

**When Recorded, Mail to:**

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Draper, UT 84020  
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01/23/2020 03:25 PM \$232.00  
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BY: TSP, DEPUTY - WI ~~25~~ 56 P.

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
MILLPOINT P.U.D.**

**(Single Family Detached Residential and Townhome Project)**

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14-28-303-110, 14-28-303-111, 14-28-303-114, 14-28-303-115, 14-28-303-116, 14-28-303-117,  
14-28-303-118, 14-28-303-119, 14-28-303-069

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
MILLPOINT P.U.D.**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILLPOINT P.U.D. (this "Declaration") is made and executed this 2 day of January, 2020, by D.R. Horton, Inc., a Delaware corporation (hereinafter referred to as the "Declarant").

**RECITALS:**

A. This Declaration affects that certain real property located in Salt Lake County, Utah described with particularity in Exhibit "A" attached hereto and incorporated herein by this reference (the "Land").

B. The Land is subdivided into fifty (50) Lots and is presently subject to that certain Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Millpoint P.U.D. recorded in the Office of the Salt Lake County Recorder on March 13, 2017 as Entry No. 12494429, Book 10537, Pages 6342-6384 (the "Original Declaration").

C. Under Section 19.1 of the Original Declaration, "so long as Declarant owns at least fifteen (15) Lots in the Project [the Original] Declaration may be amended in the sole discretion of the Declarant."

D. On February 14, 2019 Starline Development, L.L.C., a Utah limited liability company ("Starline Development"), sold and Declarant hereunder purchased a portion of the Land such that Declarant is now the owner of a portion of the Land (the "First Closing Property"). Prior to the Declarant's purchase of the First Closing Property, Starline Development had sold Lots 5, 48, 49 and 50 of the Subdivision to third party purchasers under the Original Declaration (the "Third Party Lots"). The Third Party Lots and the Residences or Townhome Units, as applicable, located thereon continue to be included within the Project (defined below) and subject to this Declaration. In addition, Starline Development executed that certain Assignment and Assumption of Declarant Rights dated February 14, 2019, and recorded on February 15, 2019 in the Office of the Salt Lake County Recorder as Entry 12935263 in Book 10753, Pages 3779 -3784, in which Starline Development assigned its rights and obligations as declarant as to the First Closing Property and the Third Party Lots under the Original Declaration to Declarant.

E. On November 27, 2019, Starline Development sold and Declarant hereunder purchased the remaining portion of the Land (the "Last Closing Property") such that Declarant is now the owner of the Land under the Original Declaration. In addition, Starline Development executed that certain Second Assignment and Assumption of Declarant Rights dated 13 November, 2019 and recorded on 14 November, 2019 in the Office of the Salt Lake County Recorder as Entry 13124339, Book 10860, Pages 2123-2126, in which Starline Development assigned its rights and obligations as declarant as to the Second Closing Property under the Original Declaration to Declarant.

F. As the owner of at least fifteen (15) Lots, Declarant is entitled to amend the Declaration as set forth herein, at Declarant's sole discretion.

G. Declarant, or Declarant's predecessor in interest, has constructed, is in the process of constructing or will construct upon the Land a residential unit development, which shall include certain Lots, Common Areas, Limited Common Areas, Townhome Limited Common Areas, Townhome Units, Residences and other improvements.

H. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Land, and a corresponding membership interest in the Association of Owners (which shall own the Common Areas), subject to the Plat, and the covenants, conditions and restrictions set forth herein.

I. Declarant desires, by recording in the Office of the Recorder of Salt Lake County, Utah this Declaration, to replace the Original Declaration in its entirety and submit the Land and all Improvements now or hereafter constructed thereon to the terms, covenants and conditions of this Declaration, and the project is to be known as Millpoint P.U.D. (the "Project").

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

## **ARTICLE 1 DEFINITIONS**

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

1.1 ACC shall mean the Architectural Control Committee as set forth in Section 4.5(h)(2), if the Board of Directors elects to form such committee.

1.2 Access Easement Area shall have the meaning as set forth in Section 3.1.

1.3 Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to attorneys' fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

1.4 Area of Common Responsibility shall have the meaning set forth in Section 5.1(a).

1.5 Area of Personal Responsibility shall have the meaning set forth in Section 5.1(b).

1.6 Articles of Incorporation shall mean and refer to the Articles of Incorporation of Millpoint P.U.D. Owners Association, Inc., on file or to be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

1.7 Assessments shall mean and refer to (collectively) the Common Areas Assessments, the Townhome Limited Common Area Assessments, the Individual Assessments,

the Special Assessments, the Specific Assessments, and the Reinvestment Fees that may be assessed by the Board and payable by an Owner of a Lot pursuant to the terms of this Declaration.

1.8 Association shall mean and refer to the association of Owners at Millpoint P.U.D., known as Millpoint P.U.D. Owners Association, Inc., a Utah nonprofit corporation.

1.9 Board or Board of Directors shall mean the board of directors of the Association who have been duly appointed or elected to perform their duties, as provided in the Bylaws and in accordance with the provisions of the Utah Revised Nonprofit Corporation Act.

1.10 Budget shall have the meaning set forth in Section 7.7(a)(3).

1.11 Building shall mean and refer to any of the structures constructed in the Project.

1.12 Business and/or Trade shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time; such activity is intended to or does generate a profit; or a license is required therefor.

1.13 Bylaws shall mean and refer to the Bylaws of the Association attached to this Declaration as Exhibit "B."

1.14 Capital Improvement shall mean and refer to all nonrecurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the Project intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas.

1.15 Class B Control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Board of Directors.

1.16 Common Area Reserve Funds shall mean the funds created or to be created by the Association pursuant to Section 7.7(m)(1) for the purposes provided in Section 7.7(m)(1).

1.17 Common Areas shall mean and refer to all real property in the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including, but not limited to, the following items:

(a) The real property and interests in real property subjected to the terms of this Declaration, including the entirety of the Land and all Improvements constructed thereon, except for and specifically excluding therefrom the individual Lots;

(b) All Common Areas and Limited Common Areas designated as such on the Plat (but Common Areas shall not include the Townhome Limited Common Areas);

(c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all

Owners, including without limitation utility services such as telephone, electricity, natural gas, water and sewer;

(d) The Project's outdoor grounds, pavillion, outdoor game area, putting green, detention basins, landscaping, street lighting, perimeter and preservation fences, sidewalks, trails, walking paths, parking spaces and private streets and alleys;

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

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

1.18 Common Areas Assessment shall have the meaning set forth in Section 7.7.

1.19 Common Areas Expense shall have the meaning set forth in Section 7.7.

1.20 Common Wall shall mean the shared wall located along the Lot line between adjoining Townhome Units.

1.21 Community shall mean and refer to the Project.

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

1.23 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Millpoint P.U.D..

1.24 Declarant shall mean and refer to D.R. Horton, Inc., a Delaware corporation, its successors and assigns.

1.25 Delinquent Assessments shall have the meaning set forth in Section 7.12(b).

1.26 Dwelling Unit shall mean and refer to the Residence or Townhome Unit built or to be built on any Lot.

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

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

1.29 Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association.

1.30 Event or Events shall have the meaning set forth in Section 7.3(b).

1.31 Family shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.

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

1.33 Improvement shall mean and refer to all physical structures and appurtenances to the Land of every kind and type, including but not limited to all buildings, dwellings, fixtures, plumbing, electrical, heating, air conditioning and utility systems, roads, alleys, walkways, driveways, parking areas, patios, fences, walls, stairs, landscaping, trees, shrubs, bushes and green space.

1.34 Individual Assessment shall have the meaning set forth in Section 7.10.

1.35 Land shall mean and refer to all of the real property subject to this Declaration, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

1.36 Limited Common Areas shall mean and refer to those portions of the Common Areas which are specifically designated on the Plat as "Limited Common Areas" and which are thereby allocated for the exclusive use of one or more Lots but fewer than all of the Lots, including, but not limited to, driveways and backyards.

1.37 Lot shall mean and refer to a portion of the Property, other than the Common Areas, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat or amendments thereto. Where the context indicates or requires, the term Lot includes any Dwelling or Improvement constructed on the Lot.

1.38 Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot as identified on the Plat.

1.39 Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

1.40 Manager shall mean and refer to the person or entity appointed or hired by the Board of Directors to manage and operate the Project.

1.41 Member shall mean and refer to an Owner obligated, by virtue of such Owner's respective ownership, to be a member in the Association.

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

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

1.44 Notice and Hearing shall mean and refer to the procedure which gives an owner or resident due process.

1.45 Occupant shall mean a Person lawfully residing in a Lot who has actual use, possession or control of the Dwelling, regardless of whether that Person is an Owner.

1.46 Official Records shall mean and refer to the records of documents that have been recorded in the Office of the Recorder of Salt Lake County, Utah.

1.47 Owner shall mean and refer to the person who is the owner of record (in the Official Records) of a fee or an undivided fee interest in a Lot, including but not limited to both the seller and buyer under an executory sales contract. The term Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust, unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Owner shall include Townhome Unit Owner.

1.48 Permitted Improvements shall mean any Improvements installed, constructed, maintained or allowed to stand on the Property in conformity with this Declaration.

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

1.50 Plat shall mean and refer to the final subdivision plat of "MILLPOINT P.U.D." on file and of record in the Official Records, as it may be amended from time to time. The Plat will show the location of the Lots, the Common Areas and the Limited Common Areas.

1.51 Project shall mean and refer to Millpoint P.U.D. residential subdivision. The terms Project, Subdivision and P.U.D. are used interchangeably in this Declaration with the same meaning and intent.

1.52 Project Documents shall mean the Plat, the Declaration, the Bylaws, the Articles of Incorporation and any rules or regulations of the Association adopted from time to time by the Board of Directors.

1.53 Property shall mean and refer to all of the Land and all Improvements and appurtenances subjected to the terms of this Declaration.

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

1.55 Reinvestment Fee shall mean the charge which may be levied and assessed by the Association in the event of a Transfer of a Lot, pursuant to Section 7.11 hereof. The Reinvestment Fee assessed, if any, shall be in compliance with Section 57-1-46 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time, and the Reinvestment Fee may be used by the Association for any purpose authorized by the Utah Code.

1.56 Reserve Budget shall have the meaning set forth in Section 7.7(b)(3).

1.57 Reserve Funds shall mean the Common Areas Reserve Fund and the Townhome Limited Common Area Reserve Fund.

1.58 Residence shall mean and refer to the single family residences constructed upon the Lots, excepting the Townhome Units.

1.59 Special Assessment shall have the meaning set forth in Section 7.8.

1.60 Special Assessment Limit shall have the meaning set forth in Section 7.8(a).

1.61 Specific Assessment shall have the meaning set forth in Section 7.9.

1.62 State shall mean the State of Utah.

1.63 Subdivision shall mean and refer to the Millpoint P.U.D. The terms Subdivision, Project and P.U.D. are used interchangeably in this Declaration, with the same meaning and intent.

1.64 Townhome Limited Common Areas shall mean and refer to those exterior portions of the Townhome Units to include the roofs, exterior walls, front door, garage door and Common Walls. The Townhome Limited Common Areas are allocated for the exclusive use of one or more Townhome Lots but fewer than all of the Townhome Lots.

1.65 Townhome Limited Common Area Assessments shall have the meaning set forth in Section 7.7(b).

1.66 Townhome Limited Common Area Expenses shall have the meaning set forth in Section 7.7(b).

1.67 Townhome Limited Common Area Reserve Fund shall mean the fund created or to be created by the Association pursuant to Section 7.7(m)(2) for the purposes provided in Section 7.7(m)(2).

1.68 Townhome Unit shall mean and refer to the townhome units constructed upon Lot Nos. 48 and 49.

1.69 Townhome Unit Owner shall mean and refer to the Owner of any Townhome Unit.

1.70 Transfer shall have the meaning set forth in Section 7.11(a).

1.71 Transferee shall have the meaning set forth in Section 7.11(a).

## **ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Property Subject to this Declaration. Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to and in strict accordance with all of the terms and conditions of this Declaration, including



without limitation all of the covenants, conditions and restrictions set forth herein, all of which are created for the mutual benefit of the Owners of the Property and the Lots. It is the intention of the Declarant in imposing the covenants, conditions and restrictions set forth in this Declaration to create a generally uniform pattern of development of the Property and to protect and enhance the property values and aesthetic values of the Property by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Lots. All of the terms and conditions of this Declaration, including without limitation all covenants, conditions and restrictions set forth herein, are intended to and shall in all cases run with the title of the land comprising the Property and shall be binding upon the Owners, their successors, assigns, heirs, lien holders, and any other person holding any interest in the Property and shall inure to the benefit of all other Property in the Subdivision. All of the terms and conditions of this Declaration, including without limitation the covenants, conditions and restrictions set forth herein, shall be binding upon Declarant as well as all of Declarant's successors in interest, and may be enforced by Declarant, by the Board of Directors, or by any Owner. Notwithstanding the foregoing, no provisions of this Declaration shall prevent Declarant from the completion of the subdivision improvements, or from using any Lot owned by Declarant as a model home, temporary construction or sales office, nor limit Declarant's right to post signs or engage in other reasonable activities on the Property incidental to sales or construction which are in compliance with the applicable ordinances of the Township. The Project is not a cooperative or condominium development.

2.2 Reservation to Declarant. There is hereby reserved unto Declarant, its employees, agents, successors and assigns such easements and rights of ingress and egress over, across, through and under the Property and any Improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to (a) engage in construction upon or to improve the Common Areas with such structures and facilities (including but not limited to sidewalks, and sidewalk lighting and various landscaped areas) designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate; and (b) do all things reasonably necessary and proper for the construction, completion, development and sale of the Project. If pursuant to this reservation, the Property or any portion thereof (including any Lot) or any improvement thereon, is traversed or partially occupied by a permanent Improvement or utility line constructed or installed by Declarant, a perpetual easement for such Improvement or utility line shall exist. Each Owner, by acceptance of a deed or other document of conveyance to a Lot, does hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt the quiet enjoyment of the Lot until all Improvements are complete, Each Owner does further hereby waive any right to object to such construction activities; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Project. Declarant's construction activities shall not be considered a violation of the use restrictions contained herein.

2.3 Subject to Taxes, Instruments of Record. The Property that is subject to this Declaration is subject to all liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities, all patent reservations and exclusions, all instruments of records which affect the Property or any portion thereof, including without limitation any mortgage or deed of trust, all visible easements and rights-of-way, and all

easements and rights-of-way record, including without limitation, the easements, restrictions and rights-of-way identified on the Plat and all notes and disclosures of any nature included on the Plat.

### **ARTICLE 3 EASEMENTS**

3.1 Reservation of Easements. Easements affecting the Lots within the Subdivision are reserved as shown on the Plat for utility installation and maintenance, drainage and other purposes as designated on the Plat.

3.2 Grant of Easement. Declarant hereby reserves to itself and grants to the Association, a non-exclusive, perpetual right-of-way and easement over, across and through the Land, together with the right to use, operate, maintain, repair and replace the Common Areas and Townhome Limited Common Areas, subject to all of the terms, covenants, conditions and restrictions set forth herein. Said easement is to be used in common by the Association, Declarant and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, the Association and the Owners.

3.3 Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Dwelling or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas, Dwellings or Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

3.4 Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas for access to the Dwelling and Lot such Owner is occupying and to any Common Areas appurtenant to such Owner's Lot, and each Owner shall have the right to the horizontal, vertical and lateral support of such Owner's Lot.

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

3.6 Locations of Facilities Easements. Declarant hereby reserves to itself a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to

the Locations of Facilities over, across, and through all other Common Areas in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the Association. The Association, for itself and on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to Declarant, and any assignee of its rights hereunder.

3.7 Easements; Drainage; Support, Maintenance and Repair. There are hereby RESERVED and the Association is hereby GRANTED the following easements and rights of way:

(a) A non-exclusive easement over, across, through, above and under the Lots and the Common Areas for the operation, maintenance and regulation of the Common Areas, amenities, facilities, and any utilities servicing any part of the Project; and

(b) A reciprocal easement on, over, under, through and across all Lots and Common Areas for the drainage of surface waters on, over, under, through and across the Project. The Declarant shall establish a sub drain and storm drainage system designed to serve the entire Project (the "Master Sub Drain and Storm Drain System"). No Owner shall interfere with the Master Sub Drain and Storm Drain System established by the Declarant or its successors or assigns. Each Owner shall be responsible to use such Owner's Lot in a manner consistent with the Master Sub Drain and Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Board of Directors. For purposes of this Section, the term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the Master Sub Drain or Storm Drain System located within the boundaries of any Lot shall be the responsibility of the Owner. The cost of all improvements, maintenance, repairs and replacements of the Master Sub Drain and Storm Drain System located in the Common Areas shall be the responsibility of the Association.

#### **ARTICLE 4 COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO ALL PROPERTY**

4.1 Description of Improvements. The significant Improvements in the Project include, or shall include, 50 Lots, the Common Areas, the Limited Common Areas as identified on the Plat, the Townhome Limited Common Areas, landscaping, roadways, a common utility system, and entrance to and exit from the Project.

4.2 Description and Legal Status of the Property. The Lots shall be owned by the Owners, and the Common Areas shall be owned by the Association.

4.3 Membership in the Association. Membership in the Association is appurtenant to the ownership of a Lot, and may not be partitioned therefrom.

4.4 Conveyancing. Any deed, lease, Mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows: "All of LOT No. \_\_\_\_\_ contained within Millpoint P.U.D., as the same is identified on the Plat recorded in the Office of the Recorder of Salt Lake County, Utah (as said Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for Millpoint P.U.D., recorded in the Office of the Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been amended or supplemented), together with and subject to the appurtenant rights and obligations as a Member of Millpoint P.U.D. Owners Association, Inc."

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot and shall run with the Land. Neither the membership in the Association, nor the right of non-exclusive use of the Common Areas shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use of the Common Areas shall automatically accompany the transfer of the Lot to which they relate.

4.5 Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of such Owner's Lot and to membership in the Association as set forth herein, subject, however, to the following:

(a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of such Owner's respective Lot. There are no requirements concerning who may own a Lot, it being intended that the Lots may and shall be owned as any other real property by Persons. The Project is a residential community, and as such the Lots shall be used only and exclusively for residential purposes, except as set forth below. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

(b) Mandatory Association. Each Owner shall automatically become a Member of the Association.

(c) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Areas in a manner consistent with the terms of this Declaration. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for the purpose of providing utilities to the Project and similar or related purposes. During the Class B Control Period, any such dedication or transfer shall be effective only if approved in writing by Declarant.

(d) Rules and Regulations. The Board of Directors shall have the power and authority to adopt, amend or repeal administrative rules and regulations pertaining to the Project from time to time, provided that the Board of Directors complies with the requirements of Section 57-8a-217 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time. Pursuant to Section 57-8a-217(6) of the Utah Code, Declarant shall be exempt from the rules of the Association and from the rulemaking procedures of Section 57-8a-217 of the Utah Code during the Class B Control Period.

(e) Governing Regulations. The lawfully enacted zoning regulations of the Township and of any other governmental body having jurisdiction with respect to the Property, including without limitation any and all applicable building, fire, and health codes, are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, ordinance or regulation. If the provisions of this Declaration are more stringent than any applicable governmental statute, law, ordinance or regulation, it is the intent that the provisions of this Declaration shall control. This Declaration shall not authorize any uses, improvements, or activities that are prohibited by any local, state or federal statute, law, ordinance or regulation.

(f) No Mining Uses. No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including but not limited to oil, gas, minerals, gravel, sand, rock and earth, shall ever be permitted on the Property within the Subdivision. The foregoing limitation shall not preclude drilling and excavation in connection with the construction of roads, utility lines and other Permitted Improvements.

(g) Township Requirements and Permits. In addition to the covenants, conditions and restrictions set forth in this Declaration, the Township may have additional requirements and/or permits pertaining to any alterations by the Association or by an Owner to any Building, fencing, landscaped areas, utilities or other Improvements within the Project.

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

(1) Parties Bound. The Project Documents shall be binding upon all Owners and residents, their Family members and Guests.

(2) Architectural Control Committee. Declarant may, during the Class B Control Period, establish an Architectural Control Committee. If an ACC is formed, all Improvements within the Project will be subject to design review and prior approval by the ACC. The ACC shall be governed by the following provisions. If Declarant does not form an ACC, the Board of Directors shall be entitled to the rights and shall perform the duties established for the ACC in this Declaration.

a. Composition and Selection. Declarant shall select, change, and remove from time to time the members of the ACC, which shall number

no less than three (3) members. During the Class B Control Period, Members of the ACC do not need to be Owners.

b. Design Guidelines. If the Declarant establishes the ACC, the ACC will adopt design and maintenance criteria for the Residences and all other Improvements permitted within the Project (“**Design Guidelines**”). The Design Guidelines shall be consistent with the building, land use, and other ordinances and regulations of the Township. The ACC must make the Design Guidelines available to all Owners or prospective Owners and, if possible, shall publish the Design Guidelines in electronic format.

c. Compliance. If the Declarant establishes the ACC, all Residences, fences, and other Improvements must be constructed and maintained in accordance with the Design Guidelines. Prior to construction, alteration, modification, or replacement of any Improvements within the Project, an Owner shall submit plans for the same to the ACC. The ACC shall evaluate all such plans for compliance with the Design Guidelines.

d. Procedure. The ACC may establish a schedule of reasonable fees for review of plans for any proposed Improvements and collect such fees before any obligation to review plans under this Article 4. The ACC may employ architects, engineers, and other professionals to review plans submitted by an Owner. The Owner shall pay all expenses reasonably associated with the ACC’s review of the plans. The ACC shall approve or deny such plans in writing within thirty (30) business days following receipt of the same. Failure to approve or deny such plans within the time period provided shall constitute disapproval of the same.

e. Enforcement. The ACC shall have the right, but not the duty, to enforce compliance with the Design Guidelines, including by means of fines levied by the Association or by legal action, in which case the ACC shall be entitled to recover the costs of enforcement, including reasonable attorney fees.

(3) Specific Design Standards. In addition to the Design Guidelines established by the ACC pursuant to Section 4.5(h)(2)(b), all construction within the Project must meet the standards set forth in this Section 4.5(h)(3) and (4) and their subparts.

a. All Improvements constructed within the Project shall be of good quality and workmanship.

b. The exteriors of all Residences must be of a material approved by the Township.

c. Exterior colors of all Residences must match the colors required by the ACC.

(4) Construction. Unless otherwise permitted by the Board, any builder must use its best efforts to complete construction of each Residence within twelve (12) months from the commencement of construction. This includes all exterior painting and finish work and the installation of all required landscaping. During the construction of any Improvement, the affected Lot must be kept reasonably clean and tidy and all construction debris must be controlled and regularly removed. All construction activities must comply with the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations adopted by the Board and all local zoning ordinances, building codes, and other applicable laws.

(5) Declarant Exemption. Nothing in this Article 4 shall prohibit or restrict the ability of the Declarant to use any Lots owned by Declarant, and the Common Areas during the Class B Control Period, for any purposes consistent with or intended to facilitate the improvement and sale of Lots owned by Declarant. Declarant shall not be bound by the Design Guidelines and reserves the right to alter or modify the plans for any Improvement on any Lot at any time Declarant owns such Lot. Declarant shall not be bound by the time limitation for construction activities set forth in this Declaration. Declarant's sales and marketing activities are exempt from the Design Guidelines. Declarant may maintain and operate temporary structures for construction, sales, or business purposes. The exemption does not apply to commercial builders and each commercial builder will be subject to the Design Guidelines and the other provisions of this Article 4.

(6) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes but is not limited to the following:

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

b. The storage of any item, property or thing that will cause any Lot or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses. This shall be interpreted to include, but not be limited to, the prevention of hanging of bikes and the hanging of clothes or linens from balconies;

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

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

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

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

g. Excessive noise or traffic in, on or about any Lot or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.

(7) Unsightly Work, Hobbies or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

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

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

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

(11) Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures, including but not limited to, tents, trailers, or sheds, without the prior written consent of the ACC. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Declarant may install and use temporary structures in the development of the Project and the marketing of the Lots.

(12) Trees, Shrubs, Bushes and Fences: Maintenance of Proper Sight Distance at Intersections and Prior Written Consent Required. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or resident in, on or about the Common Areas, or Limited Common Areas, without the prior written consent of the ACC. Approval, if any, of fencing in the front of a Unit shall be limited to a maximum of three (3) feet in height with the type and material to be approved by the ACC. The



ACC may alter or remove any objects planted or placed in violation of this subsection.

(13) Swamp Coolers or Evaporative Coolers. No Owner shall place upon any part of the Project, Lot or Common Areas any swamp cooler or evaporative cooler.

(14) Plants. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon the Project.

(15) Outdoor Clothes Washing and Drying. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes or linens.

(16) Exterior Alteration. No Owner shall make any alterations or modifications to the exterior of any Dwelling, or Improvements on such Owner's Lot, including without limitation any change to the color of the exterior finish on any Dwelling, without the prior written consent of the ACC, which consent shall be in the ACC's sole discretion.

(17) Restrictions on Signs. No signs will be permitted on any Lot or within the Subdivision, except for traffic control and directional signs for roadways placed by the Township or temporary signs warning of some immediate danger and such other signs as may be approved by the Board. Temporary signs indicating a Lot or Dwelling is for sale may be placed in accordance with the Township sign regulations. The Declarant may erect a sign acceptable to the Township at the entrance to the Subdivision announcing the availability of Lots and giving sales information. An entrance monument for the Subdivision may be constructed by Declarant, at Declarant's sole discretion.

(18) Energy Conservation Equipment. No solar energy device, solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed within the Project without the prior written consent of the ACC. Any such consent may include restrictions upon the size, location or manner of placement consistent with Section 57-8a-701 of the Utah Code.

(19) Business Use. No commercial Business or Trade may be conducted on, in, or from any Lot unless: a) the existence or operation of the business activity is not apparent or detectable by sight or sound from outside the Unit; b) the business activity conforms to all zoning requirements for the Project; c) the business activity does not involve door-to-door solicitation of residents of the Project; and d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board of Directors. Notwithstanding the above, the leasing of a

residence shall not be considered a Trade or Business within the meaning of this sub-Section.

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

a. The parking rules and regulations adopted by the Board of Directors from time to time shall be obeyed by all Owners and residents and their lessees and Guests;

b. Owners and residents shall be prohibited from parking in the Guest parking spaces in the Common Areas;

c. Except for purposes of loading or unloading passengers or supplies (for a period of time up to twelve (12) hours), no Recreational, Commercial or Oversize vehicle parking is allowed in the Project;

d. No parking on any private road or any public road or alleys, except in designated parking spaces, is allowed at any time in the Project;

e. No parking within alleys, except for the sole purpose of loading or unloading passengers or items, is allowed at any time in the Project;

f. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation vehicle or device of any kind may be parked or stationed in such a manner so as to block access to any Lot, Building or parking space, or so as to create an obstacle or potentially dangerous condition;

g. Motor vehicles may be parked on the driveway of a Lot within the Project if the garage appurtenant to the Unit does not have adequate space for the parking of such motor vehicles. In order to assure that the garage appurtenant to each Unit shall have adequate space for the parking of motor vehicles, no garage shall be used for the storage of excessive personal items that would preclude the parking within the garage of motor vehicles (i.e., if the garage is designed and constructed as a "two-car" garage, two motor vehicles must be parked in such garage as a condition of the Resident of the Unit being entitled to park on the driveway). The Board of Directors shall have the right to levy an Individual Assessment, in the nature of a fine, against the Owner of a Unit that violates this provision.

h. All vehicles parked within the Project must have a current license plate and must be drivable and in good working order, with no fluid leaking from the vehicle;

i. No resident shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Areas, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility;

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

k. All Guest parking areas shall be used solely for Guest parking. No vehicle may be parked in Guest parking areas for a period of time exceeding 48 consecutive hours;

l. Garage doors shall remain closed except when the garage is in use;

m. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning on November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas;

n. Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the vehicle owner's sole expense.

(21) Towers, Satellite Receivers and Antennas. Antennas, Satellite Dishes, Flag Poles, Flags and Banners. To the full extent permissible under state and federal law, no television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot, Unit, Parcel, or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall be subject to the Governing Documents and the regulation and prior approval of the ACC. Notwithstanding the foregoing, the ACC may not prohibit an Owner from displaying a United States flag or Utah State flag from a Dwelling Unit or a Limited Common Area or on a Lot, if the display complies with the United States Code, Title 4, Chapter 1, The Flag, and Utah Code Annotated §§ 57-24-101 and 57-24-102. The Owner of a Dwelling Unit may install on such Owner's Lot or Limited Common Area one flagpole no greater than 20 feet in height for the purpose of displaying a United States flag or Utah State flag. If an Owner desires to construct on such Owner's Lot or Limited Common Area more than one permanent flagpole with a maximum height of 20 feet as provided in the foregoing sentence, the Owner must obtain prior approval for such flagpole from the ACC. In addition to the display by an Owner of a United States flag or Utah State flag as provided above in this Section 4.5(h)(21), an Owner of a Dwelling Unit may display on such

Owner's Lot or Limited Common Area at any time a maximum of three (3) non-commercial flags or banners, with the maximum square footage of each such flag or banner being no greater than 15 square feet in size, provided that the display of such flags or banners complies with all applicable laws and ordinances. If an Owner of a Lot or Dwelling Unit desires to display at any time more than three non-commercial flags or banners having a maximum size of 15 square feet per flag or banner, such Owner must obtain prior written approval from the ACC. Notwithstanding the foregoing restrictions, this Declaration shall impose no limitations on the ability of Declarant to construct flagpoles within the Project and to display flags of such size as Declarant elects from any such flagpoles in connection with Declarant's efforts to market and sell Lots and Dwelling Units within the Project.

(22) Animals.

a. No animals or livestock of any kind shall be raised or kept on any Lot, except that dogs, cats and other domesticated household pets may be kept on a Lot, provided that they are not kept or maintained for any commercial purpose, and provided further that all pets must be restrained upon the Owner's Lot in a humane and sanitary manner. Enclosures, kennels, runs and the leash areas must be kept clean and sanitary. No pets may be kept in unreasonable numbers, as determined by the sole discretion of the Board, and the Board may establish rules and restrictions from time to time concerning specific breeds or types of animals which may be kept on any Lot. No boarding of animals for hire shall be allowed within the Subdivision. Owners are required to be in control over their respective animals and pets in order to protect inhabitants of the Subdivision and other animals kept within the Subdivision. No dangerous animals will be allowed in the Subdivision. The Owner of each Lot shall make such Permitted Improvements as are necessary to assure that animals kept on such Owner's Lot do not trespass on other Lots. Pets must be on a leash at all times outside a Lot.

b. If a pet defecates on any portion of the Common Areas, the Owner of such pet shall immediately remove all feces left upon the Common Areas by such Owner's pet. If the Owner or resident of the Project fails to abide by the rules and regulations and/or covenants applicable to pets, the Board of Directors may bar such pet from use of or travel upon the Common Areas. The Board of Directors may subject ingress, egress, use or travel by a pet upon the Common Areas to a user and maintenance fee, which may be a general fee for all similarly situated persons or a specific fee imposed for failure of an Owner, or resident of the Project to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health or welfare of any Owner, resident, invitee or guest of the Project or which creates a nuisance (e.g., unreasonable

barking, howling, whining or scratching) or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board of Directors, must be permanently removed from the Project upon seven (7) days written notice by the Board of Directors.

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

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

(25) Damage or Waste. No damage to, or waste of, the Common Areas shall be committed by any Owner or resident of the Project or any Guest of any Owner or resident of the Project, and each Owner shall indemnify, defend and hold harmless the Board of Directors and the other Owners from and against all loss resulting from any such damage or waste caused by that Owner or resident of the Project, or an invitee.

(26) Structural Alterations. No structural alterations to the Common Areas or Dwellings is allowed without the prior written consent of the ACC.

(27) Mailboxes. The initial mailbox must be the one approved and provided by the Declarant at the mail station as designated by the Board of Directors.

(28) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers approved by the Board. All equipment for the storage or disposal of waste or rubbish shall be kept in a clean and sanitary condition and must meet the approval of the Board.

(29) Parking and Storage of Personal Property. All motorized vehicles, boats, trailers, campers and other similar personal property of an Owner shall be parked or stored within the Project only in such Owner's garage. No storage of any articles, material, equipment or vehicles of any nature is permitted in the front, back or side yard portion of any Lot. No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes or other similar vehicles shall be parked or stored on any street or right of way within the Project.

(30) Fences and Walls. No fences or walls shall be constructed on or around any Lots on parcels within the Project, except for fencing that is approved by the ACC. Each Owner shall be responsible to maintain, repair and replace as necessary any such fencing on such Owner's Lot. The Association shall have no responsibility to maintain, repair or replace any such fencing.

4.6 Leasing. Other than as specified in this section, and by Township ordinance, there is no restriction on the right of any owner to lease or otherwise grant occupancy rights to a Dwelling.

(a) Any Owner who shall lease such Owner's Dwelling shall be responsible for assuring compliance by the resident with the Project Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against such Owner's resident who is in violation of the Project Documents within ten (10) days after receipt of written demand to do so from the Board of Directors, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against such Owner's resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or resident for any eviction under this section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Individual Assessment against such Owner and such Owner's Lot for all such expenses incurred by the Association. In the event such Assessment is not paid within thirty (30) days of its due date, the Board of Directors may resort to all remedies of the Association for the collection thereof.

(b) Liability of Owners and Residents for Damages. Any Owner or resident shall be liable to the Association or other Owners or residents for damages to person or property in the Community caused by his/her negligence, including without limitation any damage caused by a Benefitted Owner as the result of the entry upon and use by a Benefitted Owner of any Access Easement Area that is appurtenant to the Lot owned by such Benefitted Owner, as provided in Section 3.1.

(c) Any agreement for the leasing, rental, or occupancy of a Dwelling (hereinafter in this Section referred to as a "lease") shall be subject to the following:

(1) The Lease shall be in writing, and a copy thereof shall be delivered to the Association at least ten (10) days before the term of the lease commences. Furthermore, the Owner of a Dwelling that executes a lease shall, within ten (10) days after the commencement of the term of the lease, provide to the Association the vehicle license number of any vehicle used by Persons who have executed such a lease.

(2) Every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents. Said lease shall further provide that any failure by the resident thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provision shall nevertheless be deemed to be a part of the lease and shall be binding on the Owner and resident by virtue of the inclusion of such provisions in this Declaration.

**ARTICLE 5**  
**MAINTENANCE OBLIGATIONS**

5.1 Operation, Maintenance and Alterations. The Lots and Common Areas shall be maintained by the Owners and the Association as follows:

(a) Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, the Common Areas, the Townhome Limited Common Areas, and the Improvements constructed or installed within the Common Areas, including but not limited to the pavillion and outdoor game area, the putting green, all entrances to and exits from the Project, private streets within the Project, all park strips within the Project, open parking spaces, including without limitation the guest/pocket parking areas within the Project, street lighting, common sidewalks, the private storm drainage system for the Project, including without limitation the storm drain inlets, storm water lines, underground storm water detention areas, detention basins for storm water drainage, and the drainage swales, private sewer systems, the landscaped portions of the Common Areas identified on the Plat, curbs and gutters, pavement and central utility systems for power and light. The foregoing items are referred to as the "Area of Common Responsibility." The Board of Directors shall determine in its sole discretion if the Association shall be responsible for maintaining the landscaping installed in the back yard of the Lots.

(b) Area of Personal Responsibility. Each Owner shall maintain, repair and replace all portions of such Owner's Lot, the Dwelling on such Owner's Lot (excepting the Townhome Limited Common Areas), all Improvements located on such Owner's Lot and on the Limited Common Areas appurtenant to such Owner's Lot (the "Area of Personal Responsibility"). If the Board of Directors shall determine that back yard landscape maintenance shall be performed by Owner, each Owner shall maintain, repair and replace, as necessary, all landscaped portions within the back yard of such Owner's Lot. If an item is not included in the foregoing description of Area of Common Responsibility and it is located on a Lot, then it shall be the responsibility of the Owner of such Lot, unless otherwise determined in writing by the ACC.

(c) Landscaping Restrictions. Owners shall not modify the landscaping, green space, sod, plant and flower beds, sprinkling system, or drainage in, on or about the Common Areas or Limited Common Areas without the prior written consent of the ACC.

(d) Snow and Ice Accumulations. The Association shall cause to be taken reasonable efforts to clear ice and snow accumulations from roads and streets within the Project and also from common walkways and the Common Areas. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning on November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas. The Board shall be responsible to determine by Rule and Regulation if the Association shall clear ice and snow accumulations from the driveways and walkways on each Owner's Lot, or if each Owner shall be responsible

for such ice and snow removal. In any event, each Owner shall be responsible for snow and ice removal on the Owner's rear patio.

(e) Garbage Removal. Each Owner shall be responsible to remove all garbage, debris and refuse from his Lot and deposit it in an approved trash container. Trash containers shall be kept out of sight and inside the garage, except on days when the trash is collected within the Community.

(f) Utilities. The Association shall arrange for the provision by appropriate utility providers of any utility services not separately metered and billed to the individual Owners by the provider. The costs for all such utility services arranged by the Association shall be a Common Areas Expense.

(g) Standard of Care/General. The Property shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards. Aesthetic considerations alone, and matters of taste, are sufficient to enjoin a violation of this Declaration.

(h) Standard of Care/Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the ACC from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced within six (6) months. All lawn areas shall be neatly mowed, and trees, shrubs and bushes shall be properly pruned and trimmed.

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

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

(2) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at such Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. The Owner



shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and thereafter complete such replacement or repair in a prompt manner.

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

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

(5) Right of Entry. The Association or its agents or employees shall have a right to enter upon or into any Lot or Common Areas as necessary to perform such work and shall not be liable for trespass for such entry or work.

(j) Common Walls. To the extent that any Townhome Units are connected by, or share, a Common Wall, the following provisions shall govern the use, maintenance, repair and restoration thereof:

(1) Each Townhome Unit Owner sharing a Common Wall shall provide such access as may be reasonably necessary to permit the Association and the adjoining Townhome Unit Owner sharing said Common Wall, and their respective agents and contractors, to maintain the integrity of the Common Wall, and to repair and restore it as necessary.

(2) Should any Common Wall be damaged or destroyed by the negligence or other act or omission of a Townhome Unit Owner of one of the Townhome Units sharing the same, or said Townhome Unit Owner's agents, employees, invitees or guests, said Townhome Unit Owner shall be liable, at its sole cost and expense, for all necessary repairs or restoration of said Common Wall, and related damage to any Townhome Unit; provided, however, that any insurance proceeds received in connection with such damage or destruction from policies of insurance owned by the Townhome Unit Owners sharing said Common Wall, or by the Association, shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to the Townhome Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Townhome Unit Owners.

(3) Should any Common Wall be damaged or destroyed by any cause other than the negligence, act or omission of the Townhome Unit Owner of either Townhome Unit sharing said Common Wall, or said Township Unit Owner's agents, employees, invitees or guests, the Township Units Owners of the Townhome Unit sharing said Common Wall shall be equally liable for all necessary repairs or restoration of said Common Wall, and related damage to either Townhome Unit; provided, however, that any insurance proceeds received in

connection with such damage or destruction from policies of insurance owned by the Owners of either Townhome Unit sharing said Common Wall, or by the Association, shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to the affected Townhome Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Townhome Unit Owners.

(4) Should any party fail or refuse to complete the repairs or restorations imposed upon it by these provisions, the Association, after giving written notice to said party of its intention to do so, may undertake said repairs or restorations, and be entitled to reimbursement for all costs incurred in connection therewith from said party. Such reimbursement shall be made within thirty (30) days after the Association has completed the work and presented said party with a statement and demand for payment setting forth all costs incurred. The Association shall have a lien against the Townhome Unit of the liable Townhome Unit Owner to secure payment to the Association of all costs and expenses incurred in making the necessary repairs or restorations, and the Association shall be entitled to enforce said lien in the same manner as it is authorized to enforce assessment liens, including recovery of attorney fees, costs and interest.

(5) In the event of a dispute or controversy between the Townhome Unit Owners sharing a Common Wall, as to any matter within or arising out of the provisions of this Article 5, or the respective use, maintenance, repair, or replacement of said Common Wall, such dispute or controversy shall be submitted to the Board of Directors of the Association for arbitration. The decision of the Board with respect to the issues presented shall be binding upon the parties involved.

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

(l) Alterations to the Common Areas. Anything to the contrary notwithstanding and until the occurrence of the Events, the Declarant may make changes to the Common Areas without the consent of either the Association or the ACC; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Areas, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior consent of the ACC. No fencing along or within any Lots is allowed without the prior written consent of the Board of Directors.

5.2 Repair Following Damage. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Board.

## ARTICLE 6 CONSTRUCTION COVENANTS

6.1 Introduction. Notwithstanding any other provisions in this Article 6 or in any other provisions of this Declaration to the contrary, none of the provisions or restrictions set forth in this Article 6 shall pertain to or be binding upon Declarant. In order to minimize the disturbance of the Property within the Subdivision during any construction activities, and to minimize the inconvenience to adjoining Owners, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner and the builder of each Dwelling or other Improvements on a Lot. The Owner shall be bound by these regulations, and violations committed by the builder or its employees, subcontractors or others shall be deemed a violation by the Owner for which the Owner shall be liable.

6.2 Construction Debris Removal. The builder must comply with the ordinances of the Township and the requirements of the Board requiring the placement and maintenance of a trash container or dumpster on the Lot. The builder shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind. Such container shall be regularly serviced. No trash may be burned, buried, or otherwise disposed of on the Property. No concrete trucks may be cleaned out on the Lot, the Property or anywhere within the Subdivision.

6.3 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of a Dwelling or other Improvements. Once the Dwelling is enclosed, materials shall be stored inside the Dwelling and out of sight, whenever practical and possible.

6.4 Sanitary Facilities. The builder is responsible for the installation and maintenance of an approved portable toilet facility during construction. The portable toilet must be located on the Lot at a location approved by the Board and must be removed from the site at such time as the permanent plumbing system is operational.

6.5 Construction Parking and Vehicles. Construction crews must park their vehicles on the Lot on which they are working or on the street in front of such Lot and shall not use or park on any other Lot or any other Property within the Subdivision. All vehicles must be parked to allow the free flow of traffic within the Subdivision.

6.6 Removal of Mud. The builder is responsible for cleaning up and removing mud from the construction site that is deposited on the roadways of the Subdivision.

6.7 Duration of Construction. No construction shall be undertaken without a building permit and all other necessary permits from the Township and any other governmental entity having jurisdiction over construction on the site. No materials, tools, temporary offices or portable toilets, excavation or construction equipment or similar materials or equipment may be delivered to the site prior to the issuance of the permit(s). It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the Dwelling shall be substantially complete within a period of six months from commencement.

6.8 Repair of Damage. Each Owner is responsible for the prompt repair of any damage to any Property within the Subdivision caused by or incidental to such Owner's construction, including without limitation any cracked or broken sidewalks. The Board, if necessary, may initiate legal action against any Owner for the repair of damage that occurs from construction activity pertaining to that Owner's Lot. The Board shall be entitled to record a Notice of Charge against such Owner's Lot until all such damage is repaired and the Association has received reimbursement for all costs and expenses incurred in connection therewith.

## ARTICLE 7 THE ASSOCIATION

7.1 Board of Directors. The affairs of the Association shall be conducted by a Board of at least three (3) directors, but no more than five (5) members (as determined by the Board of Directors), and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until the expiration of the Class B Control Period. At the first meeting after the expiration of the Class B Control Period, three members of the Board of Directors shall be elected by the Owners. Two members of the Board of Directors shall be elected for two year terms and one member of the Board of Directors shall be elected for a one year term. Thereafter, all members of the Board of Directors shall be elected for two year terms. The Board may also appoint various committees and may appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager.

7.2 Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Director's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Board of Directors shall have, and is hereby granted, the following authority and powers:

(a) Access. The power and authority to enter into or upon any Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

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

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

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

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

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

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

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

7.3 Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership—Class A and Class B, described more particularly as follows:

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

(1) Each Lot shall have one (1) vote.

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

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

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

(b) Class B. The Class B Member shall be Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. 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 (herein referred to as the “Event” or “Events”):

(1) Four (4) months after one hundred percent (100%) of the Lots have been sold; or

(2) Ten (10) years after the recording of this Declaration in the Office of the Recorder of Salt Lake County, Utah; or

(3) When, in its sole discretion, Declarant so determines. If and when Declarant elects to relinquish control of the Association, Declarant shall send written notice of such relinquishment to the Association. The notice shall state the effective date of the relinquishment, which date shall be the effective date of the Event.

From and after the happening of the first to occur of the Events, (i) the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot owned, (ii) the Board of Directors shall call an annual or special meeting, as applicable, in the manner described in the Bylaws to (A) advise the Owners of the termination of the Class B Member status, and (B) elect a new Board of Directors in accordance with Section 7.1 above.

7.4 Professional Management. The Association shall have a duty and obligation to engage the services of a professional Manager to perform all of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement may be terminated by the Declarant without cause at any time during the Class B Control Period. In addition, any such management agreement may be terminated by the Association without cause upon giving reasonable notice at any time after the expiration of the Class B Control Period. However, upon the termination by the Association of any such management agreement, the Association shall execute a new management agreement with a professional Manager to perform all of its functions which are properly subject to delegation.

7.5 List of Owners Eligible Mortgagees, and Eligible Insurers of Guarantors. The Board of Directors shall maintain up-to-date records showing: a) the name of each Person who is an Owner, the address of such Person, and the Lot which is owned by such Owner; b) the name of each Person or entity who is an Eligible Mortgagee, the address of such Person or entity, and the Lot which is encumbered by the Mortgage held by such Person or entity; and c) the name of each Person or entity who is an Eligible Mortgagee or Eligible Insurer or guarantor, the address of such Person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such Person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board of Directors with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the Office of the Recorder of Salt Lake County, Utah. The Board of Directors may for all purposes act and rely on the information concerning Lot ownership in its records or, at the

option of the Board of Directors, the records of the Recorder of Salt Lake County, Utah. The address of any Owner shall be deemed to be the address of the Lot owned by such Person, unless the Board of Directors is otherwise advised in writing.

7.6 Capital Improvements and Table. The Board of Directors shall prepare a table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Common Areas. The table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board of Directors for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

(a) Board of Directors Discretion/Expenditure Limit. So long as the line item in the annual Budget for such improvements will not be exceeded by more than ten percent (10%), Capital Improvements may be authorized by the Board of Directors alone.

(b) Owner Approval/Expenditure Limit. Any Capital Improvements, the cost of which will exceed the amount described in Section 7.6(a) must prior to the commencement of construction, be authorized by at least a Majority of the Owners.

7.7 Common Areas Expenses/ Townhome Limited Common Area Expenses. Each Owner, upon receipt of a deed to a Lot, shall pay such Owner's Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments pertaining to a Lot until such time as any Dwelling on such Lot is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Declarant elects in writing to commence payment, whichever first occurs.

(a) Common Area Expenses.

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

(2) Creation of Common Area Assessments. Each Owner, by acceptance of a deed for a Lot within the Project, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Common Area Assessments assessed.

(3) Budget. Not less than ten (10) days or more than thirty (30) days prior to the annual Owners' meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget (the "Budget") which:

a. Shall set forth an itemization of the anticipated Common Area Expenses and Common Area Assessments for the twelve (12) month calendar year, commencing with the following January 1.

b. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting assessments, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

(4) Uniform Rate of Assessment. The annual Common Area Assessments shall be allocated to the Owners equally and may be collected on an annual, semi-annual, quarterly or monthly basis, as determined by the Board of Directors.

(5) Approval of Budget and Common Area Assessments. The proposed Budget and the annual Common Area Assessments shall become effective unless disapproved at the annual Owners' meeting by a vote of at least a Majority of the Owners or unless disapproved by a vote of at least a Majority of the Owners at a special meeting called for that purpose within 45 days after the date of the meeting at which the Board of Directors presented the proposed Budget to the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed Budget and Common Area Assessments or the Board of Directors fails for any reason to establish the Budget and Common Area Assessments for the succeeding year, then and until such time as a new Budget and new Common Area Assessment schedule shall have been established, the Budget and the Common Area Assessments that the Board of Directors last adopted that was not disapproved by at least a Majority of the Owners shall continue as the Budget until and unless the Board of Directors presents another Budget to the Owners and that Budget is not disapproved.

(b) Townhome Limited Common Area Expenses. The Townhome Limited Common Area Expenses and Assessments shall be paid by each Townhome Unit Owner in addition to all other Assessments applicable to Owners within the Project.

(1) Purpose of Townhome Limited Common Areas Expenses. The Assessments provided for herein shall be used for the general purpose of operating



and maintaining the Townhome Limited Common Areas, as may be more specifically authorized from time to time by the Board of Directors.

(2) Creation of Townhome Limited Common Area Assessments. Each Townhome Unit Owner, by acceptance of a deed for a Lot within the Project, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Townhome Limited Common Area Assessments assessed.

(3) Townhome Budget. Not less than ten (10) days or more than thirty (30) days prior to the annual Owners' meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget (the "Townhome Budget") which:

a. Shall set forth an itemization of the anticipated Townhome Limited Common Area Expenses and Townhome Limited Common Area Assessments for the twelve (12) month calendar year, commencing with the following January 1.

b. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Townhome Limited Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, repairs and maintenance of the Townhome Limited Common Areas and replacement of those elements of the Townhome Limited Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting assessments, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Townhome Unit Owners under and by reason of this Declaration.

(4) Uniform Rate of Assessment Among Townhome Unit Owners. The annual Townhome Limited Common Area Assessments shall be allocated to the Townhome Unit Owners equally and may be collected on an annual, semi-annual, quarterly or monthly basis, as determined by the Board of Directors.

(5) Approval of Townhome Budget and Townhome Limited Common Area Assessments. The proposed Townhome Budget and the annual Townhome Limited Common Area Assessments shall become effective unless disapproved at the annual Owners' meeting by a vote of at least a Majority of the Townhome Unit Owners or unless disapproved by a vote of at least a Majority of the Townhome Unit Owners at a special meeting called for that purpose within 45 days after the date of the meeting at which the Board of Directors presented the proposed

Townhome Budget to the Townhome Unit Owners. Notwithstanding the foregoing, however, if the Townhome Unit Owners disapprove the proposed Townhome Budget and Townhome Limited Common Area Assessments or the Board of Directors fails for any reason to establish the Townhome Budget and the Townhome Limited Common Area Assessments for the succeeding year, then and until such time as a new Townhome Budget and new Townhome Limited Common Area Assessment schedule shall have been established, the Townhome Budget and the Townhome Limited Common Area Assessments that the Board of Directors last adopted that was not disapproved by at least a Majority of the Townhome Unit Owners shall continue as the Townhome Budget until and unless the Board of Directors presents another Townhome Budget to the Townhome Unit Owners and that Townhome Budget is not disapproved.

(c) Payment of Assessments. The Board of Directors has the sole authority and discretion to determine how and when the Common Area Assessments and the Townhome Limited Common Area Assessments are paid. The dates and manner of payment of the Common Area Assessments and Townhome Limited Common Area Assessments shall be determined by the Board of Directors.

(d) Personal Obligation of Owner. Owners are liable to pay all Common Area Assessments and in addition, Townhome Unit Owners are liable to pay all Townhome Limited Common Area Assessments assessed, accruing interest, late charges and collection costs, including attorneys' fees. Provided, however, no Mortgagee or beneficiary under a first deed of trust (but not the seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the Mortgage or trust deed shall be liable for unpaid Common Area Assessments or Townhome Limited Common Area Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (i) the Owner of both the legal and equitable interest in any Lot, (ii) the owner of record in the Official Records, and (iii) both the buyer and seller under any executory sales contract or other similar instrument.

(e) Reserve Accounts. The Board of Directors shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for Capital Improvements (known as the Reserve Fund discussed more fully below). The reserve accounts shall be funded out of Assessments (as reasonably determined by the Board).

(f) Acceleration. Common Area Assessments and Townhome Limited Common Area Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Area Assessment and/ or Townhome Limited Common Area Assessment for delinquent Owners. If, however, the Common Area Assessment and/ or Townhome Limited Common Area Assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

(g) Statement of Common Area/ Townhome Limited Common Area Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of Common Area Assessments and all other Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$10.00 for the issuance of such certificate.

(h) Superiority of Assessments. All Common Area Assessments and all other Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

(i) Suspension of Right to Vote for Non-Payment. At the discretion of the Board of Directors, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

(j) Failure to Assess. The omission or failure of the Board of Directors to fix the Assessment amounts or rates or to deliver or mail to each Owner a Common Area Assessment and/or Townhome Limited Common Area Assessment, if applicable, notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

(k) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days prior written notice of any changes.

(l) Re-assessments. The Board may exercise its business judgment and if, because of bankruptcies and/or foreclosures, the charge-offs and delinquencies in any given year create too great a shortfall in the operating account and budget, then the Board, rather than deplete the contingency reserve account, may elect to reassess among all of the Owners based upon their percentages of ownership interest an amount equal to the total of unpaid or uncollected assessments. Owners shall be given at least thirty (30) days written notice of any such reassessment.

(m) Reserve Funds.

(1) Common Areas. The Board of Directors shall cause the Association to establish and maintain an adequate and reasonable Common Area Reserve Fund for maintenance, repairs and replacement of the Common Areas that are to be maintained by the Association that must be replaced on a periodic basis, and the Common Area Reserve Fund shall be funded from the Common Area Assessments

(in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law). The Common Area Reserve Fund shall be maintained by the Association in a bank account separate from the bank account maintained by the Association for the other funds of the Association. Within the Common Area Reserve Fund, the Association shall maintain a separate account designated and intended solely for the repair, maintenance and replacement from time to time of the private roads located within the Project, which shall be funded from the Assessments (in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law).

(2) Townhome Limited Common Areas. The Board of Directors shall cause the Association to establish and maintain an adequate and reasonable Townhome Limited Common Area Reserve Fund for maintenance, repairs and replacement of the Townhome Limited Common Areas that are to be maintained by the Association that must be replaced on a periodic basis, and the Townhome Limited Common Area Reserve Fund shall be funded from the Townhome Limited Common Area Assessments (in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law). The Townhome Limited Common Area Reserve Fund shall be maintained by the Association in a bank account separate from the bank account maintained by the Association for the other funds of the Association.

(3) Pursuant to Section 57-8a-211 of the Utah Code, as may be amended from time to time, the Board shall cause a Common Area Reserve Fund and Townhome Limited Common Area Reserve Fund analysis to be conducted on a periodic basis. After each initial Reserve Fund analysis is conducted, the Board shall review and, if necessary, update any previously conducted Reserve Fund analysis on a periodic basis. The Board may conduct any Reserve Fund analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct any Reserve Fund analysis. The Board may not use money in either Reserve Fund: (a) for daily maintenance expenses, unless a majority of the Members vote to approve the use of the Reserve Fund money for that purpose; or (b) for any purpose other than the purpose for which the Reserve Fund was established. The foregoing may not be construed to limit the Board from prudently investing money in either Reserve Fund, subject to any investment constraints imposed by the Articles of Incorporation or Bylaws. The Association shall: (a) annually, at the annual meeting of Owners or at a special meeting of Owners: (i) present any Reserve Fund analysis conducted; (ii) provide an opportunity for Owners to discuss reserves and to vote on whether to fund a Common Area Reserve Fund and, if so, how to fund it and in what amount; (iii) provide an opportunity for Townhome Unit Owners to discuss reserves and to vote on whether to fund a Townhome Limited Common Area Reserve Fund; and (b) prepare and keep minutes of each such meeting held and indicate in the minutes any decision relating to funding any Reserve Fund.

7.8 Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments (“**Special Assessments**”) in any year, subject to the following:

(a) Board of Directors Based Assessment. So long as the Special Assessment does not exceed the sum of One Hundred Dollars (\$100.00) (the “**Special Assessment Limit**”) per Lot in any one fiscal year, the Board of Directors may impose the Special Assessment without any additional approval.

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

7.9 Specific Assessments. The Board of Directors shall also have the power specifically to assess the Owners in a particular area pursuant to this Section (“**Specific Assessment**”) as, in its discretion, it shall deem necessary or appropriate, subject to the following:

(a) No Obligation or Waiver. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director’s right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

(b) Enabling Power. The Board of Directors may specifically assess an Owner in a particular area in the manner set forth below; provided, however, if the Specific Assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration, then the Owner has the choice to accept or reject the benefit:

(1) If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the Specific Assessment shall be equitably apportioned among those Lots according to the benefit received.

(2) If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the Specific Assessment shall be equitably apportioned among all Lots according to the benefit received.

7.10 Individual Assessments. Individual assessments (“**Individual Assessments**”) shall be levied by the Board of Directors against a Lot and its Owner to reimburse the Association for:

(a) Fines. Fines levied and costs incurred in enforcing Project Documents;

(b) Maintenance and Repairs. Costs associated with the maintenance, repair or replacement of that for which the Owner is responsible;

(c) Other. Any other charge, fee, dues, expense, or cost designated as an Individual Assessment in the Project Documents; and

(d) Collection Costs. Attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

7.11 Reinvestment Fee. Subject to the terms and conditions of Section 7.11(b) below, the Board of Directors shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section 7.11. If established by the Board of Directors, the following terms and conditions shall govern Reinvestment Fees:

(a) Upon the occurrence of any sale, transfer or conveyance (as applicable, a "Transfer") of any Lot, the party receiving title to the Lot (the "Transferee") shall pay to the Association a "Reinvestment Fee" in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (a) 0.5% of the value of the applicable Lot (including improvements, if any), or (b) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section 7.11, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

(1) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

(2) Any Transfer to the Association or its successors.

(3) Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Lot transferred.

(4) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a site by the estate of an Owner.

(5) Any Transfer made by a Person owning a Lot or portion thereof to a legal entity or trust owned or controlled by the Transferor.

(6) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing title defects or encumbrances affecting the title to such Lot, or granting easements, rights of way or licenses, and any exchange of Lots between Declarant and any original purchaser from Declarant of the one or more Lots being Transferred to Declarant in such exchange.

(7) Any lease of any Lot or portion thereof for a period of less than thirty years

(8) Any Transfer to secure a debt or other obligation or to release any Lot that is encumbered as security for a debt or other obligation.

(9) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

7.12 Collection of Assessments. All Assessments must be paid in a timely manner and shall be collected as follows:

(a) Time is of the Essence. Time is of the essence, and all Assessments shall be paid promptly when due.

(b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent (hereinafter, a “**Delinquent Assessment**”), and a lien against the Lot affected shall attach automatically, regardless of whether a notice of lien is recorded.

(c) Late Charges and Accruing Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and 1/2 percent (1.5%) per month shall accrue on all delinquent accounts. The Board of Directors may, in its sole discretion, change the amount of the late charge or waive the late charge and accruing interest, but is not required to do so.

(d) Notice of Delinquency. The Association shall give a notice of delinquency to any Owner who has not paid any Assessments in a timely manner.

(e) Notice of Lien. If any Assessment in a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorneys’ fees, the cost of a foreclosure or abstractor’s report, and any other Additional Charges permitted by law should be filed in the Official Records, then the lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association’s attorney, manager, Board of Directors member or other designated agent.

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

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

(h) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein by the non-use of Common Areas or by the abandonment of his Lot.

(i) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or to perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with an order or directive of any municipal or other governmental authority. The obligation to pay Assessments shall be a separate and independent covenant on the part of each Owner.

(j) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and current Assessments.

(k) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Directors. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. This includes judicial foreclosure (through the courts) or nonjudicial foreclosure (outside the courts) provided the prior notice of intent required by statute is sent. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report and reasonable attorneys' fees. The Board of Directors may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(l) Appointment of Trustee. Declarant hereby conveys and warrants, pursuant to Sections 57-1-20, 57-8a-302 and 57-8a-402 of the Utah Code, to Cottonwood Title Insurance Agency, Inc., a Utah corporation, as trustee, with power of sale, all of the Lots within the Project and all of the Improvements to the Lots within the Project for the purpose of securing payment of all of the Assessments under the terms of this Declaration. Each Owner, by accepting a deed to the Lot, also hereby conveys and warrants to Cottonwood Title Insurance Agency, Inc., a Utah corporation, as trustee, with power of sale, each Lot acquired by such Owner and all of the Improvements thereon for the purpose of securing payment of all of the Assessments under the terms of this Declaration and such Owner's performance of such Owner's obligations set forth herein.

(m) Attorney in Fact. To the extent not prohibited by the Utah Community Association Act set forth in Section 57-8a-101 et seq. of the Utah Code, as amended from time to time, each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any Person renting his Lot, if the Lot is rented and if the Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

7.13 Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board of



Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify, defend and hold harmless each such officer and member of the Board of Directors from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the Board of Directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

7.14 Insurance.

(a) The Board of Directors shall at all times purchase, maintain in force, and pay the premium for insurance on all Common Areas within the Project satisfying the insurance requirements set forth in Sections 57-8a-401 through 57-8a-407 of the Utah Code, as such Sections may be amended, supplemented or replaced from time to time (the "Statutory Insurance Requirements").

(b) The Owner of each Lot within the Subdivision shall be responsible, at the sole cost and expense of such Owner, to obtain and maintain in effect at all times property insurance pertaining to such Owner's Lot and on the Dwelling and all Improvements located on such Owner's Lot insuring against all risks of direct physical loss common and shared against, including fire and extended coverage perils and also liability insurance in such amount as the Owner deems desirable and appropriate covering occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership and maintenance of such Owner's Lot, Dwelling and Improvements. The Association shall have no obligation to obtain any such property insurance or liability insurance with respect to an Owner's Lot, Dwelling and Improvements.

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

(a) 90-Day Limit. All necessary consents must be obtained prior to the expiration of 90 days from the time the first written consent is obtained; and

(b) Changes in Ownership. Any change in ownership of a Lot which occurs after consent has been obtained from the Member having an interest therein shall not be considered or taken into account for any purposes.

7.16 Amendment.

(a) By Owners. Except as provided elsewhere in this Declaration, the affirmative vote of at least a Majority of the Owners shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

(b) By Declarant. Until the expiration of the Class B Control Period, Declarant may unilaterally amend this Declaration or the Plat for any purpose that Declarant deems to be in the best interest of the Project.

7.17 Notice and Hearing. If an Owner or resident is charged with a material violation of the Project Documents, then:

(a) Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board of Directors shall be given to the Member at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board of Directors for the purpose of service of notice or to the address of the Member's Lot if no other address has been provided. Any address may be changed from time to time by a Member giving written notice to the Board of Directors.

(b) Costs and Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Board of Directors may vote to assess the adverse party, levy a fine, or impose other sanctions if the Board of Directors finds that a violation has occurred.

(c) Final Determination. After the hearing has taken place, the Board of Directors shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Board of Directors shall be final. However, nothing herein shall be construed to prevent the Board of Directors from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and an opportunity for a hearing.

**ARTICLE 8  
GENERAL PROVISIONS**

The covenants, conditions, and restrictions contained in this Declaration may be enforced as follows:

8.1 Violation Constitutes Nuisance. The violation of the provisions of this Declaration is deemed to be a nuisance, and the Owner of the Property on which the violation occurs is responsible for the removal or abatement of the nuisance.

8.2 Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Board in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances pertaining to health, safety, abatement of nuisances or other matters. The remedies available under this Declaration are to be construed as being in addition to all other remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The delay or failure by anyone to take enforcement action with respect to any violation of this Declaration shall not be construed as a waiver of the covenants contained in this Declaration with respect to such violation or with respect to any other violations.

8.3 Pre-Litigation Requirements.

(a) Disclaimer. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot that Owner is purchasing or any aspect of the Project; all prior to purchasing a Lot. Moreover, if any warranty has been provided, it identifies the only items that are warranted by Declarant. Having had the ability to inspect a Lot prior to purchasing a Lot, having received a written warranty (if any warranty is provided), and having paid market price for a Lot in the condition the Lot, the Project and Common Areas are in at the time of purchase, Owner acknowledges and agrees that it would be inequitable to later seek to have Declarant and/or its respective contractors and subcontractors performing work in the Project to change, upgrade, or perform any additional work to the Project outside of any express warranty obligation. Moreover, the Owners and the Association acknowledge and agree that litigation is an undesirable method of resolving Disputes (as defined below) because litigation can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lots during any period when litigation is pending. For this reason, the Owners (by purchasing a Lot) and the Association acknowledge and agree that before any Dispute is pursued through litigation, the "Pre-Litigation Requirements" set forth below shall be satisfied. In addition, the Association and the

Owners (by purchasing a Lot) acknowledge and agree that each takes ownership and possession of the Lots, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind (except as set forth in a written warranty, this Declaration or as otherwise required as a matter of law). To the fullest extent permitted by applicable law, Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability.

(b) Notice of Claim and Opportunity to Cure (Applicable to All Owners and the Association). All claims and disputes of any kind that any Owner or the Association may have involving the Declarant or any its agents, employees, executing officers, managers, affiliates or owners, or any engineer or contractor involved in the design or construction of the Project, which arises from or is in any way related to a Unit, Building, Common Area, Limited Common Areas and facilities, or any other component of the Project (a “**Dispute**”), shall first be identified in a written notice of claim that sets forth with specificity the facts and the legal basis upon which the claim or dispute is asserted (a “**Notice of Claim**”), which Notice of Claim shall be delivered to Declarant, and Declarant shall have 150 days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to the initiating of any formal court action. If the Dispute is not resolved within the 150-day right to cure period, then with respect to any claims, actions or Disputes that the Association (but not an individual Owner) desires to pursue, the “Pre-Litigation Requirements” set forth below must be satisfied in full before initiating formal court action. If additional, different or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against Declarant that were not included in any previously submitted Notice of Claim, the right to cure period provided for in this section shall immediately apply again, and any pending action or proceedings shall be stayed during the 150-day period.

(c) Pre-Litigation Requirements (Applicable Only to the Association). Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant’s contractors, engineers or architects, or any other person or entity involved in the design or construction of the dwelling structures unless and until the Notice of Claim requirements set forth above have been satisfied, and all of the following “**Pre-Litigation Requirements**” have been satisfied:

(1) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten years of experience, with the legal opinion providing in substance the following: (A) a description of the factual allegations and legal claims to be asserted in the action; (B) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (C) providing a budget of the estimated amounts of legal fees, costs, expert witness

fees and other expenses likely to be incurred in connection with such action (the “**Litigation Budget**”);

(2) A copy of the opinion letter described in subsection (i) above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision for the Association to file the subject action has been approved by the Owners (excluding Declarant) who collectively hold at least 67% of the Eligible Votes; and

(3) The Association has collected funds from the Owners, by Special Assessment or otherwise, equal to at least 50% of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection (i) above.

The purposes of these requirements include, but are not limited to, the following: (i) to minimize the risks to the Association of pursuing litigation involving claims that lack merit; (ii) to minimize the risks of becoming involved in litigation that is unlikely to be successful or, even if successful, will not result in meaningful recovery sufficient to justify the costs and expenses of litigation; and (iii) to avoid becoming involved in litigation without sufficient support from the Members financially and otherwise.

For purposes of clarity, this Section and the requirements set forth herein shall not apply to any actions or legal proceedings (i) filed by the Association to recover payment of any Assessments or other amounts required to be paid by Owners to the Association under this Declaration, or (ii) filed by individual Owners relating solely to their own Lots. Individual Owners, however, shall not be allowed to file or pursue any actions or claims on behalf of other Owners or for the Association.

8.4 Severability. Each of the covenants, conditions, restrictions and provisions contained in this Declaration shall be independent of the others, and in the event that any covenant, condition, restriction or provision of this Declaration is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, the remaining covenants, conditions, restrictions and provisions of this Declaration shall remain in full force and effect.

8.5 Limited Liability. Neither the Declarant, the Board or its individual members, nor any Owner shall have personal liability to any other Owner for actions or inactions taken pursuant to the terms of this Declaration, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under this Declaration and without malice.

8.6 Term of Declaration. The term of this Declaration shall be perpetual.

8.7 Mortgagee Not Bound. No amendment to this Declaration will be binding upon the holder of any mortgage or trust deed on any Lot which mortgage or trust deed is of record at the time of the amendment, unless the mortgage or trust deed holder joins in the amendment. This Declaration may not be repealed by amendment.

8.8 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the

provisions of this Declaration against such Owner's Lot, whether or not there is any reference to this Declaration in the instrument by which such Owner acquires an interest in any Lot.

8.9 Reservation of Easements. Easements affecting the Lots within the Subdivision are reserved as shown on the Plat for utility installation and maintenance, drainage and other purposes as designated on the Plat.

8.10 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

8.11 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Section headings are inserted for convenience only and shall not be considered in the interpretation of the provisions. The singular shall include the plural, and the plural shall include the singular. Any reference to gender is intended to include masculine, feminine and neuter as well.

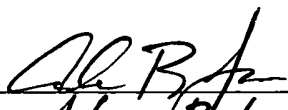
8.12 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Subdivision to the public or for any public use, except as specifically shown on the Plat

8.13 Enforcement. The Board may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

EXECUTED the day and year first above written.

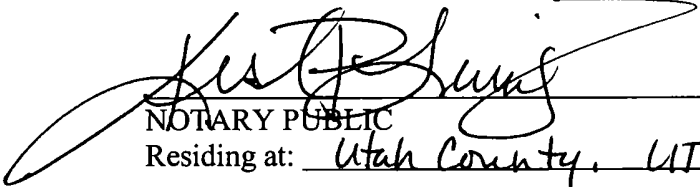
**DECLARANT:**

D.R. HORTON, INC.,  
a Delaware corporation

By:   
Name: Adam D. Lopez  
Title: Vice President

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

The foregoing instrument was acknowledged before me this 2 day of January, 2020, by Adam R. Loser in his capacity as the Vice President of D.R. Horton, Inc., a Delaware corporation.

  
NOTARY PUBLIC  
Residing at: Utah County, UT

My Commission Expires:  
Jan. 31, 2023



**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
MILLPOINT P.U.D.**

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**Legal Description of Land**

That certain real property located in Magna Metro Township, Salt Lake County, Utah more particularly described as follows:

A BOUNDARY ESTABLISHED BY FIELD SURVEY AS PERFORMED BY ANDERSON WAHLEN AND ASSOCIATES DATED 28 SEPTEMBER 2016 LYING WITHIN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, US SURVEY IN SALT LAKE COUNTY, UTAH:

BEGINNING AT A EXISTING BOUNDARY LINE FENCE CORNER ON THE SOUTH LINE OF 3100 SOUTH STREET LOCATED 1008.27 FEET NORTH 89°56'50" EAST ALONG THE QUARTER SECTION LINE AND 33.00 FEET SOUTH 0°03'10" EAST FROM THE WEST QUARTER CORNER OF SAID SECTION 28; AND RUNNING THENCE NORTH 89°56'50" EAST 130.00 FEET ALONG SAID SOUTH LINE; THENCE SOUTH 0°03'10" EAST 344.52 ALONG AN EXISTING BOUNDARY LINE FENCE; THENCE SOUTH 72°13'00" EAST 207.80 FEET ALONG AN EXISTING BOUNDARY LINE FENCE; THENCE SOUTH 0°01'23" WEST 246.01 FEET ALONG AN EXISTING BOUNDARY LINE FENCE TO THE NORTH LINE OF 3210 SOUTH STREET; THENCE NORTH 89°53'00" EAST 4.84 FEET TO THE WEST LINE OF VEGA PARK PLAT NO. "B-3"; THENCE SOUTH 0°05'00" WEST 50.00 FEET ALONG SAID WEST LINE TO THE SOUTH LINE OF 3210 SOUTH STREET; THENCE SOUTH 89°53'00" WEST 4.79 FEET ALONG SAID SOUTH LINE; SOUTH 0°01'23" WEST 56.05 FEET ALONG AN EXISTING BOUNDARY LINE FENCE; THENCE WEST 676.35 FEET TO AND ALONG THE NORTH LINE OF MOUNTAIN VIEW MEADOWS PUD SUBDIVISION PHASE 1 AND SAID NORTH LINE EXTENDED WESTERLY TO THE SOUTHWEST CORNER OF THE UNDERLYING 1999 QUIT CLAIM DEED RECORDED AS ENTRY NO. 7390482 IN BOOK 8287 AT PAGE 4815 OF OFFICIAL RECORDS; THENCE NORTH 330.00 FEET ALONG THE WESTERLY LINE OF SAID QUIT CLAIM DEED TO THE NORTHWESTERLY CORNER THEREOF; THENCE EAST 172.51 FEET ALONG THE NORTHWEST LINE OF SAID QUIT CLAIM DEED; THENCE NORTH 1°33'02" WEST 97.80 FEET; THENCE NORTH 3°00'29" WEST 89.07 FEET; THENCE NORTH 89°56'50" EAST 183.33 FEET TO AN EXISTING BOUNDARY LINE FENCE; THENCE NORTH 0°03'10" WEST 243.05 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING.

CONTAINS: 323,463 SQUARE FEET OR 7.426 ACRES



**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
MILLPOINT P.U.D.**

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**BYLAWS OF MILLPOINT P.U.D.  
OWNERS ASSOCIATION, INC.**

**A UTAH NONPROFIT CORPORATION**

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (the “Act”), the following are the Bylaws of the Association, which is obligated to operate, manage and regulate the Project. Unless otherwise defined below, the capitalized terms set forth in these Bylaws shall have the same meanings ascribed to them in the Declaration of Covenants, Conditions and Restrictions for Millpoint P.U.D. (the “Declaration”).

**ARTICLE 1  
PLAN OF LOT OWNERSHIP AND INCORPORATION**

1.1 **Submission.** These Bylaws are referred to and incorporated by reference in the Declaration. The Project is located in Magna Metro Township, Salt Lake County, State of Utah. These Bylaws shall govern the administration of the Project and the Association.

1.2 **Organizational Form.** If the Association is incorporated, then these Bylaws shall also function as the bylaws of the corporation.

1.3 **Bylaws Applicability.** All present and future Owners, residents, occupants, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance to the Project shall be subject to and shall abide by these Bylaws.

**ARTICLE 2  
ASSOCIATION**

2.1 **Composition.** The Association is a mandatory association consisting of all Owners of Lots within the Project.

2.2 **Voting.** Each Lot shall have one (1) vote. Multiple Owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Organizational Owners may vote by means of an authorized agent.

2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors from time to time and stated in the notice of meeting.

2.4 Annual Meeting. Unless otherwise designated by the Board of Directors, the annual meeting of the Association shall be held at 7:00 p.m. on the first Tuesday of October of each year, or at such other suitable date as may be designated by the Board of Directors from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.

2.5 Special Meetings. The President of the Association, or a Majority of the members of the Board of Directors, may call a special meeting of the Association, or if the President of the Association is so directed by resolution of the Board of Directors or upon receipt of a petition signed and presented to the Secretary of the Board of Directors by at least twenty five percent (25%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.6 Quorum. The presence in person or by proxy of three (3) of the Owners entitled to cast a vote shall constitute a quorum for the transaction of business at any Owners meeting.

(a) Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than 48 hours and no later than 30 days, after the time set for the original meeting.

(b) Quorum at Rescheduled Meeting. Those Owners present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting, regardless of the number of Owners present at the rescheduled meeting.

(c) Percentage Approval Requirement. Notwithstanding the foregoing provisions of this section, however, in any case in which the Declaration requires the affirmative vote of a certain percentage of Owners for authorization or approval of a matter, their consent, in person, by proxy or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

2.7 Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of: (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners. The notice shall be delivered at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

2.8 Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association, if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments and/or Additional Charges due.

2.9 Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies fully executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or Owners that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by the Owner or Owners as the case may be.

(a) Executive Session. The Board of Directors may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an executive session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

(b) Action Without a Formal Meeting. Any action to be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board of Directors.

### **ARTICLE 3 BOARD OF DIRECTORS**

3.1 Powers and Duties. The affairs and business of the Association shall be managed by the Board of Directors in accordance with the Declaration. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things appropriate and necessary to operate, manage, maintain, control and regulate the Project. The Board of Directors shall have the power from time to time to adopt any rules and regulations deemed proper for the exercise of its management powers. The Board of Directors may delegate its authority to a manager or managers.

3.2 Composition of Board of Directors. The Board of Directors shall be composed of at least three (3) but no more than nine (9) members. Only individual Owners or officers or agents of organizational Owners shall be eligible for Board of Directors membership.

3.3 Election and Terms of Office of the Board of Directors. The election and terms of the Board of Directors shall be carried out in accordance with the provisions of the Declaration. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until the expiration of the Class B Control Period. At the first meeting after the expiration of the Class B Control Period, three members of the Board of Directors shall be elected by the Owners. Two members of the Board of Directors shall be elected for two year terms and one member of the Board of Directors shall be elected for a one year term. Thereafter, all members of the Board of Directors shall be elected for two year terms. At the expiration of the member's term, a successor shall be elected.

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

3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held from time to time and at such time and place as shall be determined by a Majority of the members of the Board of Directors.

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

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

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

3.9 Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the Majority of the remaining members of the Board of Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Directors; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

3.10 Removal of Board of Directors Member. A member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a Majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board of Directors member who fails on three successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board of Directors meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Board of Directors members shall elect a replacement to sit on the Board of Directors until the next meeting of the Association.

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

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

#### **ARTICLE 4 OFFICERS**

4.1 Designation. The principal officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board of Directors. Two (2) or more offices may be held by the same person, except that the President shall not hold any other office.

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

4.3 Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed, with or without cause, at any time by the affirmative vote of a majority of the Board of Directors, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purposes. Provided, however, if a member of the Board of Directors is removed as an officer, he shall continue to be a member of the Board of Directors.

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

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

4.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board of

Directors and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board of Directors including resolutions.

4.7 Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Manager, and with the assistance of the Manager shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such federally insured depositories as may be designated by the Board of Directors. He shall disburse funds as ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

## **ARTICLE 5 FISCAL YEAR**

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

## **ARTICLE 6 AMENDMENT TO BYLAWS**

### 6.1 Amendment.

(a) By the Board. The Board may amend the Bylaws at any time to add, change, or delete a provision, unless:

(i) this Section or the Articles of Incorporation or Bylaws:

(a) reserve the power exclusively to the Members in whole or part; or

(b) otherwise prohibit the Board from amending the Bylaws to add, change, or delete a provision; or

(ii) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(b) By the Members.

(i) Unless otherwise provided by the Bylaws, the Members may amend the Bylaws even though the Bylaws may also be amended by the Board.

(ii) Amendments to the Bylaws by Members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 of the Utah Code Annotated as if each reference in Sections 16-6a-1003 and 16-6a-1004, as amended or supplemented, to the Article of Incorporation was a reference to the Bylaws.

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

## **ARTICLE 7 NOTICE**

7.1 Fair and Reasonable Notice. Notice given in accordance with the provisions of the Act shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association requiring written notice. If such written demand is made, then all notices, demands, bills, statements, or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage prepaid, a) if to an owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board of Directors or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

7.2 Waiver of Notice. Whenever any notice is required to be given by the Project Documents, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

## **ARTICLE 8 COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

8.1 Compliance. These Bylaws are set forth in compliance with the requirements of the Declaration.

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

8.3 Severability. If any provision of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and, to this end, the provisions hereof are declared to be severable.

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

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

8.6 Gender and Grammar. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

8.7 Liability of Board of Directors Members. Neither the members of the Board of Directors nor the officers of the Association shall be liable to any Owner, resident or person for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Board of Directors, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the Owners and residents, by virtue of their taking title to or possession of a Lot, agree to indemnify, defend and hold harmless the members of the Board of Directors and officers of the Association from and against any and all claims arising out of or caused by their voluntary participation as a member of the Board of Directors or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or willful neglect.

8.8 Attorneys' Fees, Assessments and Costs. If an Owner or resident, or their families, guests or invitees shall, at any time, violate the terms, covenants or conditions of these Bylaws, and the Board of Directors shall be required to take action to enforce the same, regardless of whether a lawsuit is commenced, the Owner or resident shall reimburse the Board of Directors for all costs and expenses, including but not limited to reasonable attorneys' fees. To secure payment of any unpaid costs or Assessments, the Board of Directors shall have the right and power to file a lien against the Lot owned or occupied, and may proceed to collect the same by judgment or foreclosure. In the event of a breach or anticipated breach by an Owner or resident, or by their family, guests or invitees, of any of the terms, covenants, or conditions of these Bylaws, the Board of Directors shall have, in addition to any other remedies provided by law equity, the right to injunctive relief and damages.

8.9 Persons Bound. All references herein to an Owner, resident, tenant, renter, lessee, guest, or invitee shall be deemed to include their respective executors, administrators, employees, representatives, successors and assigns, and the terms, covenants, and conditions herein contained shall apply to and be binding upon them.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

MILLPOINT P.U.D. OWNERS ASSOCIATION,  
INC., a Utah nonprofit corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_