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Somerset at Miller Crossing, LLC
6190 South State Street, Suite B
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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SOMERSET AT MILLER CROSSING
6190 S STATE ST STE B
MURRAY UT 84107
BY: CRA, DEPUTY - WI 33 P.

Space above for County Recorder's use

Parcel I.D. # 26.25.326.004

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

FOR

SOMERSET VILLAS AT MILLER CROSSING

AN EXPANDABLE PLANNED RESIDENTIAL UNIT DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS (the "**Declaration**") is made on this 26 day of May, 2017, by **SOMERSET AT MILLER CROSSING, LLC**, a Utah limited liability company, of 6190 South State Street, Suite B, Murray, Utah 84107 ("**Declarant**"), with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in Salt Lake County, State of Utah, which property is more particularly described as follows:

See attached Exhibit "A"

For purposes of development and marketing, the above-described property is intended to be known as "Somerset Villas at Miller Crossing" (the "Project"). In this Declaration, the term "**Property**" shall refer to Property set forth on Exhibit "A" consisting of twenty (20) Units and Common Area. The Additional Land, as defined below, upon which Declarant reserves the option to develop in phases, is defined in Exhibit "B" hereto.

B. Declarant intends to improve the Property by construction thereon of certain residential improvements and common facilities, and to establish thereon a Planned Residential Unit Development, to be managed, operated, and maintained by an incorporated Association of Owners, for the benefit of the Property as a whole. Declarant explicitly reserves for itself the option in the future to expand the Project.

C. The development of the Property shall be hereinafter refers to the "**Project**". The Owner of each of the Units shall receive fee title to their individual Unit and the residential dwelling thereon, together with all rights associated with membership in SOMERSET AT MILLER CROSSING OWNERS ASSOCIATION, INC. (the "**Association**").

D. Declarant intends by this document to impose upon the Property mutually-beneficial restrictions under a general plan of improvement for the benefit of all of said Units and the Owners thereof.

E. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a planned unit development. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.

Article I.
DEFINITIONS

Section 1.01 Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the Project Documents, shall have the following meanings:

(a) **Additional Land:** any part of the parcel of land more particularly described on Exhibit "B" attached hereto and incorporated herein by reference, all or a portion of which may be added to the Project in accordance with the provisions outlined in this Declaration.

(b) **Articles:** the Articles of Incorporation of the Association, as amended from time to time.

(c) **Assessment:** that portion of the cost of maintaining, improving, repairing, operating, and managing the Property which is to be paid by the Unit Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6 of this Declaration.

(d) **Association:** SOMERSET AT MILLER CROSSING OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, formed or to be formed by Declarant, the members of which shall be the Owners of Units in the Project.

(e) **Board or Board of Directors:** the governing body of the Association.

(f) **Building:** shall mean and refer to a building or buildings containing Units and comprising a part of the Property.

(g) **Bylaws:** the Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the incorporating members of the Board of Directors.

(h) **Common Areas or Common Facilities:** all the real property and improvements located within the Property, other than the Units and Dwellings, including without limitation, all landscaped areas, and private roadways and walkways, all of which shall be managed by the Association for the common use and enjoyment of all Owners. The individual Owners within the Project shall own an undivided interest in the Common Areas and Common Facilities as tenants in common, each with an equal undivided interest therein. The undivided interest in the Common Areas shall not be separated from the Unit to which it appertains. The Common Area is designated as such on the Plat Map, as defined below. Common Areas shall also include the storm sewer, sanitary sewer and water lines, sewer and water laterals and other related improvements (the "**Sewer / Water Improvements**") within and under the Common Areas to the point that said sewer / water facilities reach the public sewer / water system.

(i) **Common Expenses:** the actual and estimated expenses of maintenance improvement, repair, operation, insurance, and management of the Common Area and of the exterior and structural components of the Dwellings, expenses of operating and maintaining the private roadways and walkways through the Project, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefitting the Common Area; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.

(j) **Declarant:** Somerset at Miller Crossing, a Utah limited liability company, and its successors-in-interest and assigns with respect to the Property, but shall not include members of the public purchasing completed Units.

(k) **Declaration:** this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time.

(l) **Dwelling:** that portion of any building (including garage and other improvements) which is located on a single Unit and which is designed and intended for use and occupancy as a single-family residence.

(m) **Improvements:** the improvements included in the Project are now or will be located upon the Property. The significant improvements contained in the Project include up to twenty-three (23) Buildings with garages, porches, patios, private

driveways, picnic areas, asphalt roadways, open parking spaces, concrete sidewalks or walkways and fencing. The location and configuration of the improvements referred to in the forgoing sentence are depicted on the Plat Map. The Project also contains other improvements of a less significant nature, such as outdoor lighting and the landscaping. The Plat Map shows the number of Units, which are contained in the Buildings in the Project. Said Buildings are composed of the following materials: wooden frame with load and nonload-bearing walls studded with wood, first floor of concrete or wood, second floor of wooden joists; combination truss-rafter type roof; surfaced with asphalt shingle roofing; interior walls surfaced with gypsum board; and exterior surfaced with stucco and stone or brick.

(n) **Limited Common Areas:** shall mean and refer to those Common Areas designated herein or in the Plat as reserved or designated by this Declaration for the exclusive use of a certain Unit or Units to the exclusion of the other Units and Owners. Each Unit shall include, as Limited Common Area, exclusive and appurtenant to such Unit, the driveways, porches, rear patio areas, as shown on the Plat.

(o) **Member:** a person entitled to membership in the Association as provided herein.

(p) **Mortgage:** includes a recorded mortgagee, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.

(q) **Mortgagee:** includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage on any Unit.

(r) **Mortgagor:** includes a mortgagor, the trustor of a deed of trust, real estate contract vendee or other individual granting a security interest in any Unit.

(s) **Owner or Owners:** the record holder or holders or entity title to or a contract vendee's interest in a Unit in the Project. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "**Owner**", and the fee owner shall be considered a mortgagee.

(t) **Person:** any natural person, corporation, partnership, association, trustee, or other legal entity.

(u) **Plat or Plat Map:** the recorded map or maps prepared by or for Declarant showing the surface of the Property and the division thereof into Units and Common Area, as amended and/or supplemented from time to time. The Property may be developed in multiple phases.

(v) **Project Documents:** this Declaration, the Plat Map, and the Articles and Bylaws of the Association, as each may be amended from time to time.

(w) **Property or Project** (synonymous): the real property covered by this Declaration and all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon.

(x) **Unit**: all elements of individual ownership of a residential interest in the Project, including ownership of a Unit, the Dwelling thereon, applicable Limited Common Areas, a nonexclusive easement, and right of use and enjoyment of the remainder of the Common Area, and all rights of membership in the Association.

Article II.

ASSOCIATION, ADMINISTRATION, MEMBERSHIP, VOTING RIGHTS

Section 2.01 Organization of Association. The Association is or shall be incorporated under the name of SOMERSET AT MILLER CROSSING OWNERS ASSOCIATION, INC., in accordance with the requirements of the Utah Non-Profit Corporation and the Utah Community Association Act.

Section 2.02 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

Section 2.03 Membership. The Owner of a Unit shall automatically, upon becoming the Owner of that Unit, become a Member of the Association, and shall remain a Member thereof until such time their ownership ceases for any reason, at which time their membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

Section 2.04 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of their Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void. A transfer of ownership of a Unit in the Project will incur a reinvestment fee as set forth in Section 6.11 herein.

Section 2.05 Class of Membership, Voting Requirements. The Association shall initially have two (2) different classes of voting membership: Class A Members and Class B Members, as described herein and according to the Articles and Bylaws for the Association. As provided herein and such additional governing documents for the Association, reasonable allowance shall be made for a transition from initial total ownership and control by the Declarant to eventual ownership and control by the individual property owners and residents within the Project. The different classes of voting membership shall be a mechanism to accomplish that

objective and for such other purposes as may be recognized and established under the Governing Documents of the Association.

Section 2.06 Class A Members. The Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

(a) One Vote. Each Unit shall have one (1) vote.

(i) Multiple Owners. When more than one (1) Person holds an interest in a Unit, the vote for such Unit shall be exercised as such Persons determine and advise the Secretary of the Association prior to any meeting. In the absence of such notice, the vote of the Unit shall be suspended in the event more than one (1) Person or entity seeks to exercise it.

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

Section 2.07 Class B Members. The Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. Prior to the Transition Events, as defined below, the Declarant shall have the exclusive right to appoint all members of the Board. The Class B Members shall originally be entitled to three (3) votes per Unit owned or to be developed. The Class B membership shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (the “**Transition Events**”):

(a) Units Sold. One Hundred Twenty (120) days after the sale (meaning the execution and delivery of a deed to a Unit by Declarant to a person other than Declarant) of seventy-five percent (75%) of the Units (75 Units) in the Project; or

(b) Three Years. Three (3) years from the date following the first conveyance of a Unit in any Building to a Unit purchaser after the effective date of this Declaration; or

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

Section 2.08 Change to Class A Member. From and after the happening of the Transition Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

Section 2.09 Membership Meeting. Regular and special meetings of Members of the Association shall be held with the frequency, and time and place, as are in accordance with the provisions of the Bylaws of the Association.

Section 2.10 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association. Prior to the Transition Events, as defined in Section 2.07 above, the Declarant shall have the exclusive right to appoint all members of the Board of Directors.

Section 2.11 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of any such contract shall comply with the restrictions set forth in the Bylaws.

Article III. RIGHTS IN COMMON AREA

Section 3.01 Common Area. The Common Area shall include all real property and improvements within the Property, other than the Units and Dwellings, including without limitation, all landscaped areas, and private roadways and walkways, all of which shall be managed by the Association for the common use and enjoyment of all Owners. The individual Owners within the Project shall own the Common Area as tenants in common, each with an equal undivided interest therein. The Common Area shall be operated, maintained, and insured by the Association for the use and benefit of Owners of Units in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. Each Unit Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Unit Owners. The Declarant hereby reserves in itself and its successors-in-interest and assigns, all easements (and the right to grant further easements) over and onto the Common Area for ingress to and egress from the Project for the purpose of necessary construction, maintenance, or repair work in connection with the development, use, and occupancy thereof. Each Unit Owner shall also have the rights and easements granted pursuant to the rights set forth herein.

(a) Limited Common Area. The exclusive right to use and occupy each Limited Common Area, as designated herein and on the Plat shall be appurtenant to and shall pass with the title of the Unit with which it is associated. Each Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas and facilities reserved exclusively for the use of the Unit, subject to the residual rights of the Association therein. It is anticipated that upon completion of construction, each Unit shall include, as Limited Common Area, the driveways, exclusive and appurtenant to such Unit, porches, rear patio areas, as shown on the Plat.

Section 3.02 Common Maintenance of Exclusively-Owned Areas. As depicted in Exhibit "B", each of the Dwellings is situated on an individual Unit sharing a common wall(s) with other Units, which shall be exclusively owned by recorded title thereof. However, as a planned unit development, it is intended that the yards of each Unit, including the driveways,

porches, patios and Dwelling exterior, shall at all times be a uniform, well-manicured and maintained residential community with relatively low maintenance responsibilities for the individual owners and with reasonable assurances that all of the areas within the Project will be similarly well cared for and maintained. Therefore, it is agreed that the Association shall contract for regular property maintenance services to keep up the Building exteriors, structures and landscaping within the Project, including but not limited to the Common Area and the front yards and park strips of each Unit within the Project. The Association shall be responsible for the continual upkeep, repair, maintenance, and eventual replacement thereof.

Section 3.03 Partition of Common Area Prohibited. As provided in Section 3.1 hereinabove, the Owners shall each own an equal undivided interest in the Common Area as tenants in common. No Owner shall bring any action for partition or division of any part of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area.

Section 3.04 Extent of Easements. The rights and easements of use and enjoyment of the Common Area created by this Declaration shall be subject to such rules and regulations as may be adopted by the Board of Directors according to the Bylaws. Without limiting the generality of the Board's authority to enact reasonable rules and regulations, such easements shall be subject to the following:

(a) The right of the Board to suspend the rights and easement of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located within the Common Area, for any period during which the payment of any Assessment against the Member and his Unit remains delinquent; provided, however, that any suspension for either nonpayment of any assessment or breach of any provision in the Project Documents shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided in this Declaration;

(b) The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area, and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area for the benefit of the Members of the Association; and

(c) The right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights of way in, on or over the Common Area for purposes consistent with the intended use of the Property as a residential planned unit development.

Section 3.05 Damage by Member. Each Member shall be liable to the Association for any damage to the Common Area (including damage to Sewer Improvements) not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon

the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit of the Member liable for the damage and may be enforced as provided hereby for the enforcement of any other Assessment.

Article IV.
Intentionally deleted.

Article V.
REPAIR AND MAINTENANCE

Section 5.01 Repair and Maintenance Rights and Duties of Association. Subject to the provisions in this Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace the Common Area and all improvements and landscaping thereon, and the exteriors, including roof and the exterior structural components of all Buildings associated therewith, or shall contract for such maintenance, repair and replacement to assure that maintenance of such areas are in good condition, reasonable wear and tear excepted. However, the Association shall not be responsible for, or be obligated to perform those items of maintenance, repair or improvement, which are the responsibility of the Owners as provided in Section 5.02 below. However, in the event an Owner fails to maintain his Dwelling or to provide other maintenance or repair as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify the Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien his Unit for the amount thereof. For the purpose of performing any maintenance, repair or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Common Area or to other Dwellings, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portion of the Common Area, and shall also have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit and/or Dwelling.

Section 5.02 Repair and Maintenance Rights and Duties of Owners. Except for those portions of the Property which the Association is required or elects to maintain and repair, each Unit Owner shall, at their sole cost and expense, maintain and repair all interior and non-structural components of their Dwelling, keeping the same in good condition, and shall repair all damage to the Common Area for which the Owner is responsible under Section 3.5 above. Additionally, each Owner shall maintain, repair and replace as necessary, all doors and windows (and appurtenant hardware and accessories) to their Dwelling, and any separate air conditioning, water heating, or other separate utility unit which services their Dwelling. Additionally, each Owner shall be responsible for snow removal on the Limited Common Area appurtenant and appertaining to their Unit and Lot, including driveways, patios and porches. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and

decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding their Dwelling.

Article VI.
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

Section 6.01 Creation of the Lien and Personal Obligation of Assessments. The Declarant shall establish and the Association shall, at the time of its initial organization, adopt such operating budgets for the project as are reasonably necessary to commence such operations in the full execution of all of the Association's responsibilities provided hereunder. The Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the Bylaws of the Association: (a) Regular Assessments; (b) Extraordinary Assessments; and (c) Special Assessments.

All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Unit against which each Assessment is made. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Unit as provided herein. Declarant shall not be responsible to pay assessments until any Unit is sold to, or occupied by a resident thereof.

Section 6.02 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project for the improvement and maintenance of the Common Area and for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area and the exterior and structural components of all Dwellings which must be replaced on a periodic basis, creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund for maintenance and repairs of all Common Areas, including the private roadways, if any, located within the Project as shown on the official plat recorded in the office of the Salt Lake County Recorder.

Section 6.03 Regular Assessments. Until the end of the Association's fiscal year immediately following the closing of the sale of the first Unit in the Project, the annual maximum Regular Assessment per Unit shall be such amount as is set forth in the Project budget prepared by Declarant, payable in monthly installments, or such other billing period as the Board determines from time to time. Each Unit's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment against each Unit at least thirty (30) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular Assessment for the immediately-preceding fiscal year, without the vote or written assent of a majority of the voting power of the Association.

Section 6.04 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, all Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or of any exterior or structural component of any Dwelling, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment (and, where necessary, for taxes assessed against the Common Area); provided, however, and except as provided in the last sentence of this subsection 6.4, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of more than sixty percent (60%) of the voting power of the Association. Notwithstanding any language in this Declaration to the contrary, a one-time extraordinary assessment in an amount equal to two months' of the then-established monthly Association Assessment shall be assessed at the time of closing of the purchase of a Unit by the first Owner thereof, to establish working capital for the Association.

Section 6.05 Special Assessment. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against all individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the Bylaws, including actual attorneys' fees and costs.

Section 6.06 Limited Exemption of Declarant. Declarant's obligation to pay any Assessment for Units owned by Declarant shall not begin until such time any such Unit owned by Declarant is first occupied or Declarant no longer has control of the Association, whichever is earlier.

Section 6.07 Commencement of Assessment: Due Dates. Except as provided in Section 6.06 above, the Regular Assessments provided for herein shall commence as to all Units in the Project on the first day of the month following closing of the sale of each applicable Unit in the Project or such other billing period as the Board may determine from time to time. No notice of such Assessment shall be required other than an annual notice setting forth the amount or the periodic Assessment.

Section 6.08 Transfer of Unit by Sale or Foreclosure. The sale or transfer of any Unit shall not affect any Assessment lien, or relieve the Unit from any liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Unit pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first mortgage given in good faith and for value shall not extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to recording of the mortgage). Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Section shall be deemed to be Common Expenses collectible from all of the Units including the Unit for which the lien was extinguished. In a voluntary conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the grantor up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the

grantee therefor. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement. As used herein, the term "lien" shall mean any claim for a delinquent Assessment, whether or not any formal document is recorded with the Salt Lake County Recorder's office to document such lien.

Section 6.09 Enforcement of Assessment Obligation; Priorities; Discipline. All charges, fees and/or assessments due hereunder shall be due on the first (1st) day of the month. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge, the amount of which shall be determined by the Board, shall be assessed, and additional sums, as determined by the Board, shall be assessed for each month or fraction thereof from the due date until the Assessment and all late charges are paid. Each unpaid Assessment shall constitute a lien on each respective Unit prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any institutional first mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale of said Owner's Unit, after failure of the Owner to pay such Assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorneys' fees and costs, and may temporarily suspend the Association membership rights of a Unit Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

Section 6.10 Taxes Assessed Against Association Common Areas or Personal Property. Pursuant to and consistent with Section 3.1 hereinabove, taxes assessed against the Common Area, or the personal property of the Association, shall be paid by the Owners through assessments from and collection by the Association rather than directly from the Owners.

Section 6.11 Reinvestment Fee (formerly "Transfer Fee). Any Unit being transferred by sale shall incur a reinvestment fee, the amount of which shall be determined by the Board of Directors of the Association, but shall not exceed any amount allowed by law.

Article VII.

EASEMENTS AND UTILITIES: COMMON WALLS

Section 7.01 Access, Use and Maintenance Easements. Declarant expressly reserves for the benefit of the Owners, reciprocal, non-exclusive easements for reasonable access, ingress and egress over all of the Common Area and for the use and enjoyment of all recreational facilities thereon, including any private streets or driveways in the Common Areas currently

existing in the Property, or subsequently added to it, which easements shall be deemed granted by Declarant to the Owners and to the Association for so long as Declarant owns any interest in the Property. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Unit in the Project. Declarant also expressly reserves for the benefit of the Board of Directors and all agents, officers and employees of the Association, nonexclusive easements over the Common Area (including the Limited Common Area) and all Units and Dwellings as necessary to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Area shall be appurtenant to, binding upon and shall pass with the title to, every Unit conveyed.

Section 7.02 Encroachments and Utility Easements. Each Unit within the Property is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction or shifting of any building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

Declarant also expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, easements over and under the entire Property (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, telephone, cable television, internet, and other utility/communications lines and services, as may be deemed appropriate to service the Project.

Section 7.03 Owner's Rights and Duties With Respect to Utilities. The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

(a) Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, internet, and other utility/communications, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections, or any portion thereof, lie in or upon or beneath Units or Dwellings owned by other than the Owner of a Dwelling served by said connections, the Owners of any Dwellings served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Dwelling or to have the Association or utility companies enter upon the Dwellings in or upon or below which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

(b) Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, internet, and other utility/communications, heating or air

conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections serve more than one Dwelling, the Owner of each Dwelling served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Dwelling.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 7.04 Owner's Rights and Duties With Respect to Common Walls.

(a) General Rules of Law to Apply. The Owner of any Dwelling which shares a common wall with another Dwelling shall be deemed to own the one-half (1/2) of the wall nearest his Dwelling, and shall have an exclusive and perpetual easement over the remainder of the Common Wall for support and maintenance. To the extent consistent 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 thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Unit and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Article VIII. RESIDENCE AND USE RESTRICTIONS

Section 8.01 In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

(a) Use of Individual Dwellings. No Dwelling shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein. An Owner shall have the right to rent out their Unit to a tenant or tenants, under such terms and conditions as may be deemed appropriate by the Owner; provided that any tenant shall occupy the Unit subject to all terms and conditions of the Project Documents. No such lease shall be for a term of less than six (6) months.

(b) Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Dwelling, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Dwelling, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

(c) Signs. No Signs advertising Units for sale or rent may be displayed on the Property or on any portion of the Property, unless first approved by the Board or the Architectural Committee, and unless such signs comply with any and all local ordinances. Notwithstanding the preceding sentence, until all Units in all phases of the Project have been sold, the Declarant shall have the right to advertise Units for sale, provided Declarant complies with the requirements of Herriman City with respect to such advertising.

(d) Animals. No animals or birds of any kind shall be raised, bred, or kept in any Dwelling, or on any portion of the Property, except that no more than two (2) usual and ordinary household animals such as dogs, cats, or birds may be kept, provided they are not kept, bred or maintained for any commercial purposes and they are kept under reasonable control at all times. Any dog shall be kept on a leash at all times when the dog is in the Common Area. The Board may enact reasonable rules respecting the keeping of animals within the Project, including noise restrictions, and may designate certain areas in which animals may not be taken or kept, or they may require that specific animals not be allowed on any part of the Property. No animal allowed hereunder shall be larger than thirty-five (35) pounds in weight at full growth. It is intended that all animals shall be small household animals, to be kept indoors and not left outdoors overnight and such shall, at no time, become a nuisance to the other Owners within the Project. If any animal housed at a Unit causes any unreasonable annoyance to other Owners in the Project or if any other provision of this Declaration by maintenance of such animal is violated, the Board shall have the right to require any Owner to remove such animal from their Unit.

(e) Animal Registration/Fine. No animal shall be allowed to be kept or harbored in any dwelling or on any portion of the property without first registering the animal with the Association. For registration of any dog, a registration fee of \$100 will

be charged to the Owner, and DNA swabbing is required upon the registration of any dog. Any Owner who does not register their animal within thirty (30) days of acquisition of a Unit or acquiring such animal will be subject to a fine to be established by the Board, which fine shall continue monthly until the animal is registered.

(f) Animal Waste/Fine. Owners shall prevent their animals from soiling any portions of the Common Area. In the event an animal does soil a portion of the Common Area, the Owner or person in control of such animal shall immediately clean up after the animal. If an Owner does not clean up animal waste as required herein, and any such waste is determined to be from an Owner's animal, such Owner shall be subject to a fine in an amount to be determined by the Board.

(g) Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All garbage or trash receptacles, including recyclable containers, shall be stored in the garage except on trash collection days. Trash, garbage and other waste shall not be kept except in sanitary containers and shall be kept in the garage. No equipment, garbage cans, or storage piles may be kept outside of any Dwelling.

(h) Radio and Television Antennas, Etc. No alteration to or modification of a central radio or television antenna system, cable television system, or internet or communication lines, whichever is applicable, shall be permitted, and no Owner may be permitted to construct, use, or operate his own external radio, television antenna, or other electronic antennae without the consent of the Board. No Citizens Band or other transmission shall be permitted on the Property. Notwithstanding the foregoing, an Owner may install a small satellite dish on his Dwelling as long as such equipment is installed on the back of a Dwelling and not visible from the front of any Building.

(i) Clothes Line. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

(j) Power Equipment and Car Maintenance. No power equipment or car maintenance of any nature shall be permitted on the Property. Provided however, car washing or polishing may be done, but only in the Limited Common Area appurtenant to that Unit.

(k) Recreational Vehicles. No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas or Limited Common Areas. Any boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property must fit within and be stored and kept within the Owner's garage.

(l) Parking Restriction. No permanent parking shall be allowed in front of the garages of the Units. Only temporary guest parking shall be allowed in front of the garages of the Units. No Unit owners are allowed to park in parking spots designated for guest parking or on any street in the Property. Said parking regulations shall be strictly enforced.

(m) Window Coverings. Curtains and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window coverings, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material. No window tinting or mullions shall be allowed without the prior written approval of the Architectural Committee.

(n) Sculptures/Flags. No outdoor sculptures and/or flags shall be permitted except by written approval of the Architectural Committee. Nothing stated herein shall be deemed to be a prohibition on display of the flag of the United States of America in accordance with U.C.A. § 57-27-102 and United States Code Title 4 Chapter 1.

(o) Fences. The original fencing established and installed by Declarant as part of the original Project design shall be preserved and maintained by the Owners and by the Association, as the case may be according to the location of such fencing. Thereafter, all new and/or additional fencing must be approved by the Architectural Committee as provided herein.

(p) No Patio/Deck Storage. No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition, which may be maintained on patios or porches.

Section 8.02 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 8 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

Article IX.
INSURANCE

Section 9.01 Duty to Obtain Insurance: Types. The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered desirable by the Board, but not less than \$1,000,000 in combined single-limit coverage (taking into consideration the requirements of mortgagees), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any other property under its jurisdiction. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Area and all Dwellings and, if economically feasible, those portions of the Dwellings consisting of all fixtures, installations, or additions comprising a part of the Dwellings and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the mortgagees, as their interests may appear as named insured; subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance as necessary, including, but not limited to, a directors' and officers' errors and omissions policy, and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall be deemed desirable for the Project. The directors' and officers' policy shall be retroactive to the date of the inception of the Association, and shall provide coverage for all past, present, and future board members, directors, officers, and their spouses, in their respective capacities as Association board members, directors, or officers.

Section 9.02 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

Section 9.03 Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and improvements within his Dwelling. Nothing hereby shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to persons or property occurring inside the Owner's Dwelling or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Each Owner shall also carry insurance of not less than \$10,000 of dwelling coverage under their HO6 or similar-type policy. In the event of a Property claim that arises from within a Unit, the Owner is responsible for the Association's deductible, or up to \$10,000 if covered by the Owner's insurance. Such Owner's individual HO6 or similar-type policy is primary, and the Association's insurance is secondary.

Section 9.04 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be canceled, terminated or expired by their terms, without twenty (20) days' prior written notice to the Board, Declarant, Owners and their respective first mortgagees (provided that Declarant, such Owners or mortgagees have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

Section 9.05 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners.

Section 9.06 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 above shall be paid to the Board of Directors of the Association. The Board shall have full power to receive and to receipt of the proceeds with same to be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article 10 of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration.

Section 9.07 Actions as Directors. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association, and all Owners shall have the exclusive right to bind such parties in respect to all matters affecting insurance received by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance.

Section 9.08 Required Waivers. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Subrogation of claims against the Owners and tenants of the Owners;
- (b) Any defense based upon co-insurance;
- (c) Any right of set-off, counterclaim apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; and

(e) Any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured.

Article X.

DESTRUCTION OF IMPROVEMENTS

Section 10.01 Damage to Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy all Extraordinary Assessment for the deficiency and proceed with such restoration and repair.

Section 10.02 Damage to Dwellings. Except as otherwise provided in this Declaration, in the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owner(s) of the Dwelling or Dwellings to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Property shall be made available for such purpose, unless otherwise provided herein. The Dwelling or Dwellings shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Dwelling or Dwellings shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event more than one Dwelling is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Dwelling.

Section 10.03 Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Sections 10.1 and 10.2, the Association shall have the right, by a vote of seventy-five percent (75%) of the voting power of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subsection shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Dwelling has been physically damaged, to the extent the proposed plan affects the reconstruction of such Dwelling.

Section 10.04 Appraisal of Damages. In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article 10, the Association shall appoint three (3) independent appraisers having at least five (5) years' full-time appraisal

experience in Salt Lake County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within forty-five (45) days after the selection of the appraisers, a majority of the appraisers shall set the estimated cost of repairs and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal is/are more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subsection shall be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

Section 10.05 Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Article 9 of this Declaration, restoration and repair of any other damage to the interior of any individual Dwelling, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Dwelling so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Article 10, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

Article XI.

DECLARANT'S RIGHTS AND RESERVATIONS

Section 11.01 Declarant is undertaking the development of the Project and the creation of the Planned Unit Development on the Property. The completion of that work and the sale or other disposition of the Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors, or subcontractors from doing on the Property whatever is reasonably necessary or advisable in connection with the completion of the work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale or other disposition; or
- (c) Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale or disposition thereof; or
- (d) Prevent Declarant, its successors in interest and assigns, from entering into an exclusive, long-term contract on behalf of the Association with a company to provide

to each Owner cable television or internet service, the cost of the same to be considered a common area expense; or

(e) Prevent Declarant, its successors in interest, and assigns from selling to a third party the rights to build upon the real property which subsequent Phases of the Project may be built. Declarant, its successors in interest and assigns shall, however, be obligated, if an election is made to develop subsequent Phases of the Project, to develop the Phases consistent with the requirements of this Declaration. So long as Declarant, owns one or more of the Units established and described in this Declaration and except as otherwise specifically provided herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration.

(f) In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation or liability hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 11.02 Expandable Project. The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Units to be constructed thereon, all in accordance with the provision of this Section.

(a) The Project may be expanded by the addition of all or a portion of the real property designated on Exhibit "B" attached hereto and incorporated herein by reference, such real property or portions thereof where applicable being referred to as Additional Land.

(b) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

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

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

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

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

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

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

Section 11.03 Indemnity. A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have acted recklessly, wilfully, or intentionally in carrying out his/her duties. If Declarant or any Director, officer, manager, member or agent of Declarant is a made a party, or is threatened to be made party to, or is involved as a defendant in any action, suit or proceeding, by reason of the fact that such Person is or was a manager or member of the Declarant, or is or was serving at the request of the Declarant as a Director, officer or representative of the Association or Declarant, shall be indemnified and held harmless by the Association to the fullest extent legally permissible under the laws of the State of Utah as in effect from time to time, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Person in connection therewith. Such right of indemnification shall be a contract right that may be enforced in any manner desired by such Person.

Section 11.04 Expenses Advanced. Expenses incurred by any Person in defending any action, suit or proceeding by reason of any act or omission of Declarant, managers or members acting as a director manager or member shall be paid by the Association as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt or any undertaking by or on behalf of the Person to repay the amount if it is ultimately determined by a court of competent jurisdiction that he/she is not entitled to be indemnified by the Association.

Section 11.05 Insurance. Without limiting the application of the foregoing, the Association shall cause the Association to purchase and maintain insurance or make other financial arrangements on behalf of any Person who is or was a Declarant, a manager or member of the Declarant or a member of the Board of the Association against any liability asserted against such Person and incurred in any capacity or arising out of such status, to the fullest extent permitted by the laws of the State of Utah, whether or not the Association would have the power to indemnify such person. The indemnification and advancement of expenses provided in this Article shall continue for a person who has ceased to be a director, member, manager, employee or agent, and inures to the benefit of the heirs, executors and administrators of such person.

Article XII.
RIGHTS OF MORTGAGEES

Section 12.01 In order to induce various lenders and lending agencies to participate in the financing of Units within the Project, this Article 12 is included in this Declaration. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Declaration or any other of the Project Documents, these added restrictions shall control.

Section 12.02 Notwithstanding any other provision of the Project Documents, no amendment or violation of the Project Documents shall operate to defeat or render invalid the rights of any Institutional First Mortgagee of a Unit made in good faith and for value, provided that after the foreclosure of any such mortgage, such Unit shall remain subject to the Project Documents.

Section 12.03 Each Institutional First Mortgagee of a mortgage encumbering any Unit which obtains title to such Unit pursuant to judicial foreclosure or the powers provided in such mortgage shall take title to such Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued after the time such mortgagee recorded its mortgage, and prior to the time such mortgagee acquires title to such Unit.

Section 12.04 Institutional First Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Association during normal business hours; (b) require from the Association the submission of annual financial reports and other financial data; (c) receive written notice of all meetings of the Owners; and (d) designate, in writing, a representative to attend all such meetings.

Section 12.05 Each Owner hereby authorizes the Institutional First Mortgagee of a first mortgage on their Unit to furnish information to the Board concerning the status of the first mortgage and the loan which it secures.

Article XIII.
DURATION AND AMENDMENT

Section 13.01 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded, meeting the requirements of an amendment to this Declaration as set forth in Section 13.2. There shall be no

severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant membership of the Association, as long as this Declaration shall continue in full force and effect.

Section 13.02 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by all Owners at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members of the Association representing not less than sixty-seven percent (67%) of the total voting power of the Association (both classes combined). Notwithstanding the foregoing, the following special voting provisions shall apply:

(a) The specified percentage of the voting power necessary to amend a specified provision of this Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision;

(b) A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Units have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact.

The Association shall maintain in its files the record of all such votes of written consents for a period of at least three (3) years. This Section 13.02 shall not apply during the period in which the Declarant maintains Class B membership shares.

Article XIV. GENERAL PROVISIONS

Section 14.01 Enforcement. The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Any such action by the Board shall be taken on behalf of three (3) or more Unit Owners, as their respective interests may appear, with respect to any cause or action relating to the Common Area or more than one Unit. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 14.02 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

Section 14.03 Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Plat Map; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of Institutional First Mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

Article XV.
DISPUTE RESOLUTION

Section 15.01 Dispute Resolution. Declarant, Association, its officers and directors, and all Owners (each a “Bound Party” as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, operation, or sale of any part of the Project or any improvements thereon (“Claims”) involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

- (a) Prior to any Claim being made against any Bound Party for defective construction, and notwithstanding anything herein to the contrary, the Bound Party alleging the defect must notify the Declarant in writing of such within thirty (30) days after discovery of the first evidence of the alleged defect. With regard to all Claims, generally, any Bound Party initiating a Claim (“Claimant”) against any other Bound Party (“Respondent”) (the Claimant and Respondent referred to herein being individually referred to as a “Party” or collectively referred to as the “Parties”) shall promptly notify each Respondent in writing (“Notice”), stating plainly and concisely:
 - i. The nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
 - ii. The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
 - iii. The proposed remedy;
 - iv. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim, and
 - v. That the person or entity alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the claim.
- (b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (c) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following one hundred eight (180) days of the original notice.

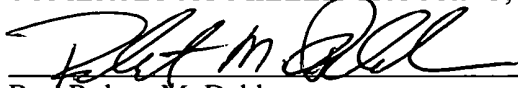
- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
- i. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
 - ii. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
 - iii. Receive approval from two-thirds vote of the Association Owners, who must be present in person or by proxy at the special meeting, to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable.
- (e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.
- (f) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time

without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting 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.

- (g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

The undersigned, being the Declarant herein, has executed this Declaration on the 26th day of May, 2017.

DECLARANT:
SOMERSET AT MILLER CROSSING, LLC



By: Robert M. Dahle
Its: Manager

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

On this 26 day of May, 2017 before me personally appeared Robert M. Dahle and signed the foregoing document in my presence.



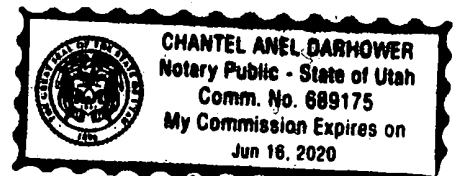
NOTARY PUBLIC

Exhibit "A"
Legal Description

Somerset Villas Phase 1 – Townhomes Area

Beginning at a point being South 89°52'44" East 1,775.04 feet along the section line and North 1,671.66 feet from the Southwest Corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence North 00°21'41" West 95.17 feet;
thence North 46°09'22" East 151.02 feet;
thence North 89°38'19" East 77.59 feet;
thence North 00°21'41" West 107.67 feet;
thence North 89°38'19" East 87.95 feet;
thence South 00°21'41" East 17.25 feet;

thence Southeasterly 256.19 feet along the arc of a 380.00 feet radius curve to the left (center bears North 89°38'19" East and the chord bears South 19°40'31" East 251.36 feet with a central angle of 38°37'39");

thence Southwesterly 26.24 feet along the arc of a 15.00 feet radius curve to the right (center bears South 51°00'40" West and the chord bears South 11°07'15" West 23.02 feet with a central angle of 100°13'10");

thence Southwesterly 122.47 feet along the arc of a 247.00 feet radius curve to the right (center bears North 28°46'10" West and the chord bears South 75°26'05" West 121.22 feet with a central angle of 28°24'29");

thence South 89°38'19" West 236.16 feet to the point of beginning.

Contains 67,916 Square Feet or 1.559 Acres

Exhibit "B"
Legal Description - Additional Land

Somerset Villas Phase 2

Beginning at a point being South 89°52'44" East 2,204.64 feet along the section line and North 1,756.34 feet from the Southwest Corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence Northwesterly 22.20 feet along the arc of a 15.00 foot radius curve to the right (center bears North 35°11'55" West and the chord bears North 82°47'30" West 20.23 feet with a central angle of 84°48'49");

thence Northwesterly 223.53 feet along the arc of a 320.00 foot radius curve to the right (center bears North 49°36'54" East and the chord bears North 20°22'23" West 219.02 feet with a central angle of 40°01'25");

thence North 00°21'41" West 100.11 feet;

thence Northwesterly 28.58 feet along the arc of a 230.00 foot radius curve to the left (center bears South 89°38'19" West and the chord bears North 03°55'18" West 28.57 feet with a central angle of 07°07'14");

thence South 81°10'38" East 44.93 feet;

thence North 70°26'29" East 65.46 feet;

thence North 36°02'14" East 83.80 feet;

thence North 58°53'40" East 73.05 feet;

thence South 88°33'32" East 47.27 feet;

thence South 81°10'31" East 79.72 feet;

thence North 31°01'16" East 66.79 feet;

thence North 58°46'40" East 52.43 feet;

thence North 48°59'15" East 43.49 feet;

thence South 41°00'45" East 179.58 feet;

thence Southeasterly 49.96 feet along the arc of a 4,927.00 foot radius curve to the right (center bears South 48°59'15" West and the chord bears South 40°43'19" East 49.96 feet with a central angle of 00°34'51");

thence South 50°08'52" West 193.45 feet;

thence Southwesterly 119.15 feet along the arc of a 1,467.00 foot radius curve to the right (center bears North 39°51'08" West and the chord bears South 52°28'29" West 119.12 feet with a central angle of 04°39'13");

thence South 54°48'05" West 323.79 feet to the point of beginning.

Contains 167,697 Square Feet or 3.850 Acres and 44 Units

Somerset Villas Phase 3

Beginning at a point being South 89°52'44" East 2,204.64 feet along the section line and North 1,756.34 feet from the Southwest Corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence Northwesterly 64.87 feet along the arc of a 230.00 foot radius curve to the left (center bears South 72°46'31" West and the chord bears North 25°18'17" West 64.66 feet with a central angle of 16°09'37");

thence Northwesterly 99.10 feet along the arc of a 170.00 foot radius curve to the right (center bears North 56°36'55" East and the chord bears North 16°41'08" West 97.70 feet with a central angle of 33°23'56");

thence North 00°00'50" East 51.64 feet;

thence Northeasterly 161.53 feet along the arc of a 170.00 foot radius curve to the right (center bears South 89°59'10" East and the chord bears North 27°14'02" East 155.52 feet with a central angle of 54°26'24");

thence North 54°27'14" East 72.57 feet;

thence Northeasterly 37.54 feet along the arc of a 117.00 foot radius curve to the right (center bears South 35°32'46" East and the chord bears North 63°38'47" East 37.38 feet with a central angle of 18°23'06");

thence Northeasterly 112.08 feet along the arc of a 283.00 foot radius curve to the left (center bears North 17°09'40" West and the chord bears North 61°29'36" East 111.35 feet with a central angle of 22°41'28");

thence North 50°08'52" East 16.59 feet;

thence South 41°00'45" East 324.53 feet;

thence South 48°59'15" West 160.14 feet;

thence South 79°17'32" West 121.36 feet;

thence South 61°35'45" West 169.24 feet;

thence South 74°54'44" West 44.16 feet to the point of beginning.

Contains 132,267 Square Feet or 3.036 Acres and 35 Units