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RICHARD T. MAUGHAN
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS
FOR
MILL CREEK HOLLOW,
a Utah subdivision**

*11-648-0001
thru 0009*

**DECLARANT
MILL CREEK HOLLOW, LLC
A Utah limited liability company**

**WHEN RECORDED RETURN TO:
MILL CREEK HOLLOW, LLC
175 Mill Road
Kaysville, UT 84037**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS
FOR
MILL CREEK HOLLOW
(a Utah subdivision)**

This Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Mill Creek Hollow, an Expandable Utah Planned Unit Development, is made and executed by Mill Creek Hollow, LLC, a Utah limited liability company, of 175 Mill Road Kaysville, UT 84037 (the "Declarant").

RECITALS:

- A. The Property is an area of unique natural beauty, featuring distinctive terrain;
- B. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.
- C. This Declaration of Covenants, Conditions and Restrictions affects that certain real property located in Davis County, Utah described with particularity in Article II below (hereinafter referred to as the "Tract").
- D. Declarant is the Owner of the Tract.
- E. Declarant has constructed, is in the process of constructing, or will construct upon the Tract a residential subdivision which shall include certain Lots, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Final Plat to be recorded concurrently herewith.
- F. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Tract, together with an appurtenant ownership interest in the Association of Lot Owners, subject to the Final Plat, the covenants, conditions and restrictions set forth herein.
- G. Declarant desires, by filing this Declaration of Covenants, Conditions and Restrictions, to submit the Tract and all improvements now or hereafter constructed thereon.
- I. The Project is to be known as "Mill Creek Hollow."
- J. Declarant intends to construct the Common Area and Lots (as defined in the Declaration) shown on the Final Plat.

AGREEMENT

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The said covenants, conditions, restrictions and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals. The City of Kaysville is intended to be a third party beneficiary of this agreement.

I. DEFINITIONS

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

1. Accessory Building shall mean and refer to any structure which (1) is not the preliminary structure, (2) contains at least 120 square feet, (3) requires a building permit, (4) is not a shed, shack or other out-building (for which a building permit is not required), and (5) qualifies as such under the totality of the circumstances in the opinion of the Architectural Review Committee (the "ARC").
2. Additional Land shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference.
3. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Mill Creek Hollow Homeowners Association, Inc. on file or to be filed with the Utah Department of Commerce.
4. Assessment shall mean and refer to any amount imposed upon, assessed or charged a Lot Owner or Resident at the Project.
5. Association shall mean and refer to all of the Lot Owners at Mill Creek Hollow taken as or acting as, a group in accordance with the Declaration.
6. Board of Directors shall mean and refer to the governing board of the Association.
7. Builder shall mean and refer to the Person who builds a home on a Lot.
8. Building shall mean and refer to any of the structures constructed in the Project.

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

10. **Bylaws** shall mean and refer to the Bylaws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "B."

11. **Capital Improvement** shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair or maintenance.

12. **City** shall mean and refer to the City of Kaysville, Utah.

13. **Class B Control Period**. Means and refers to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) five (5) years from the effective date of this Declaration, (b) not less than 120 days after all of the Lots have been conveyed, or (c) the Declarant executes and records a written Waiver of its right to control. The Class B Control Period is also known as the "Period of Declarant's Control."

14. **Common Area** shall mean and refer to all real property in the Project owned in common by the Lot Owners including but not limited to the following items:

a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Lots.

b) All Common Area and Facilities designated as such in the Final Plat;

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

d) The Project's outdoor grounds, open space, retention pond, private street(s), entry and entry monument;

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 the owners.

Provided, however, utility installations such as power, gas, water, sewer, or the retention basin may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

15. Common Expense shall mean and refer to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (e) Expenses declared common expenses by the Declaration.

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

17. County Recorder shall mean and refer to the Davis County Recorder in the State of Utah.

18. Covenant to Share Costs shall mean and refer to any declaration of easements and/or covenant to share costs executed by Declarant or the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association and the present and future owners of real property subject to such Covenant to Share Costs and/or which obligates the Association and such owners to share the costs of maintaining or contributing to maintain certain property described therein.

19. Declarant shall mean and refer to Mill Creek Hollow, LLC, a Utah limited liability company.

20. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Mill Creek Hollow.

21. Declarant shall mean and include Mill Creek Hollow, a Utah limited liability company, and any Person or Persons who might acquire title from it to all or some of the unsold Lots through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Lots in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration and any Supplemental Declaration applicable to the property; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant, or its successor in interest, and the Declarant, or its successor in interest, with respect to such property.

22. Design Guidelines shall mean and refer to the architectural and engineering plans and specifications and guidelines prepared by the Declarant and approved by the City for the

construction of the Buildings, Lots, and other physical improvements in the Project, including by way of illustration but not limitation all structural components and Exterior Materials. The City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion.

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

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

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

26. Entry shall mean the entry way into the Project.

27. Entry Monument shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Project located at or near the Entry or entrance to the Project.

28. Exterior Materials shall mean and refer to the construction materials on the exterior of a structure Visible from a Neighboring Property, such as stone, rock, brick, stucco, hardiplank, wood, finished lumber, brick, cinder block, concrete block, aluminum, vinyl or other similar materials. Exterior residence materials shall be of a noncombustible material as approved by the City. Stone, rock, brick, stucco, and hardiplank are "authorized" Exterior Materials. Any other Exterior Materials shall be considered "non-conforming" and "unacceptable" unless expressly approved in writing by the Architectural Review Committee. The City shall assume no responsibility for enforcement of the External Materials, but reserves the right to and may enforce any External Material requirement at any time and in its sole discretion. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by Declarant or its designee.

29. Family shall mean one of the following: (1) a single person living alone; (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild, with an additional person or persons as domestic help or a caretaker; or (3) a group of not more than three unrelated persons living and cooking together as a single housekeeping Lot and maintaining a common household, but not as a boarding or rooming house.

30. Final Plat shall mean and refer to the final Plat Map of the Mill Creek Hollow on file in the office of the County Recorder of Davis County, as amended or supplemented from time to time.

31. Guest shall mean and refer to a visitor, guest, invitee, or any other person whose presence within the Project is approved by or is at the request of a particular Owner or Permittee.

32. Historical Property shall mean and refer to real property listed on the state of national register of historical places.

33. Home shall mean and refer to both the structure and use of a dwelling unit, living unit or residence constructed upon a Lot.

34. Individual Charges shall mean and refer to a charge levied by the Board of Directors against an Owner or Permittee for all expenses resulting from the act or omission of such Owner or Permittee, excepting the Owner's failure to pay any Assessment.

a) The act or negligence of any Permittee shall be deemed to be the act or negligence of the Owner responsible for the Permittee.

b) Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or Permittee;

1) The cost to repair any damage to any portion of the Project on account of loss or damage caused by such Owner or Permittee;

2) The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Owner or Permittee, or resulting from the breach by such Owner or Permittee of any provisions of the Project Documents;

3) Any transient occupancy tax, sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner or Permittee which the Association is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied;

4) Administrative costs and expenses incurred by the Committee in enforcing the Project Documents;

5) Any other fine, charge, fee, due, expense, or cost designated as an Individual Charge in the Project Documents or by the Board of Directors;

6) Attorney fees, interest, and other charges relating thereto as provided in this Declaration; and

7) Individual a la carte services provided, such as cable television, additional lawn, yard or garden care, the cost of insurance covering the deductible on the Association all-risk policy, and so forth.

While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Association and Board of Directors also shall have all other remedies, both legal and equitable, described in this Declaration available against any Owner for nonpayment of such Owner's other monetary obligations.

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

36. Lot shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Lot, or located without said Lot but designated and designed to serve only that Lot, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows, window units and window frames, doors, door units and door frames, trim, carpeting, tile, linoleum and so forth. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Lot or serving only the Lot, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Lot, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Lot is located shall be deemed to be part of the Lot.

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

38. Lot Owner shall mean and refer to the person who is the Owner shown of record in the office of the County Recorder of Davis County, Utah of a fee or an undivided fee interest in a Lot. The term Lot 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.

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.

40. Management Committee shall mean and refer to the Board of Directors.

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

42. Map shall mean and refer to the Final Plat.

43. Member, unless the context clearly requires otherwise, shall mean and refer to a member of the Association.

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

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

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

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

48. Permittee shall mean and refer to a Guest, tenant, renter, lessee, or permittee of the Owner.

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

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

51. Plat Map shall mean and refer to the Final Plat.

52. Project shall mean and refer to this Mill Creek Hollow Subdivision.

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

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

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

56. Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration

resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

57. Resident shall mean and refer to any person living or staying at the Project.

58. Single Family shall mean one Family Lot.

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

60. Visible From a Neighboring Property shall mean with respect to any object, that such object is or would be visible to an individual six feet (6') tall, standing at ground level on any portion of the neighboring property.

II. SUBMISSION

The Land described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the Act.

The Land is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of the City to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is SUBJECT TO the described easements and rights of way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements and are depicted on the Final Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration and not limitation all easements and rights-of-way in and to the detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary

for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. It is intended that the Project will consist of 7 Lots, numbered 1-7, inclusive. The Common Area and Facilities will include open space, retention pond, private street(s), entry, entry monument, and other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Final Plat.

2. Description and Legal Status of the Property.

a) The Final Plat shows the Lot Number of each Lot, its location, and the Common Area and Facilities to which it has immediate access.

b) All Lots shall be capable of being independently owned, encumbered and conveyed; and shall have an appurtenant ownership interest in the Association, subject to the rights of Declarant, Declarant and City, and all easements of record.

c) Title to the Common Area and Facilities is hereby granted to and the Common Area and Facilities shall be owned by the Association for and in behalf of the Owners.

d) No Person may own less than a 25% ownership interest in a Lot.

3. Membership in the Association. Membership in the Association is mandatory. Each Owner by virtue of his or her acceptance of a deed or other document of conveyance is a member of the Association. Membership may not be partitioned from the ownership of a Lot.

4. Allocation of Profits, Losses and Voting Rights.

a) Voting rights (subject to subsection (b) below) shall be distributed among the Owners equally and the ownership interest in the Association appurtenant to each Lot is equal. The ownership interest of each Lot and Owner in the Association shall have a permanent character and shall not be altered without the express affirmative consent of at least two-thirds (2/3) of the Lot Owners memorialized in an amendment to the Declaration duly recorded.

b) The Association shall have two (2) classes of membership -- Class A and Class B, described more particularly as follows:

1) Class A Members shall be all Owners with the exception of the Class B Members, if any.

2) Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

(a) Each Lot shall have one (1) vote;

(b) No vote shall be cast or counted for any Lot not subject to assessment;

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

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

3) Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant.

(a) The Class B Member shall originally be entitled to three (3) votes per Lot owned.

(b) The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which is hereinafter referred to as the "Event" or "Events"):

(1) Four months after seventy five percent (75%) of the Lots have been sold; or

(2) Five years from the effective date of this Declaration; or

(3) When, in its sole discretion, Declarant so determines and records a written "Notice of Termination of Class B Control Period."

From and after the happening of these Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has

not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

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

All of Lot No. ___ in Building No. ___ contained within Phase ___, Mill Creek Hollow, as the same is identified in the Final Plat recorded in Davis County, Utah as Entry No. ___ in Book ___ at Page ___ of the official records of the County Recorder of Davis County, Utah (as said Final Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for Mill Creek Hollow recorded in Davis County, Utah as Entry No. ___ in Book ___ at Page ___ of the official records of the County Recorder of Davis County, Utah (as said Declaration may have heretofore been supplemented), together with an ownership interest in the Association.

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. The membership in the Association shall not 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 shall automatically accompany the transfer of the Lot to which they relate.

6. **Ownership.** Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot and to membership in the Association.

a) **Nature and Restrictions on Ownership and Use in General.** Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Lot. There shall be no requirements concerning who may own a Lot, it being intended that they may and shall be owned as any other property rights by persons. The Common Area shall only be used in a manner consistent with the residential nature of the Project.

b) **Title to the Common Area.** Title to the Common Area and Facilities shall be vested in the name of the Association.

c) **Mandatory Association.** Each purchaser of a Lot, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a member of the Association.

d) **Rules and Regulations.** The Association, acting through its Board of Directors, shall have the power and authority to adopt administrative and/or house rules and regulations and, in its sole discretion, to impose reasonable user fees for the amenities. Such

rules, regulations and use restrictions shall be binding upon all Owners and Residents, their guests and invitees.

e) Parties Bound. All provisions of the Project Documents shall be binding upon all Owners, Guests and Permittees.

7. Initial Use Restrictions. The Property is subject to the following initial Use Restrictions:

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

1. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about his or her Lot or the Common Area;

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

3. Unreasonable amounts of noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m. during the week and midnight and 8:00 a.m. during weekends and holidays; and

4. Drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; parties which occur frequently which bother, annoy or disturb other reasonable residents or interfere with their quiet and peaceful enjoyment of the premises; prostitution; or other violation of U.C.A., Section 78-38-9 (1999) as amended or supplemented.

(b) Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be deposited in sealed plastic bags or other authorized containers, shall be regularly removed from the Lot, not being allowed to accumulate therein so as to create a sanitation, health or safety hazard, and shall be disposed of within dumpsters provided by the Association.

(c) Subdivision of a Lot. No Lot may be subdivided.

(d) No Severance. The elements of a Lot and other rights appurtenant to the ownership of a Lot, including interest in Common Area and Facilities if any, are inseparable, and each Owner agrees that he or she shall not, while this Declaration is in effect, make any conveyance of less than an entire Lot and such appurtenances. Any conveyance made

in contravention of this subsection, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

(e) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or 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.

(f) Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures, including but not limited to dog runs, storage Lots, tents, trailers and sheds or their equivalent, without the prior written consent of the Board of Directors; provided, however, tents may be allowed for up to twenty-four (24) hours by Lot Owners in their Limited Common Area or the Common Area immediately adjacent to their homes.

(g) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. 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 occupant in, on or about the Common Area without the prior written consent of the Board of Directors. The Board of Directors may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.

(h) Energy Conservation Equipment. Unless expressly allowed by state law or City ordinance, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior express written consent of the Board of Directors.

(i) Business or Commercial Use. Except to the extent specifically and expressly permitted by this Declaration, Owners shall not make any commercial use of the Lots, or any portion thereof, with the exception of home occupations which do not increase traffic into the Property, subject to rules and regulations enacted by the Board of Directors; provided, however, that nothing in this subsection shall prevent Declarant or an affiliated entity or a duly authorized agent from using any Lot owned or leased by Declarant as sales offices and model units or a property management office or for other commercial purposes. Home bases businesses are allowed under limited circumstances, and must comply with community guidelines. No business or commercial use may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all home occupation ordinances and zoning requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board of

Directors. The prior written consent of the Board of Directors is required for any type of home based business. No businesses are allowed that have employees of any kind, or that have any customers that are not residents of the community. Examples include, but are not limited to: day care/pre-schools, hair/nail salons, auto repair, general office (i.e. mortgage, accounting, legal), call centers, contractors gathering, storage of heavy equipment, etc. In the event of a dispute between an Owner and the Board of Directors regarding compliance with this subsection, the decision of the Board of Directors shall be final, conclusive and binding. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this subsection.

(j) 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:

1. The parking rules and regulations adopted by the Board of Directors from time to time;

2. The parking areas are not designed for Recreational, Commercial or Oversized motor vehicles and the Board of Directors has the right to make rules and regulations restricting or prohibiting their use. Unless otherwise determined by the Board of Directors, all Recreational, Commercial and Oversized Vehicles shall be parked outside the Project, except for purposes of loading and unloading.

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

4. Except for purposes of loading and unloading, no motor vehicle or trailer may be parked or stationed in such a manner so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Lot, or in an unauthorized Common Area.

5. Residents may only park their motor vehicles within their designated garages, covered parking spaces, or in other designated Common Area parking stalls.

6. Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas.

7. Overnight parking on the street(s) is prohibited.

8. Guests shall park their motor vehicles in Common Area designated for Guest or visitor parking.

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

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

11. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

12. All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.

(k) Aerials, Antennas, and Satellite Systems. Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter or diagonal measurement; (b) antennas or satellite dishes designed to receive vidco programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is: (1) located in the Lot so as not to be Visible From A Neighboring Property. Ham Radio antennas are not allowed. The Board of Directors may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device in the authorized areas.

(l) Window Coverings, Awnings and Sun Shades. No-aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Lot. Sun shades are not allowed on the exterior of any home, unless the color, style, construction material and uniformity of appearance is approved by the Board of Directors.

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

(n) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per Lot are allowed. All pets must be properly licensed and registered with the appropriate governmental agency, abide by all pet rules and regulations adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to the property of anyone other than its Owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines or howls, or makes other disturbing noises in an excessive, continuous or untimely fashion; or (f) it molests or harasses

passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area. The Board of Directors may require a pet deposit or a pet registration fee.

(o) Chimes and Musical Sound Makers. Chimes, dream catchers, bells, tubes or other objects hung vertically outside the home which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

(p) Mailboxes. Only gang mailboxes installed or to be installed by the Declarant are allowed.

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

(r) Structural Alterations. Except in the case of an emergency repair, no structural alterations, plumbing, electrical or similar work within the Common Area shall be done or permitted by any Owner without the prior written consent of the Board of Directors.

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

(t) Laws. Nothing shall be done or kept in, on or about any Lot or Common Area, 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.

(u) Damage or Waste. No damage to, or waste of, the Common Area shall be committed by any Owner, Resident, or Permittee. Each Owner and Resident shall indemnify and hold the Board of Directors and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner, Resident, or Permittee; provided, however, that any invitee of the Declarant and/or Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

c. 8. Leases. In order to maintain the value of the purchased property and subdivision, each Home must be owner-occupied, unless the Owner is granted upon application in writing a hardship exemption. The term "owner-occupied" shall mean a Home occupied by one of the following: (a) The vested owner as shown on the records of the County Recorder; (b) The vested owner and/or his spouse, children or parents; or (c) The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner, provided, the occupant holds a beneficial interest in such legal entity of at least 50.0% and/or his spouse, children or parents. The Board of Directors is hereby empowered but not required to

allow the leasing of a Home upon written application to avoid undue hardship on an Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which: (i) An Owner must relocate his residence and cannot, within ninety (90) days from the date the Home was placed on the market, sell the Home while offering it for sale at a reasonable price no greater than its current appraised market value; (ii) The Owner dies and the Home is being administered by his estate; (iii) The Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Home; or (iv) The Home is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents, and spouse. Rental rules and regulations may be adopted by the Board of Directors. No Owner may lease or rent his Home for a period of one (1) year from the date of closing. No Owner shall be permitted to lease his Home for short term, transient, hotel, vacation, seasonal or corporate use purposes. For purposes of this section the term "short term" shall be considered to be any rental with an initial term of less than one (1) year. No Home may be rented more than one time in any twelve (12) month period. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate Persons or less than his entire Home, including by way of illustration but not limitation letting a room to domestic help or a caretaker, without the prior express written consent of the Board of Directors. "For Rent" or "For Lease" signs are prohibited. The Board of Directors must approve in writing all lease and rental agreements as to form. Any lease or rental agreement not approved or in violation of the Project Documents shall be considered "non-conforming" and, as such, voidable by the Board of Directors. The Board of Directors may also require that Owners use lease forms or addenda, such as the Crime Free Addendum or the Drug Free Addendum, approved by the Association (or include specific terms in their leases). Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Lot, that in order to maintain the value of the purchased property and the subdivision, to pay to the Association a sum equal to five percent (5%) of the gross sales price on the Lot as a transfer fee if his Lot is sold or if he enters into a lease/option or other similar agreement on the Lot without the express prior written consent of the Board of Directors.

9. Easements. The Property is subject to the following easements.

a. Non-Exclusive Easement. The City and Association reserve to themselves a non-exclusive easement over, across, through, above and under the Lots and the Common Area for the operation, maintenance, and repair of the Common Area and Facilities. The City shall assume no responsibility for maintenance, but reserves the right to and may enforce maintenance obligations at any time and in its sole discretion.

b. Grant of Easement. Declarant hereby reserves to itself and grants to the Association a nonexclusive, perpetual right-of-way and easement over, across and through the Tract, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein. Said easement is to be used in common by Declarant, Association, and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein.

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

d. **Encroachments.** If any part of the Common Area and Facilities encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Area and Facilities, 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 Area and Facilities or the 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 Final 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.

e. **Improvements.** Improvements, including Lots, Common Area and Facilities constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Declaration necessary to repair, maintain and operate such improvements is hereby granted.

f. **Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot he or she is occupying and to any Common Area and Facilities appurtenant to his or her Lot, and shall have the right to the horizontal, vertical and lateral support of his or her Lot.

g. **Declarant's Easement.** The Declarant hereby reserves to itself an exclusive easement to make such use of the Common Area and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Area and Facilities.

h. **Construction Easements.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area and Facilities for the purpose of doing all things that is reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots and Common Area and Facilities. The Owners of Lots by acceptance of a deed or other document of conveyance do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots and the Common Area and Facilities appurtenant thereto until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners in the Project.

Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

i. Locations Facilities Easements. Declarant hereby reserves to itself a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities of the Project 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, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

j. Entry Monument Easement. Easements for the Entry Monument and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Final Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his or her sole expense, excepting those improvements for which a public authority or utility company is expressly responsible.

k. Storm Drain System, Slope and Drainage Control. The Declarant shall establish a storm drainage system and retention pond designed to serve the entire Project, including by way of illustration but not limitation a retention pond. The Declarant shall require each Lot to install, at the Owner's sole expense, a subsurface drain around the entire Lot (collectively "Subdrain System"). Each Owner by virtue of his acceptance of a deed or other document of conveyance agrees to and shall install said Subdrain System on his Lot.

l. Maintenance. The Association is responsible to maintain, repair and replace the Subdrain System located in, on, under or within the boundaries of the Common Area. Each Owner is responsible to maintain, repair and replace the Subdrain System located in, on, under or within the boundaries of his or her Lot.

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

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

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

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

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

7. **Costs.** The cost of all improvements, maintenance, repairs and replacements of that part of the Subdrain 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 that part of the Subdrain System located in the Common Area shall be the responsibility of the Association.

8. **Default.** If an Owner fails to properly manage, maintain, repair or replace that part of the Subdrain System in, on, under or within the boundaries of his or her Lot, then the Association shall have the right, but not the obligation, to do the work and charge the cost thereof to the responsible Owner or Owners.

9. **Governmental Approval.** The Association shall not have unilateral authority to change, by vote, alienation, alteration, transfer, sale, or otherwise, the use of the

Subdrain System without the consent of Kaysville City (the "City"), who is hereby made a party to the covenants established by this Declaration for the sole purpose of protecting and preserving the use of the Subdrain System; however, the City shall neither be a member of the Association nor has a vote in the management, operation or regulation of its affairs, although the City is hereby granted a right of enforcement. This Section may not be amended without the express written consent of the City.

1. Member's Easements and Rights of Way. Each Owner shall have the right and non-exclusive easement to use and enjoy the Common Area and Facilities. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions:

1. The right of the Association to limit the number of Guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Area and Facilities;

2. The right of the Association to suspend voting rights by a member for: (a) any period during which his Assessment remains delinquent, and (b) a period not to exceed thirty (30) days after notice and hearing as may be set forth hereinafter for any infraction of the Association rules; and

3. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities 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 the Declarant.

10. Liability of Owners and Residents For Damages and Waste. Each Owner or Resident shall be strictly liable to the Association, or other Owners or Residents, for damages to person or property and waste caused by his or her negligence.

11. Board of Directors. The Association shall be managed, directed, and governed by a Board of Directors, also known as a Board of Directors, consisting of three (3) individuals.

12. Officers and Agents. The Board of Directors shall elect and/or appoint officers and agents of the Association, including without limitation a President, Secretary, and Treasurer.

13. Board of Directors Meetings. The Board of Directors shall meet at regular intervals and at least quarterly.

14. 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 Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (m) below, constitute a

legal entity capable of dealing in its Committee name. The Board of Directors shall have, and is hereby granted, the following authority and powers:

a) Access. The right, power and authority to have access to each Lot: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Lot being entered, as may be necessary for the maintenance, repair or replacement of any of the Common Area and Facilities; or (2) for making emergency repairs necessary to prevent damage to the Common Area and Facilities or to another Lot or Lots, provided that a reasonable effort is made to provide notice to the occupant of the Lot prior to entry.

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 Area for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project, including by way of illustration but not limitation a reciprocal or cross easement for the use and maintenance of the retention pond located or to be located off-site.

c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Final 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) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

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

h) Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

i) Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by at least seventy-five percent (75%) of the Association Members.

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

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

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

m) 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.

Anything to the contrary notwithstanding, while Declarant controls the Association and before the end of the global change to Class B Control Period, any amendments to the Declaration or mergers must be approved in writing and in advance by Declarant.

15. Delegation of Management Responsibilities: The Board of Directors may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Board of Directors may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause upon at least thirty (30) days notice.

16. Owners Meetings. The Association shall meet at least annually.

17. Lists of Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Board of Directors shall maintain up-to-date lists of the name, address and phone number of all Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Owners, Mortgagees, Insurers and Guarantors have a duty to provide this information to the Board of Directors.

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

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

b) Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the Owners.

c) Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the Owners.

19. Operation, Maintenance and Alterations. Each Lot and the Common Area shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

a) Clean, Safe, Sanitary and Attractive Condition. The Lots and Common Area shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition, consistent with Community Standards.

b) Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with any City landscaping maintenance plans or ordinances. Specific additional written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Board of Directors from time to time. All landscaping shall be maintained in a safe, sanitary, aesthetic and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. All landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project. Anything to the contrary notwithstanding, all landscaping must abide by and strictly comply with all soils report recommendations and City requirements.

c) Area of Common Responsibility. Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Area and Facilities within or serving the Project. The Association shall remove all ice and snow accumulations from the private street(s).

d) Area of Personal Responsibility. Each Owner shall maintain, repair and replace his or her Lot, including without limitation all interior spaces and improvements, individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door systems, garage

doors and garage door systems, patios, balconies and decks, plumbing fixtures, systems and lateral pipes or valves servicing only his or her Lot, including any damage caused thereby and not covered by insurance. No Lot Owner shall allow his or her Lot or home to detract from the health, safety or uniform appearance or design scheme of the Project. Each Owner shall remove all snow and ice accumulations from his Lot.

e) Default Provisions. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Association, or Board of Directors may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The term "emergency" as used here means a situation or condition in which there is a threat of imminent and substantial harm to person or property. The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Lot Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Lot Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses.

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

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

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

a) Declarant and/or Declarant. Anything to the contrary notwithstanding, neither the Declarant nor the Declarant shall not be obligated to pay Assessments on any Lots owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Lots are sold or rented; or (3) Declarant and/or Declarant elects in writing to pay the Assessments, whichever first occurs.

b) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including

the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

c) Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Board of Directors from time to time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Board of Directors.

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

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

(2) Basis. 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 Area and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Area and replacement of those elements of the Common Area that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

e) Apportionment. The voting rights shall be distributed among and the Common Expenses shall be charged equally and uniformly to all of the Lot Owners.

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

g) Assessment Payments. All Assessments and Additional Charges will be billed annually to the Owners and must be paid by the February 1. Assessments must be paid in a yearly installment on or before February 1 or in the alternative, if an Owner prefers, an Owner may elect to make semi-annual payments due February 1 and August 1. The charge for the privilege of making semi-annual payments shall be \$50.00, although this amount may be changed by the Board of Directors from time to time without further notice.

h) Additional Services. The Board of Directors may but is not obligated to add to the Assessment of any particular Lot or Lot Owner additional charges for individual services offered or provided, not a Common Expense.

i) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the Owner of record in the offices of the County Recorder of Davis County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

j) 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 Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

k) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

l) Reserve Account. The Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses, major Repairs, and Capital Improvements.

m) Analysis Report. The Board of Directors shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

n) Acceleration. The Board of Directors may but is not obligated to accelerate the entire annual Assessment of a delinquent Owner who has not cured his or her default within thirty (30) days after written notice.

o) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his or her Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may

require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

p) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments and each Owner, by accepting a deed or other document of conveyance to a Lot, waives his or her right to claim a homestead exemption has priority.

q) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended for up to ninety (90) days if the Owner is delinquent in the payment of Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

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

a) Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100th Dollars (\$500.00) per Lot in any one fiscal year (the "Special Assessment Limit"), the Committee 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 Committee in its discretion may allow any special assessment to be paid in installments.

22. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Board of Directors shall have the power and authority to assess an Owner in a particular area as follows:

(1) Benefit only To Specific Lot. 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) Unequal or Disproportionate Benefit. 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.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any

expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

23. **Individual Charges.** Individual Charges may be levied by the Board of Directors against a Lot and its Owner and shall be due not earlier than thirty (30) days after written notice.

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

a) **Delinquent Assessments.** Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

b) **Late Fees.** A late fee may be assessed in an amount to be determined by the Board of Directors. A payment received by the Board of Directors ten (10) days or more after its due date shall be considered late for purposes of this subsection.

c) **Default Interest.** The Association may charge interest at a rate determined by the Board of Directors on the outstanding balance of an Owner's account until paid.

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

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

f) **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, trust deeds or encumbrances may be foreclosed.

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

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

i) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and Current Assessments.

j) 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 Committee. The sale or foreclosure shall be conducted in the same manner as either judicial or non-judicial foreclosures in deeds of trust or mortgages, or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rent without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

k) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, the Owner hereby transfers in trust to said Trustee all of his or her right, title and interest in and to the real property for the purpose of securing performance of the obligations set forth herein.

l) Attorney in Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his or her attorney in fact to collect rent from any person renting his or her Lot, if the Lot is rented and Owner is delinquent in 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.

m) Lenders, Foreclosures and Unpaid Assessments. Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot in a voluntary conveyance or pursuant to the remedies in a mortgage or

trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including reasonable attorneys fees, against the Lot for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

n) Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments. If an Owner fails or refuses to pay any Assessment when due, the Board of Directors may terminate the Owner's right to receive utility services paid as a Common Expense, after giving notice and an opportunity to be heard.

o) Assignment of Rents. If the Owner of a Lot who is leasing the Lot fails to pay any assessment for a period of more than thirty (30) days after it is due and payable, the Board of Directors may demand the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the Manager or Board of Directors must give the Owner written notice of its intent to demand full payment from the tenant.

Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or Board of Directors must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the Owner.

As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a Lot by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

25. 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 attorney's 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 (except to the extent that such officers or members of the Board of Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board 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.

26. **Insurance.** The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the Property, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual Owners.

a. **Insurance Obligation of the Association.** The Association shall obtain the following insurance coverage (collectively, "Association Master Policy"):

1) **Public Liability.** Public liability coverage for the Common Area and Facilities;

2) **Common Area and Facilities.** Property, fire and extended hazard coverage for all Common Area, Elements and Facilities:

3) **Buildings and Units.** Property, fire and extended hazard coverage for all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building and is considered Common Area, Elements and Facilities;

4) **D&O.** Directors and officers coverage; and

5) **Fidelity Bond.** A fidelity bond.

The Association's Master Policy **DOES NOT** cover the contents or the personal property in the Unit or belonging to the Owner or renter (as defined below), or personal liability. Coverage C (as that term is defined by the standard homeowners insurance policy) – Personal Property is excluded from the Association Master Policy. The Association **IS NOT REQUIRED** to cover property, fire or hazard insurance on a Unit or loss of business, rents or rental income although it expressly reserves and is hereby granted the right to obtain such and other coverage for its benefit.

b. **Minimum Amount of Insurance Coverage.** The liability insurance purchased by the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate and optional umbrella liability coverage to be determined by the Board of Directors from time to time for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Board of Directors.

c. **Name HOA as "Loss Payee" or "Additional Insured."** Any insurance policy obtained independently by the Association, if any, shall name the Association as a certificate holder, additional insured and/or loss payee if applicable.

d. **Premium a Common Expense.** The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

e. Insurance Obligation of Owner. The foregoing obligation and right of the Association to purchase insurance coverage **DOES NOT** preclude the right or negate the obligation of each Owner to insure his or her own Lot for his or her benefit. **EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE (collectively, "Owner Policy"):**

1) **Public Liability Insurance. PUBLIC LIABILITY COVERAGE FOR HIS OR HER LOT. THE LIMITS OF HIS OR HER PUBLIC LIABILITY INSURANCE POLICY SHALL BE IN AN AMOUNT NOT LESS THAN \$500,000.00 FOR BODILY INJURY, DEATH, AND PROPERTY DAMAGE.**

2) **Coverage "A" Building (as that term is defined by the standard homeowners insurance policy) A COVERAGE "A" BUILDING POLICY IN THE AMOUNT OF AT LEAST \$100,000.00;**

3) **EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO HIS OR HER LOT, TO WIT: For use herein the insurance required shall cover at least the Lot, including the interior boundaries of the Dwelling Unit or Home (the "Unit") which are defined as follows: The horizontal boundaries extend to the intersection with the vertical boundaries. Each Unit's lower boundary shall be a plane coinciding with the top of the concrete slab below the Unit's floor and each Unit's upper boundary shall be a plane coinciding with the top the Unit's ceiling. The vertical boundaries extend to the intersection with each other and with the horizontal boundaries. Each Unit's vertical boundaries shall be its perimetric walls. This includes by way of illustration but not limitation the sheetrock, drywall or plaster, windows and window frames; doors; stairwell; appliances; mechanical equipment and appurtenances located within any one unit or located outside said unit but designated and designed to serve only that unit; garage, porches, verandas, patios, balconies, decks, attics, subdrain, plumbing-including all pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only that unit including sewer, water main that enters the property and pipes within the home; electrical receptacles and outlets, air conditioning and compressors and other air cooling apparatus, boilers, water heaters and water softeners; cabinets, fixtures, lighting, sinks, tubs, counters, countertops and islands, hardware; all decorated (affixed) interiors and surfaces of interior structural walls, floor coverings, ceilings and trim, consisting of wallpaper, paint, wood floors, carpeting and tile; patio porch, or deck, along with any covering of said patio, porch or deck; interior of garage, storage and any other areas which shall pass with the title to the Unit with which is associated and any Limited Common Area and facilities that are reserved for the use of the individual Unit. EACH OWNER IS ENCOURAGED TO SPEAK WITH HIS OR HER INDEPENDENT INSURANCE AGENT BEFORE DETERMINING THE AMOUNT OF AN OWNER POLICY.**

4) Changes in Amounts of Required Insurance. The amounts of insurance required shall be reviewed by the Board of Directors and the Association's insurance agent at least annually, and may be increased or decreased unilaterally by the Board of Directors at any time.

5) Coverage C (as that term is defined by the standard homeowners insurance policy) – Personal Property/ Contents and Lost Rents. **EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C – PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS OR HER LOT AND LOST BUSINESS, RENTS OR RENTAL INCOME.** For use herein the term "contents" shall mean and include in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original design and specifications, and all personal property, belongings and effects in the Lot, Unit, Building or Common Area and Facilities not covered by the HOA Master Policy.

6) Premium Is An Individual Expense. The insurance premium on the Owner Policy shall be an Individual Expense.

7) Maintenance of Coverage. The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

8) Not a Limitation. The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he or she may deem appropriate.

9) Name Association as "Additional Insured." Each Owner Policy shall name the HOA as an "Additional Insured."

10) Certificate of Insurance. Each Owner shall provide the Association with a "Certificate of Insurance" upon request.

f. Owner's Default. If an Owner fails to obtain an Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if an Owner fails to obtain the required Owner Policy, then he or she shall be personally responsible to pay any deductible on the Association Master Policy as well as any and all costs, up to the minimum amount of coverage, incurred for repairs of or to the building as defined in Subsections 6.6.2 and 6.6.3 above.

g. Payment of Deductible. It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the HOA Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. It is the intent of the Declarant to obtain property, fire and extended hazard insurance with a \$10,000.00 deductible. This amount may be increased or decreased unilaterally by the Board of Directors upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

h. Damages. Each Owner is responsible for the maintenance of his or her Lot and for the repair of any damage he or she causes to another Lot or the Common Area and Facilities.

i. Validity of Document. If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

j. Right to Adjust Claims. The Association has the right, power and authority to adjust claims.

k. Use of Insurance Proceeds and Repairs. Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

l. Quality of Insurance Company. The Association and Owners shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

m. Primary Coverage. It is the intent of the Declarant that the Owner's Coverage A - Building provide **PRIMARY** coverage and that the Association Master Policy provide **SECONDARY** coverage.

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

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

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of

restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

(4) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

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

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

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

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

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

c) **Restoration of the Project.** Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the ownership interest in the Association and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the ownership interest in the Association which is then subject to Mortgages held by Eligible Mortgagees.

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

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

f) **Inadequate Insurance.** If the cost of Restoration exceeds Available Funds, the Board of Directors may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

g) **Reallocation in Event of Partial Restoration.** In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a Planned Unit Development project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the ownership interest in the Association shall be immediately reallocated to the remaining Lots.

h) **Sale of Project.** Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, Planned Unit Development ownership under this Declaration and the Final Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective ownership interests in the Association. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

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

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

k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

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

m) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Lot Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder (except (where appropriate) the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA)) fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

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

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

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

c) Notice. If approved, written notice of the approval must be given to all Lot Owners at least ten (10) days before any action is required by them.

29. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Board of Directors or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

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

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

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

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

(2) No contract may be for an initial term greater than one (1) year.

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

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

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

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

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

f) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

30. Amendment. This Declaration may be amended as follows:

a) General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the addition or annexation of any land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the total ownership interest in the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting.

b) Initial Declarant Right to Amend. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot.

c) Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner of said Lot shall consent thereto in writing.

d) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the express written consent of said Lot Owner:-

e) To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the desire of Declarant that Declarant retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, then Declarant shall have the unilateral right to amend this Declaration to restore such control.

f) Rights of Declarant and Declarant. No provision of this Declaration reserving or granting to Declarant and/or Declarant any unexpired rights, including by way of illustration but not limitation any and all developmental rights, may be amended, including by way of illustration but not limitation a modification which would terminate or decrease any such rights, without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

g) Execution of Amendments.

1) An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder.

2) An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association, who shall certify that all of the voting requirements have been satisfied, and the Declarant, if the Declarant's consent is also required, and recorded in the office of the County Recorder.

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

i) Consent of Eligible Mortgagees to Add or Amend Any Material Provision. The consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the ownership interest in the Association shall be required to add to or amend any material provision of this Declaration or the Final Plat which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for maintenance, repair, and replacement of Common Area, Facilities and Elements;
- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area, Limited Common Area, and general or limited common elements, or rights to their use;
- Redefinition of any Lot boundaries;
- Convertibility of Lots into Common Area or Elements, or vice versa;
- Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Lots;
- Imposition of any restrictions on a Lot Owner's right to sell or transfer a Lot;
- A decision by the Association (if the Project consists of more than 50 Lots) to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this paragraph if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Final Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Final Plat or the termination of the legal status of the Project. If such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

31. Due Process Requirements; Notice of Hearing; Opportunity to be Heard. In the event of a claimed violation of the Project Documents or the Act, no citation or suspension shall be imposed without the Board of Directors first giving the alleged violator written notice of the violation and an opportunity to be heard by the Board of Directors. Provided, however, nothing herein shall be construed to prevent the Board of Directors from (a) immobilizing, towing or impounding a motor vehicle in violation of the parking rules and regulations for which no additional notice is required, or (b) making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice to the Lot Owner or resident and giving them an opportunity to be heard.

32. Declarant's Sales Program. Anything to the contrary notwithstanding, until Declarant has sold all Lots owned by it, or the expiration of five (5) years following the date on which the Declaration is filed for record in the Office of the County Recorder, whichever first occurs, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay his or her portion of the Common Expenses or other Assessments, except as herein otherwise provided. Neither the Owners, the Association, nor the Board of Directors shall interfere with the completion of improvements and sale of Declarant's Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

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

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

c) Common Area Use. Declarant shall have the right to use the Common Area of the Project including but not limited to the right to use the Clubhouse as a sales office and in any other way necessary to facilitate sales.

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

e) Restrictions in Favor of the Declarant. The recreational amenities or facilities at the Project may not be subject to any restriction or reservation in favor of the Declarant or any of its affiliates.

f) Joint or Common Utility Easements with Neighboring Subdivisions, Project or Developments. The Declarant or Builder, for themselves and their successors in interest (including but not limited to the Association), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement, right of way, reciprocal use, utility, drainage system or similar agreements with or to convey to the City or owners or Declarants of adjoining subdivisions, projects or developments any and all reasonable and necessary easements or rights of way for such utilities, systems or benefits over, across, under or through the Project.

33. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) all of the Additional Land has been added and the Declarant has sold or rented all of the Lots, or (b) five (5) years after the effective date of this Deed, or (c) such time as Declarant chooses, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant.

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

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

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

36. Mortgagee Approval. Until the termination of the Period of Declarant's Control, the Declarant shall not annex additional properties or amend the Declaration without the prior written consent (where appropriate) of the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

37. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Board of Directors to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Committee.

38. Working Capital Fund. Each purchaser of a Lot shall at the time of closing pay the sum of \$1,000.00 into a Working Capital Fund established by the Declarant for the benefit of the Association. The purpose of the working capital fund is to ensure that the Board of Directors will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Project. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses. Thereafter, the Board of Directors may continue the working capital fund by charging a reasonable transfer or impact fee when Lots are sold or rented.

39. Separate Taxation. Each Lot and its appurtenant ownership interest in the Association shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing Lot and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. The Building or Buildings, the property or any of the Common Area and Facilities may be considered a parcel for tax purposes.

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

41. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

42. Enforcement and Right to Recover Attorneys Fees. Should the Association or Committee be required to take action to enforce the Declaration, Bylaws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

43. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Truman Carver and the initial office of the Registered Agent is 175 Mill Road, Kaysville, UT 84037.

44. Architectural Review Committee.

a. Construction Supervision. All construction shall be supervised by an Architectural Review Committee (the "ARC") which shall consist of at least one (1) and no more than three (3) Persons. The Board of Directors may, but is not required, to function as the ARC. The member(s) of the ARC may be compensated for their services. The ARC may charge a deposit and application fee.

b. Designs, Plans and Specifications. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval. Information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction should be submitted if applicable. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.

1) Review Considerations Generally. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things.

2) Aesthetics. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

3) Minimum Dwelling Requirements. No Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- a) Only single family residential Dwellings are allowed.
- b) The height of any Dwelling shall not exceed two (2) stories above ground.
- c) No slab on grade Dwellings are permitted.
- d) Without the prior written consent of the ARC, a basement is required for each Dwelling.
- e) Without the prior written consent of the ARC, each Dwelling shall have a private garage for not less than two motor vehicles.
- f) The Dwelling exteriors, in their entirety, must consist of either maintenance free stucco or masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted.
- g) Any detached accessory building must conform in design and materials with the primary residential Dwelling.
- h) Any and all plans and specifications for an Accessory Building must be submitted, reviewed and approved in writing in advance.

i) Any detached accessory building must conform in design and materials with the primary residential Dwelling.

j) All Lots shall be fully landscaped in accordance with Section 20(k) below.

k) No fence or similar structure shall be placed in any front yard. No fence or similar structure shall be placed in any side or rear yard in excess of six (6) feet. Beige vinyl and wrought iron are allowed without additional approval required. Wood, masonry, cinderblock, concrete block, and chain link fencing are prohibited.

l) Conditional uses may be allowed for a swimming pool, cabana, equipment building, outdoor recreational activities, such as an athletic court, tennis courts, basketball court, soccer pitch, batting cage, and so forth.

m) No tin sheds are allowed.

n) One (1) story rambler must have a minimum square footage of 2,350, excluding the garage.

o) Two (2) story structures must have a minimum square footage of 2,000 on the main level and a total above-ground square footage of at least 3,500.

p) The existing elevation of a Lot may not be changed more than one foot (1') without the express prior consent of the ARC.

q) The height of a structure may not exceed thirty-five feet (35') from ground level.

r) All construction materials must be new unless used materials are approved by the ARC in writing.

s) Any exterior material other than brick, stone, rock, stucco, or hardiplank, are not permitted without the express prior written consent of the ARC.

t) The front exterior surface of each home must consist of brick, rock, stone, hardiplank, or stucco or some combination. In addition, it is required that two (2) "large" full front facings of brick, rock, stone, or a combination

u) Both side exterior surfaces of each home must have wainscoting approximately three feet (3') above ground level.

v) The pitch of the roof on any structure must be at least 6/12 and no more than 10/12.

w) All roofs must be constructed of thirty (30) year architectural asphalt shingles unless otherwise expressly authorized by the ARC.

x) The set backs for the home are twenty feet (20') in front and eight feet (8') on each side.

y) The construction of a home must be commenced within twelve (12) months and completed no later than twenty-four (24) months of the date of closing on the purchase of the Lot, and if not, the Owner by virtue of an acceptance of a deed or other document of conveyance agrees to re-sell the Lot to the Declarant at its original price.

z) Every home shall have a three-car attached garage.

4) Preliminary Architectural Drawings, Plans and Specifications. The ARC may require, as a minimum, the following additional items:

a) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.

b) Floor plans of each floor level to scale.

c) Elevations to scale of all sides of the Dwelling.

d) One major section through Dwelling.

e) A perspective (optional).

f) Specifications of all outside materials to be used on the exterior of the Dwelling.

5) Final Plans and Specifications and Working Drawings. The ARC may also require, as a minimum, the following:

a) Plot plans to scale showing the entire site, building, garages, walks, drives, fences, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

b) Detailed floor plans.

c) Detailed elevations, indicating all materials and showing existing and finished grades.

d) Detailed sections, cross and longitudinal.

e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Dwelling.

6) Landscaping. All Lot landscaping, grading, and drainage is subject to the following covenants, conditions, restrictions and easements, and shall be completed strictly in accordance with the Landscaping Guidelines adopted by the Developer or the ARC and so as to comply with and not impair all applicable ordinances and flood control requirements.

a) All front and side yard landscaping must be completed within six (6) months of the date of completion of construction of the home or twenty-four (24) months of the date of closing, whichever first occurs. All rear yard landscaping must be completed within nine (9) months of the date of completion of construction of the home or twenty-four (24) months of the date of closing.

b) Landscaping shall include by way of illustration but not limitation the planting of a lawn and/or other appropriate ground cover, planting beds and flower beds, appropriate bushes and shrubs, and the planting of trees in accordance with the Street Tree Planting Plan, a copy of which is attached hereto, marked Exhibit "D" and incorporated herein by this reference.

c) The Developer will provide the City with a bond for landscaping whenever possible.

d) In the event that such a bond is provided, it shall be refunded, upon the buyer's completion of the City's landscaping requirements, inspection and approval, to the Owner.

e) The Owner is responsible for the initial planting of trees.

f) Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced by the Owner.

g) Any weeds or diseased or dead lawn, trees, ground cover, bushes or shrubs shall be removed and replaced.

h) All replacement trees must also satisfy the requirements of the Street Tree Planting Plan.

i) The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the subdivision.

j) No concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the ARC.

k) Front, side or rear yards constructed primarily or substantially of controlled surfaces are prohibited.

l) If Developer is required to install front yard landscaping prior to receiving a final inspection from the City, then the Owner, by accepting a deed or other document of conveyance to a Lot, acknowledges, understands and agrees that only a basic front yard landscaping will be provided by Developer.

m) Should any Owner fail to comply with the provisions of this paragraph, the Developer or the ARC shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof or to recover damages, or both, and shall also have the authority but not the obligation to complete the landscaping or restore the property to its original condition without being guilty of a trespass, and require the Lot Owner to pay the cost of labor and materials.

n) The costs and expenses incurred, including a reasonable attorney's fee, whether or not a lawsuit is filed, shall be considered the personal obligation of the Lot Owner and shall constitute a lien on the interest of the Owner in such property, enforceable at law or equity, until payment is made.

7) Slope and Drainage Control. No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

a) The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible.

b) It shall be the responsibility of the Owner to see that his or her Lot strictly conforms with the grading and drainage plan established by the Developer, Davis County and the City.

8) Accessory Buildings. Since Accessory Buildings are considered "conditional uses," each application to construct or install an Accessory Building will be evaluated separately by the ARC, subject to the following guidelines:

a) Any detached Accessory Building must conform in design and construction materials with the primary residential Dwelling Unit;

b) The maximum height of an Accessory Building shall be 12 feet, (although the ARC may grant an exception if, in its sole opinion, such is in the best interest of the Project); and

c) If there is a dispute of any kind whatsoever, such as whether a structure is an Accessory Building, the decision of the Developer or upon the termination of the Period of Developer's Control the Board of Directors shall be final, conclusive and binding

9) Approval. In the event that the ARC fails to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be considered approved, subject to the minimum requirements as set forth herein.

10) No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

11) Variance. The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations, and prior written consent of the City Board of Adjustment. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

12) Limitation of Liability. Neither the Developer nor the ARC, or any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Developer and the ARC, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

13) Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his or her own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

14) Contractors. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the ARC from the Project, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, the ARC or the Developer, or their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

15) Historical Property. Nothing shall be done to impair the registry of a Historical Property at Mill Creek Hollow.

16) Yards. If there is a dispute as to what constitutes the front, side or rear yard area, for any purpose, or whether a variance has been granted, the decision of the ARC shall be final, binding and conclusive.

45. Fines. Each Owner and Resident is responsible for adhering to the Project Documents. The Board of Directors may issue fines for violations of the Project Documents after giving the violator written notice and an opportunity to be heard. Fines are collectible in the same manner as Assessments. Liens may be filed to secure payment of a fine.

46. Indemnity. Declarant has reduced or will reduce the price of each Lot by the sum of \$500.00 as consideration for this indemnity agreement. In consideration thereof, the Association, the Board of Directors, Manager, or the Declarant under the Declaration shall **NOT** be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of an Owner, Resident, or any Permittee for any property of any such Persons, including negligence and the inherent risk of having a creek and water feature on the Property. In addition each Owner, Resident and Permittee hereby assumes all risks associated with the use and enjoyment of the Property, including negligence and the inherent risk of having a creek and water feature on the Property, and covenants not to sue.

a. No provision of this Declaration shall be interpreted as creating a duty of the Association, the Board of Directors, Manager, or the Declarant under the Declaration to protect or further the health, safety, or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

b. Each Owner (by virtue of acceptance of title to a Lot), and each Resident (by virtue of entering into possession of a Lot), shall be bound by this Article and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board of Directors, the Manager, and the Declarant under the Declaration, their directors, officers, committee and Board of Directors members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which liability has been disclaimed, including negligence and the inherent risk of having a creek and water feature on the Property.

c. The Association may maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be; provided, however, the Association shall not be obligated to maintain or support such activities.

d. The Association, the Board of Directors, Manager, nor the Declarant under the Declaration shall in any way be considered insurers or guarantors of security within the Project. The Association, the Board of Directors, Manager, nor the Declarant under the Declaration shall be held liable for any loss or damage for failure to provide adequate security or for the ineffectiveness of any security measures undertaken.

e. The Declarant, Association, Board of Directors, or Manager shall in any way be considered insurers or guarantors of security within the Project. Neither the Declarant nor Association shall be held liable for any loss or damage, including malfunction, by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Permittees acknowledge that the Declarant, Association, Board of Directors nor Manager, or their employees, agents or representatives represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or that the gate, fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. All owners and their Guests and Permittees acknowledges and understands that the Declarant, Association, Board of Directors and Manager, and their employees, agents or representatives are not insurers and that each Owner and his or her Permittees expressly, by accepting a deed or other document of conveyance or taking possession of a Lot or entering the Project, assume all risks for loss or damage to persons or property within the Project and further acknowledges that Declarant, Association, Board of Directors and Manager, and their employees, agents or representatives have made no representations or warranties nor has any Owner or his or her Permittees relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

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

Dated this 15 day of January, 2008.

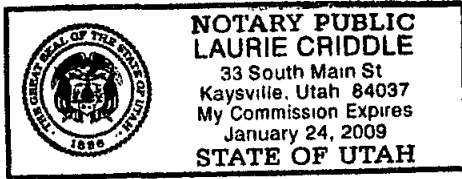
MILL CREEK HOLLOW, LLC,
a Utah limited liability company.

By: *Truman Carver*
Name: Truman Carver
Title: Manager

STATE OF UTAH)
 ss:
COUNTY OF DAVIS)

On the 23rd day of January, 2008, personally appeared before me Truman Carver, who by me being duly sworn, did say that he is the Manager of Mill Creek Hollow, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Organization or a resolution of its Members, and said Truman Carver duly acknowledged to me that said Company executed the same.

Laurie Criddle
NOTARY PUBLIC



**LEGAL DESCRIPTION OF TRACT
EXHIBIT "A"
PHASE 1 OF MILL CREEK HOLLOW**

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

BOUNDARY DESCRIPTION

*A part of the Northeast Quarter of Section 34, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:
Beginning at the Southeast corner of Lot 18, Sanders Lane Subdivision No. 2 in Kaysville City, Davis County, Utah; said point is 2057.90 feet South 0°23'40" West along the Section line and 709.80 feet West from the Northeast corner of said Quarter Section; and running thence South 8°04'02" East 326.68 feet along the West boundary line of Mill Creek Estates No. 3, a subdivision in Kaysville City, Davis County, Utah to the North boundary of Barker Subdivision in Kaysville City, Davis County, Utah; thence three (3) courses along said North boundary as follows: South 85°53'04" West 138.54 feet; South 9°14'16" East 95.04 feet and South 44°10'04" West 89.90 feet; thence South 76°13'04" West 69.96 feet; thence North 84°49'36" West 52.36 feet; thence South 0°34'04" West 42.71 feet to said North boundary; thence North 89°25'56" West 436.50 feet along said North boundary to the East right-of-way line of Fairfield Road; thence North 0°34'04" East 124.92 feet along said East right-of-way line to the South right-of-way line of Sanders Lane; thence three (3) courses along said South right-of-way line as follows: Northeasterly along the arc of a 354.11 foot radius curve to the left a distance of 107.58 feet (Long Chord bears North 81°51'51" East 107.17 feet); Northeasterly along the arc of a 105.68 foot radius curve to the left a distance of 133.89 feet (Long Chord bears North 36°51'51" East 125.11 feet); and North 0°34'04" East 64.13 feet to the Southwest corner of Lot 10, Sanders Lane Subdivision in Kaysville City, Davis County, Utah; thence South 89°25'56" East 163.20 feet along the South line of said Lot 10 to the East boundary of said Sanders Lane Subdivision; thence two (2) courses along said East and the South boundaries of said Sanders Lane Subdivision as follows: North 16°52'07" West 124.84 feet and North 72°46'52" East 404.87 feet and along the South boundary of said Sanders Lane Subdivision No. 2 to the point of beginning.*

Contains 5.298 Acres

EXHIBIT "b"
BYLAWS
FOR
MILL CREEK HOLLOW HOMEOWNERS ASSOCIATION

ARTICLE I
REGISTERED AGENT AND OFFICE

1. Office and Registered Agent. The initial Registered Agent shall be Truman Carver of 175 Mill Road, Kaysville, UT 84037. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

ARTICLE II
ASSOCIATION

1. Composition. The association is a mandatory association consisting of all Lot Owners at Mill Creek Hollow.

2. Meetings. 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, but at least annually.

3. Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail to each Owner at his or her last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she is in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his or her share of the Common Expenses and all Assessments and/or Additional Charges due.

5. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. 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 a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the

Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. A majority of the members of the Association shall constitute a quorum for the adoption of decisions. If however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. Order of Business. The order of business at all meetings of the Association shall be as follows:

- a. roll call;
- b. proof of notice of meeting;
- c. reading of minutes of preceding meeting;
- d. reports of officers;
- e. report of special committees, if any;
- f. election of inspectors of election, if applicable;
- g. election of Committee Members, if applicable;
- h. unfinished business; and
- i. new business.

8. Conduct of Meeting. The President shall, or in his or her absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

9. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Board of Directors or any action that be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Board of Directors. An explanation of the action taken shall be posted at a prominent place or places within the Common Area with three (3) days after the written consents of all of the members of the Board of Directors have been obtained.

**ARTICLE III
BOARD OF DIRECTORS**

1. **Powers and Duties.** The affairs and business of the Association shall be managed and directed by the Board of Directors or Board of Directors. 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 necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- a) Preparing of an annual budget;
- b) Allocating the Common Expenses;
- c) Maintaining the Common Area and Facilities.
- d) Collecting Assessments.
- e) Making, amending, repealing and enforcing the Rules and Regulations.
- f) Creating bank accounts.
- g) Enforcing by legal means the Project Documents.
- h) Purchasing and maintaining insurance.
- i) Keeping books and records.
- j) Paying for common utilities.
- k) Making emergency repairs;
- l) Immobilizing, towing and/or impounding motor vehicles;

m) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or Bylaws, or to do anything required by a proper resolution of the Board of Directors or Association.

2. **Composition of Board of Directors.** The Board of Directors shall be composed of three (3) individuals.

3. Election and Term of Office of the Committee. The term of office of membership on the Board of Directors shall be two (2) years; provided, however, at the first annual meeting of the Association after the termination of the Period of Declarant's Control, the odd number of members elected to serve on the Board of Directors shall serve a one (1) year term. Thereafter all members shall be elected to serve a two (2) year term. At the expiration of the member's term, a successor shall be elected by the majority vote of Owners present in person or by proxy at a meeting of the Association duly called for this purpose.

4. First 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 Committee.

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 Committee, but no less often than quarterly.

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 Committee shall be valid for any and all purposes.

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 Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee'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 Committee members present at a meeting at which a quorum is present shall be deemed to be the acts of the Committee. If, at any meeting of the Committee, there be 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.

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 Committee at a special meeting of the Committee 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 committee; and each person so elected shall be a member for the remainder of the term of the member so replaced. 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.

10. Removal of Committee Member. A member of the Board of Directors may be removed with or without cause, and a 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 days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses twenty-five percent (25%) or more of the Committee Meetings or who misses three (3) consecutive meetings, in any calendar year, shall be automatically removed from the Committee.

11. Presiding Authority. The President shall preside over all meetings of the Committee.

12. Minutes. The Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

13. Report of Committee. The Committee 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 IV OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. The President, Secretary and Treasurer must be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the first meeting of each Committee immediately following the annual meeting of the Association and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

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 Committee may be removed at any time by the affirmative vote of a majority of the Committee, and a successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. President. The President shall be the chief executive officer; s/he shall preside at meetings of the Association and the Committee shall be an ex officio member of all committees; s/he shall have general and active management of the business of the Committee and shall see

that all orders and resolutions of the Committee are carried into effect. S/he shall have all of the general powers and duties which are usually vested in or incident to the use of president of a corporation organized under the laws of the State of Utah.

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 Committee or the President shall prescribe. If neither the President nor the Vice President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for committees when required. S/he shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. 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 all 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 Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the assistance of the Managing Agent, 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 depositories as may be designated by the Committee. S/he shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Project.

ARTICLE V 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 Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured.

**ARTICLE VII
AMENDMENT TO BYLAWS**

1. Amendment. These Bylaws may be amended as follows:

a) General. Except as provided elsewhere in this Bylaws, including by way of illustration but not limitation to sections pertaining to the addition or annexation of any land, any amendment to this Bylaws shall require the affirmative written vote or consent of at least a majority of the total ownership interest in the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting.

b) Initial Declarant Right to Amend. The Declarant alone may amend or terminate these Bylaws prior to the closing of a sale of the first Lot.

c) Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in these Bylaws to the contrary, these Bylaws may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Bylaws; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner of said Lot shall consent thereto in writing.

d) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend these Bylaws for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the express written consent of said Lot Owner.

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

when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, then Declarant shall have the unilateral right to amend these Bylaws to restore such control.

f) Declarant's Rights. No provision of these Bylaws reserving or granting to Declarant any unexpired developmental rights may be amended, including by way of illustration but not limitation a modification which would terminate or decrease any developmental right, without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

g) Execution of Amendments.

1) An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder.

2) An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association, who shall certify that all of the voting requirements have been satisfied, and the Declarant, if the Declarant's consent is also required, and recorded in the office of the County Recorder.

2. Effective Upon Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the County Recorder.

ARTICLE VIII NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these Bylaws (except as to notices of Association meetings which were previously addressed in Article II of 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 pre-paid, a) if to an Owner, at the address of his or her Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Committee 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.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these Bylaws, 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, unless such waiver is ineffective under the provisions of the Declaration.

ARTICLE IX BOOKS AND RECORDS

1. **Books and Records.** All books and records shall be kept in accordance with generally accepted accounting practices.

2. **Financial Statements:** Upon the written request of any Lot Owner, the Board of Directors shall mail to such member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operation, unless the member has already received the same.

3. **Limitation of Liability.** Neither the Association nor any director, officer, employee or agent of the Association shall be liable to the member or anyone to whom the member discloses the financial statement or any information contained therein for any error or omission therein, whether caused without fault, by negligence or by gross negligence, unless (1) the error or omission is material, (2) the director, officer, employee or agent in question knew of the error or omission and intended for the member or other person to rely thereon to his or her detriment, (3) the member or other persons did reasonably rely thereon, and, in addition, (4) he or she is otherwise liable under applicable law.

4. **Independent Compilation, Review or Audit.** Within 120 days of the end of the Association's fiscal year, the Board of Directors shall provide a Compilation Report, Reviewed Financial Statement, or an Audited Financial Statement¹, prepared by an independent CPA.² At least every third year, or whenever requested in writing by a majority of members of the Board

¹ The Board of Directors should be sensitive to the legal requirements for, and the costs involved in, preparing financial reports. The Board of Directors may require preparation of anything from merely compiled financial statements to a full audit. With compiled financial statements, the accountant simply takes information supplied by the Board of Directors of the association and puts it in proper financial statement form, without attempting to verify the information supplied. The accountant expresses no assurances regarding the financial statements. Reviewed financial statements involve certain inquiries and analytical procedures by the accountant concerning the association's accounting methods. A review should provide the accountant with a reasonable basis for expressing limited assurances to home owners that no material modification need be made to the financial statements. Audited financial statements require detailed examination, tests of accounting records and methods, and direct verification of assets and liabilities with banks, attorneys, creditors, and others. Generally, the accountant will give the association an unqualified opinion that the financial statements fairly represent the financial position of the association. Although audited financial statements may be the most thorough, they are also the most expensive financial report and may be unnecessary for the average association. A compilation is generally the least expensive type of report, but it gives the homeowners no assurances that the Board of Directors is accounting for association monies in accordance with generally accepted accounting principles. For this reason, the Board of Directors may wish to require only a review, which should be adequate to fulfill the Board of Directors's fiduciary duty to account to the home owners.

² The CPA may not own or reside in a Unit, serve on the Board of Directors, be an officer, agent, representative or employee of the Association, or otherwise have a conflict of interest, real or apparent.

of Directors or Lot Owners, the Board of Directors shall provide an Audited Financial Statement. The cost of the Compilation Report, Reviewed Financial Statement, or an Audited Financial Statement shall be a common expense.

ARTICLE X
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. **Conflict.** These Bylaws are subordinate 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 provision of the Declaration shall control.

2. **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.


3. **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.

4. **Interpretation.** 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; and the term "shall" is mandatory while the term "may" is permissive.

5. **Severability.** The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

Dated the 16th day of January, 2008.

MILL CREEK HOLLOW, LLC,
a Utah limited liability company

By: 
Name: Truman Carver
Title: Manager

STATE OF UTAH)
 ss:
COUNTY OF DAVIS)

On the _____ day of January, 2008, personally appeared before me Truman Carver, who by me being duly sworn, did say that she is the Manager of MILL CREEK HOLLOW, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Organization or a resolution of its Members, and said Truman Carver duly acknowledged to me that said Company executed the same.

Notary Public

Commission Expires: