenance. The Association is responsible to maintain, repair and replace the Subdrain System located in, on, under or within the boundaries of MILLPOINT.

12.2 Interference, Erosion or Damage Prohibited. No structure, object, whether natural or artificial, including by way of illustration but not limitation any tree, shrub, bush or plant, or other improvement or material may be placed or permitted to remain, or other acts or omissions, which may damage or interfere or threaten to damage or interfere with the Subdrain System, established controls, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels to the detention basin.

12.3 Use Restrictions. It shall be the responsibility of each Owner to see that the use of his Lot or Lot conforms with and continues to conform with any established grading and drainage plan that has previously been designed by the Declarant.

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12.4 Alterations to Established Drainage Pattern. For use herein the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time a Lot or Lot is conveyed to a purchaser by the Declarant, its successor or assign. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior express written consent of the Board of Trustees.

12.5 Restriction Against Pollution of Water. In the interest of public health and sanitation, and so that the property and all other land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wild life, and other public uses of such property, no Owner or occupant shall use the property for any purpose that would result in the pollution of any waterway that flows through or adjacent to the property by refuse, sewage, or other material that might tend to pollute the waters of any such streams or otherwise impair the ecological balance of the surrounding lands.

12.6 Restriction Against Excavation and Grading. No excavation or deposit of stone, gravel, earth, or other material shall be made on the property, which may impair or threaten to impair the structural integrity and/or support of the Subdrain System, or any part thereof.

12.7 Costs. The cost of all improvements, maintenance, repairs and replacements of the Subdrain System located in MILLPOINT shall be considered a Common Expense.

12.8 Damages. An Owner shall be responsible for damage caused to the Subdrain System in any manner, including negligence.

12.9 Governmental Approval. The Association shall not have unilateral authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the Sub-drain System without the prior written consent of the County, who is hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the Sub-drain System; however, the County shall neither be a member of the Association nor has a vote in the management, operation or regulation of its affairs, although the County is hereby granted a right of enforcement.

ARTICLE 13 PARTY WALLS

13.1 Each wall, if any, which is built as a part of the original construction of the Lots upon the properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

13.2 By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees and understands that it is essential that the Party Wall be maintained in good condition and repair to preserve the integrity of the Parking Garages and Residences. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owner's respective Residence. With respect to pipes, conduits, ducts and other utility lines and connection which benefit only one of the Owners, the Owner benefitted solely thereby shall be fully responsible for the cost and maintenance of such items, including the making of replacements if needed. In the event that the need for maintenance is caused by the willful or negligent act of any Owner or family, tenants, invitees etc., the cost of such maintenance shall be solely borne by such Owner. With respect to the structural components of the Party Wall, the Owners agree to share equally in the cost of maintenance, repair and replacement. If the Party Wall is destroyed or damaged by fire or other casualty, either Owner may restore it, and the adjoining Owner shall contribute one-half of the cost of restoration thereof; provided, however, that any such single maintenance or repair activity, including replacement, which exceeds \$5,000.00 shall,

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except in an emergency, be undertaken only with the approval of the Board of Trustees and both Owners, which approval shall not be unreasonably withheld, conditioned or delayed.

13.3 The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE 14 SIGNS

14.1 Any entry monument and sign placed within the Common Area shall be maintained by the Association in all respects. In the event of a partial or total destruction of the sign from any cause, the Association shall rebuild the sign to restore it to its original dimensions and conditions consistent with applicable law, the uninsured cost or expense of such maintenance and/or rebuilding to be treated as a Common Area Assessment. The Association shall have the sole and exclusive right to allocate the space on said sign for any and all purposes.

14.2 Any signs comprising a part of a central directory to the Lots or business development, or individual signs attached to individual Lots shall conform in all respects to the Bylaws as administered by the Board of Trustees.

14.3 The requirements of Article 8, Section 8.21 apply to any and all signs.

ARTICLE 15 INSURANCE

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

15.2. Property Insurance.

(a) Hazard Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

1. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

2. At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

3. The blanket policy shall be in an amount not less than one hundred percent (100%) of

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current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

4. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

5. Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

1. the Association's policy provides primary insurance coverage, and:

- a) the Owner is responsible for the Association's policy deductible; and
- b) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

2. An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Living Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and

3. If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

(c) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(d) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Trustees determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association

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need not tender the claim to the Association's insurer.

(e) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

15.3. Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Internet Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

15.4. Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Trustees, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board of Trustees, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

15.5. Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Trustees members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, (c) officers, directors, and employees of any manager of the Association, and (d) coverage for acts.

15.6. Worker's Compensation Insurance. The Board of Trustees shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Trustees deems appropriate.

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

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

15.9. Association has the Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired

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and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

15.10. Insurance Trustee. In the discretion of the Board of Trustees or upon written request executed by Owners holding at least 50% of the Allocated Interest, the Board of Trustees shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board of Trustees(as the case may be) shall require.

15.11. Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

15.12. Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

15.13. Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, Board of Trustees may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board of Trustees shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.

15.14. Applicable Law. This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8a-401 through §57-8a-407, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

ARTICLE 16 CASUALTY DAMAGE OR DESTRUCTION

16.1 All of the Owners irrevocably constitute and appoint the Board of Trustees as their true and lawful agent in their name, place and stead for the purpose of dealing with the Property upon its damage or destruction. Acceptance of a deed from the Declarant or from any Owner shall constitute appointment of the Board of Trustees as attorney in fact for the limited purposes as herein provided.

16.2 As attorney in fact, the Board of Trustees shall have full and complete authority, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be

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necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the Property to substantially the same condition in which it existed prior to damage, with each Lot and the Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before.

16.3 In the event any Mortgagee should not agree to rebuild, the Board of Trustees shall have the option to purchase such mortgage on behalf of the Association by payment in full of the amount secured thereby. The Board of Trustees may obtain the funds for such purpose by Special Assessments as outlined in this Declaration.

16.4 As soon as practicable after receiving estimates, the Board of Trustees shall diligently pursue completion of the repair or reconstruction of the part of the Property damaged or destroyed, but only if the Property is damaged or destroyed to the extent of 75% or less than the value thereof. In the event the Property is destroyed or damaged to the extent of more than 75% of the value thereof, the Owners shall, at a meeting within one hundred (100) days after such damage or destruction duly called by the Board of Trustees for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless Owners representing at least 80% of the voting interests of the Association agree to the withdrawal of the Property from the provisions of the Act and this Declaration and to its subsequent disposal, the Property shall be repaired, rebuilt or restored to substantially the same condition it was in immediately prior to destruction or damage. The Board of Trustees may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Property or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Lot may not vary by more than 5% from the number of cubic feet and the number of square feet for such Lot as originally constructed pursuant to the original plans and specifications, and the location of any building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Section 4 shall apply under the provisions of this Section.

16.5 The proceeds of any insurance collected shall be available to the Board of Trustees for the purpose of repair or reconstruction. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Board of Trustees may levy in advance a Special Assessment sufficient to provide funds to pay the estimated or actual costs of repair or reconstruction, Such Assessment shall be allocated and collected as provided in this Declaration. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

16.6 The insurance proceeds held by the Board of Trustees and the amounts received from Assessments constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair of reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to the Assessments.

ARTICLE 17

DUTY OF OWNER TO PAY TAXES ON LOT(S) OWNED

Each Lot and its appurtenant membership interest in the Association is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and Assessments authorized by law, and that as result thereof no taxes will be assessed or levied against the Property as such. Accordingly, each Owner will pay and discharge any and all taxes and assessments which may be assessed on that Lot.

**ARTICLE 18
ALLOCATION OF PROFITS, LOSSES AND VOTING RIGHTS**

18.1 Voting rights (subject to anything contained in this Declaration) shall be distributed among the Lots equally. The ownership interest in the Association appurtenant to each Lot is equal. The ownership interest of each Lot and membership in the Association shall have a permanent character and shall not be altered without the unanimous affirmative consent of the Lot Owners.

- 18.1.1 The Association shall have two (2) classes of membership, known as Class A Members and Class B Members.
- 18.1.2 Class A Members shall be the Declarant, and each Lot that Class A Member owns shall be allotted five (5) votes.
- 18.1.3 Class B Members shall be all Owners, not including the Declarant and each Lot that Class B Members own shall be allotted one (1) vote.

18.2 When more than one Person holds such interest in a Lot, the vote for such Lot shall be exercised as those Persons themselves determine. In the event that there are conflicting votes for any one Lot, the vote of such Lot shall be disregarded.

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

**ARTICLE 19
AMENDMENT OF THIS DECLARATION**

19.1 So long as Declarant owns at least one (1) Lot in the Project, no amendment shall be valid or enforceable without the Declarant's prior written consent; and provided, however, that so long as Declarant owns at least fifteen (15) Lots in the Project, this Declaration may be amended in the sole discretion of the Declarant.

19.2 Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Declaration, the Declarant alone may amend or terminate this Declaration prior to closing of a sale of the first Lot. This Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing. Further, prior to the expiration of the Declarant's control period, Declarant may unilaterally amend this Declaration; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

19.3 Consent of the Owners. Outside of Section 19.1 and 19.2, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer or Director of the Association shall certify that the vote required by this Section for amendment has occurred.

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19.4 To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a governmental Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of a written Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the change, modification or amendment requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein.

19.5 Declarant's Rights. No provision of this Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

19.6 Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of MILLPOINT.

19.7 Material Amendment. Any addition or amendment shall not be considered material for purposes of this Section if it is for the clarification only or to correct a clerical error.

19.8 Notice to Eligible Mortgagee. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the P.U.D. Plat is required shall be mailed postage prepaid to the address for such Eligible Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board of Trustees or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the P.U.D. Plat or the termination of the legal status of the Project as a planned Lot development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

ARTICLE 20 **MORTGAGEE PROTECTION**

The lien or claim against a Lot for unpaid Assessments levied by the Trustees or by the Association pursuant this Declaration shall be subordinate to any mortgage recorded on or before the date such Assessments become due, subject to the following:

20.1 Effects of Voluntary and Involuntary Sale. The lien or claims against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to foreclosure of the mortgage affecting such Lot or the exercise of power of sale available thereunder shall extinguish any debt prior to such sale or transfer.

20.2 Right to Financial Statements. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediate preceding fiscal year, which shall be provided within a reasonable time.

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ARTICLE 21 WORKING CAPITAL FUND

A working capital fund shall be established by the Declarant equal to or greater than three (3) months' Assessments for each Lot. Each Lot's share of the working capital fund shall be paid by the buyer of a Lot, collected by the title company, and transferred to the Association at the time of closing of the sale of each Lot. If the working capital contribution is paid for by the Declarant, in cash or kind, then the Declarant shall be reimbursed for such contribution by the buyer of such Lot at the time of closing. The purpose of the working capital fund is to ensure that the Board of Trustees will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of MILLPOINT. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses. Thereafter, the Board of Trustees may continue the working capital fund by charging reinvestment fees when Lots are sold or rented. The amount of the reinvestment fee may be changed via a resolution of the Board of Trustees.

ARTICLE 22 ENFORCEMENT AND RIGHT TO RECOVER ATTORNEY FEES: DEVELOPER'S RIGHT TO CURE DEFECTS

22.1 General Remedies. Should the Association, Manager, Board of Trustees, or an aggrieved Owner be required to take action to enforce the Governing Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including reasonable attorneys' fees, which may arise or accrue.

22.2 Additional Remedies. In addition, the Board of Trustees may impose the following sanctions after proper notice and the opportunity to be heard:

- 22.2.1 imposing Individual Charges, Default Assessments and fines, which may be secured by a lien against the Owner's interest in the Property;
- 22.2.2 suspending an Owner's right to vote;
- 22.2.3 suspending any Person's right to use any of the recreational amenities located in the Common Area and Facilities; provided, however, nothing herein contained shall authorize the Board of Trustees to limit ingress or egress to or from a Lot;
- 22.2.4 requiring an Owner at his sole expense to remove any structure or improvement in the Common Area and Facilities, and upon the failure of the Owner to do so, the Board of Trustees or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;
- 22.2.5 without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Governing Documents; and,
- 22.2.6 levying Individual Charges or a Default Assessment to cover costs and expenses incurred by the Association to bring an Owner into compliance.

22.3 Declarant's Right to Cure Alleged Defects. It is the Declarant's intent that all improvements constructed or made by Declarant in the Project be built or made in compliance with all applicable building codes and ordinances and that such improvements be of a quality that is consistent with quality and construction standards. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and whether Declarant and/or an agent of Declarant is responsible. It is Declarant's intent to resolve all disputes and claims regarding Alleged Defects (defined below) amicably, and without the necessity of time-

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consuming and costly litigation. The Association, Board of Trustees, and all Owners shall be bound by the following claim resolution procedure:

- 22.3.1 Declarant's Right to Cure. In the event the Association, any individual Member of the Association, Board of Trustees, any individual Manager, or any Owner (collectively "Claimant") claim, contend or allege that any portion of the Project, including without limitation, any Additional Land, any Building, any Capital Improvement, all Common Areas, any Limited Common Areas, the entire Project, the Property, and all Lots (excluding Owner occupied Lots not constructed by Declarant) are defective or that Declarant or its agents, consultants, contractors, or subcontractors were negligent in planning, design, engineering, grading, construction, or other development thereof (collectively "Alleged Defect"), Declarant hereby reserves the right to inspect, repair, and/or replace such Alleged Defects as set forth below.
- 22.3.2 Notice to Declarant. In the event a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant's Registered Agent at such address at which the Declarant maintains its principal place of business or Declarant's agent for service of process, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").
- 22.3.3 Right to Enter, Inspect, Repair, and/or Replace. Within a reasonable time after receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservations of rights, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Lot and/or improvement (including Common and Limited Common Areas), or other portions of the Project and/or Property for the purposes of inspecting and if deemed necessary by Declarant, repairing or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant shall be entitled to take any action, as it shall deem reasonably necessary under the circumstances.
- 22.3.4 Legal Actions. No Claimant shall initiate any legal action, cause of action, proceeding, reference or arbitration against the Declarant alleging damages (i) for the cost of repairing or replacing any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, unless and until (1) Claimant has delivered to Declarant a Notice of Alleged Defect, and (2) Declarant has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) fails to repair or replace such Alleged Defect, or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, fails to commence such repair or replacement of the Alleged Defect and, thereafter fails to pursue diligently such repair or replacement to completion. If the statute of limitations for bringing legal action on a defect expires during the 90 day cure period, then the statute of limitations shall be extended until the cure period expires, not to exceed 90 days.
- 22.3.5 Mediation. If the parties have not resolved the Alleged Defect through negotiations within the ninety (90) day period, the Claimant shall have thirty (30) additional days to submit the Alleged Defect to mediation with any independent agency providing dispute resolution services in the Salt Lake City, Utah area. Both the Declarant and the Claimant shall present the mediator with a written summary (containing at least the same information as required to be set forth in the Notice) of the Claim within ten (10) days after the date of termination of the ninety (90) day period.
- 22.3.5.1 If the Claimant does not submit the Alleged Defect to mediation within such time, does not appear for the mediation when scheduled or does not participate in good faith in the mediation, the Claimant shall be deemed to have waived the Claim, and the Declarant shall be relieved of any and all liability to the Claimant (but not third parties who were not part of the mediation process) on account of such claim.

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- 22.3.5.2 If the parties do not settle the Alleged Defect within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonably by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Alleged Defect, as appropriate.
- 22.3.5.3 Each party (the Declarant and Claimant) shall bear its own costs of the mediation, including any attorney's fees, and shall pay an equal share of the mediator's costs and fees.
- 22.3.6 Litigation. Before initiating any legal proceeding for any Alleged Defect against the Declarant, the Association shall:
- 22.3.6.1 Provide full disclosure in writing to all Owners of all material information relating to the Alleged Defect, which includes without limitation, a statement describing the nature of the Alleged Defect, the manner in which the Alleged Defect will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
- 22.3.6.2 Call and hold a special meeting of the Owners to discuss the Alleged Defect and disclosures, and provide at least 72 hours notice to the Declarant of such meeting, and permit a representative of the Declarant to attend the special meeting;
- 22.3.6.3 Receive approval from 67% of the entire voting interest of the Association, who must be present in person or by proxy at the special meeting, to initiate any legal proceeding of the Alleged Defect Claim against the Declarant, its successors, successors in interest, assigns, and/or its affiliate, if applicable.
- 22.3.7 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Paragraph 22 shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the Office of the Salt Lake County Recorder.
- 22.3.8 Waiver. Notwithstanding anything to the contrary in this Paragraph 22, Declarant hereby disclaims any representations and warranties in respect of, shall have no continuing liability to any Owners for, any design or construction defects (whether known or unknown) relating to the Project or Property, including latent defects.
- 22.3.9 Attorney Fees. Any post-turnover litigation involving the Declarant shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Claimant or the Declarant fails to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other party to the fullest extent permissible by law, and the non-breaching party shall be entitled to recover any and all attorneys fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.
- 22.3.10 Amendment. Any provision in this Declaration notwithstanding: (1) other than as set forth in this Article, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to

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comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, and (b) not less than seventy-five percent (75%) of the total voting power of the Board; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.

ARTICLE 23 **MORTGAGES**

Notwithstanding all other provisions hereof:

23.1 The liens created hereunder upon any Lot shall be subject to and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) where such interest was made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien on the interest of the purchaser at such foreclosure sale to secure all Assessments made pursuant to this Declaration after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the manner as provided herein. All other mortgages shall have such rights and priorities as established by law.

23.2 No amendment to this paragraph shall affect the rights of the holder of any such mortgage who does not join in the execution thereof.

ARTICLE 24 **INDEMNIFICATION OF BOARD OF TRUSTEES**

Each member of the Board of Trustees shall be entitled to be indemnified and held harmless by the Owners against all cost, expenses, and liabilities whatsoever, including attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of being or having been a member of the Board of Trustees, excluding only acts of gross negligence, intentional misconduct, bad faith or reckless disregard by the trustee.

ARTICLE 25 **SEVERABILITY**

If any provision, paragraph, sentence, clause, phrase, or word of this Declaration should under any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

ARTICLE 26 **TOPICAL HEADINGS AND CONFLICT**

The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this

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Declaration of any paragraph or provision hereof, In case any provisions hereof shall conflict with Utah law, Utah law shall be deemed to control.

**ARTICLE 27
EFFECTIVE DATE**

This Declaration shall take effect upon recording in the office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, the undersigned has hereunto sets its hand this 13th day of March, 2016.

Starline Development, L.L.C., a Utah limited liability company

Douglas Notard

Name:
Title: OWNER

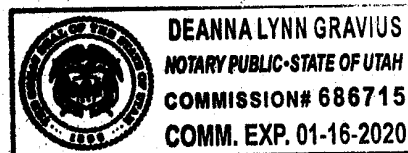
ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this 13th day of March, 2017 by Douglas Notard Manager/Member of Starline Development, L.L.C., a Utah limited liability company, and said Douglas Notard duly acknowledged to me that he executed the same by authority on behalf of Starline Development, L.L.C., a Utah limited liability company.

Deanna Lynn Gravius

NOTARY PUBLIC



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EXHIBIT "A"

LEGAL DESCRIPTION MILLPOINT PROPERTY

The Property referred to in the foregoing document as the MILLPOINT Property is located in Salt Lake County, Utah and is described more particularly as follows:

Legal Description:

A Boundary established by field survey as performed by Anderson Wahlen and Associates dated 28 September 2016 on file with the Salt Lake County Surveyors Office as file No. S2016-10-0762, lying within the Southwest Quarter of Section 28, Township 1 South, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at an existing Boundary Line fence corner on the South Line of 3100 South Street located 1008.27 feet North 89°56'50" East along the Quarter Section Line and 33.00 feet South 0°03'10" East from the West Quarter Corner of said Section 28; and running thence North 89°56'50" East 130.00 feet along said South Line; thence South 0°03'10" East 344.52 feet along an existing Boundary Line fence; thence South 72°13'00" East 207.80 feet along an existing Boundary Line fence; thence South 0°01'23" West 246.01 feet along an existing Boundary Line fence to the North Line of 3210 South Street; thence North 89°53'00" East 4.84 feet to the West Line of Vega Park Plat No. "B-3"; thence South 0°05'00" West 50.00 feet along said West Line to the South Line of 3210 South Street; thence South 89°53'00" West 4.79 feet along said South Line; thence South 0°01'23" West 56.05 feet along an existing Boundary Line fence; thence West 676.35 feet to and along the North Line of Mountain View Meadows PUD Subdivision Phase 1 and said North Line extended Westerly to the Southwest Corner of the underlying 2014 Warranty Deed recorded as Entry No. 11942593 in Book 10273 at Page 4376 of Official Records; thence North 330.00 feet along the Westerly Line of said Warranty Deed to the Northwesterly Corner thereof; thence East 172.51 feet along the Northwest Line of said Warranty Deed; thence North 1°33'02" West 97.80 feet; thence North 3°00'29" West 89.07 feet; thence North 89°56'50" East 183.33 feet to an existing Boundary Line fence; thence North 0°03'10" West 243.05 feet along said fence line to the point of beginning.

**Contains 323,463 sq. ft.
or 7.426 acres
50 Lots
5 Parcel**

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EXHIBIT "A" (continued)

<u>Lot No.</u>	<u>Lot Area in Square Feet</u>	<u>Percentage of Undivided Ownership Interest</u>
1	5931	2%
2	5032	2%
3	4703	2%
4	5032	2%
5	7532	2%
6	4240	2%
7	4101	2%
8	4101	2%
9	4664	2%
10	5081	2%
11	4240	2%
12	3961	2%
13	4239	2%
14	3961	2%
15	5143	2%
16	5293	2%
17	3977	2%
18	4252	2%
19	4405	2%
20	4911	2%
21	4587	2%
22	4385	2%
23	4101	2%
24	4587	2%
25	4661	2%
26	5265	2%
27	4587	2%
28	4378	2%
29	4101	2%
30	4587	2%
31	4574	2%
32	5172	2%
33	4478	2%
34	4572	2%
35	4269	2%
36	4565	2%
37	4263	2%
38	4558	2%
39	4265	2%
40	5155	2%
41	5091	2%
42	4693	2%
43	4822	2%

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44	4782	2%
45	4294	2%
46	4786	2%
47	5746	2%
48	6809	2%
49	6366	2%
50	6379	2%