

When recorded, deliver to:

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE LINKS AT THE HOMESTEAD  
(a Planned Unit Development)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LINKS AT THE HOMESTEAD (this "**Amended and Restated Declaration**") is made and executed this 15<sup>th</sup> day of May, 2012 by RESET MIDWAY, LLC, a Utah limited liability company and the transferee of Utah Home Building Company, a Utah corporation (the "**Declarant**").

RECITALS

A. Description of Land. The planned unit development (the "**Project**") that is the subject of this Amended and Restated Declaration is situated in and upon that certain real property (the "**Subject Land**") located in Wasatch County, State of Utah, as specifically described in Exhibit "A" attached hereto and incorporated herein by this reference. Utah Home Building Company, a Utah corporation ("**UHB**") originally master planned the Project for the development of fifty-seven (57) Units located on the Subject Land and developable in phases.

B. Recordation of the Declaration. On or about July 12, 2006, UHB, acting as the developer and original Declarant recorded in the office of the County Recorder for Wasatch County, State of Utah (the "**Wasatch County Recorder**"), the original Declaration of Covenants, Conditions and Restrictions for The Links at the Homestead as Entry No. 304414, Book No. 873 and Page 134 et seq. (the "**Original Declaration**"). The Original Declaration subsequently was amended on November 6, 2006 by that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions recorded with the Wasatch County Recorder as Entry No. 310288, Book No. 905 and Page No. 703 et seq. (the "**First Amendment to the Original Declaration**"). The Original Declaration and the First Amendment to the Original Declaration are collectively referred to herein as the "**Declaration**".

C. Plat. Concurrently with the recordation of the Original Declaration, UHB prepared and recorded with the Wasatch County Recorder a Plat for The Links at The Homestead, a residential planned unit subdivision (the "**Plat**").

D. Association and Bylaws. The Links at The Homestead Owners Association, Inc. (the "Association"), was incorporated on the 12th day of July, 2006 by filing Articles of Incorporation therefore with the Utah Division of Corporations and Commercial Code. The Association shall henceforth be the governing body of the Project subject hereto and shall operate in accordance with the "Bylaws of The Links at The Homestead" (the "Bylaws").

E. Intent and Purpose. The Declarant intends by recording this Amended and Restated Declaration and the Plat to submit the Subject Land and all improvements situated upon the Subject Land to the applicable statutes and provisions of the Utah Code (the "Code") and the applicable ordinances of Wasatch County (the "County Ordinances"), and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Units within said Project and the Owners thereof. The Code and the County Ordinances are collectively referred to herein as the "Applicable Law".

F. UHB Assignment of the Project to Reset Midway, LLC. Over time it became apparent that UHB was unable to successfully develop the Project as it originally planned. Accordingly, on or about September 8, 2011, UHB assigned, conveyed, transferred and sold to Reset Midway, LLC ("Reset"), the remaining forty-three (43) residential lots that UHB owned in the Project, together with any and all other rights, titles and interests that UHB owned, possessed or held in the Project, the Subject Land, the Association.

G. UHB Assignment of Declarant to Reset. On or about September 8, 2011, UHB assigned, transferred and conveyed to Reset any and all rights, titles and interests that it possessed as Declarant to Reset. This Assignment of Declarant's rights was recorded with the Wasatch County Recorder on the 14th day of May, 2012 (the "Assignment of Declarant"). Under the terms and provisions of the Assignment of Declarant, UHB remains solely liable for any and all duties and obligations owed under the Declaration and any similar documents until the 12th day of September, 2011, with Reset only assuming those duties and obligations arising from that point going forward.

H. Amendment of the Declaration. With the passage of time, the exit of UHB, the change in the financial condition and circumstances of the Project, more than seventy-two percent (72%) of the property owners of the Project and the Declarant have determined to amend and restate the Declaration as provided herein.

## ARTICLE I DEFINITIONS

1.1. Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Amended and Restated Declaration shall have the meanings set forth in this Article I.

1.2. "Association" shall mean The Links at The Homestead Owners' Association, Inc., a Utah nonprofit corporation, organized to be the Association referred to herein.

1.3. "Board of Directors" or "Board" shall mean the Board of Directors of the Association (formerly known as the Board of Trustees).

1.4. "Common Areas" shall mean all real property of the Project, except all Units and that portion of the Subject Land upon which all Units are located, but otherwise including without limitation, all easements of the Project and all perimeter walls around the Project and all areas, lawns and landscaping between said perimeter walls and any contiguous property or public streets or sidewalks, as specifically shown on the Plat as Common Areas. The Common Areas not constituting part of a Unit shall be owned by the Association, and all Common Areas shall be managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Amended and Restated Declaration. The "Limited Common Areas," described in further detail below, also are deemed to be part of the Common Areas but are different from other Common Areas in that the Owners of each Unit are responsible for the maintenance and repair of such Unit's Limited Common Areas subject to the management and oversight of the Association.

1.5. "Common Expense Fund" shall mean the fund created or to be created pursuant to the provisions of Article X of this Amended and Restated Declaration for the payment of Common Expenses and into which all operating funds of the Association shall be deposited.

1.6. "Common Facilities" shall mean all equipment, facilities, fixtures and other personal property and real property improvements owned by the Association for the use and benefit of all Owners and all equipment, fixtures, facilities and other personal property hereafter purchased in accordance with this Amended and Restated Declaration with monies from the Common Expense Fund. Except as otherwise expressly provided in this Amended and Restated Declaration, the Common Facilities shall be deemed to be part of the Common Areas.

1.7. "Declarant" shall mean Reset Midway, LLC, a Utah limited liability company, its successors or assigns.

1.8. "Home Owner" shall mean any person or entity or combination thereof, including the Declarant (except for the model home or any home held for sale to the public), at any time owning a Unit within the Project, as shown on the records of Wasatch County, State of Utah, on which a single-family, detached residence has been built and completed and that has received a certificate of occupancy. The term "Home Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes), Declarant in its capacity with respect to the ownership of the model home or any home held for sale to the public, or to any person or entity purchasing a Unit under contract until such contract is fully performed and legal title conveyed.

1.9. "Limited Common Areas" shall mean any Common Areas designated for the exclusive use by the Owner of a particular Unit, all as shown on the Plat. Limited Common Areas shall include all driveways, porches, patios, storage facilities and all other areas identified and designated on the Plat as reserved for the exclusive use of the Owner of a particular Unit.

1.10. "Manager" shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

- 1.11. "Member" shall mean a member of the Association.
- 1.12. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.
- 1.13. "Mortgagee" shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage.
- 1.14. "Owner" shall mean any person or entity or combination thereof, including the Declarant, at any time that holds fee title to a Unit within the Project as shown on the records of the Wasatch County Recorder and shall also include any Home Owner. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Unit under contract until such contract is fully performed and legal title conveyed.
- 1.15. "Phase" shall mean Phase One and/or Phase Two of the Project, together with a particular parcel of property which is or shall become part of the Project pursuant to the recordation of an appropriate Declaration of Annexation. Hence, the term "Subject Land" as used in this Amended and Restated Declaration also shall refer to Phase One and Phase Two of the Project which combined have been subdivided for fifty-seven (57) residential Units, unless and until any additional adjoining land shall be added to the Project by Declarant pursuant to a Declaration of Annexation recorded with the Wasatch County Recorder.
- 1.16. "Plat" shall mean the Plat for The Links at The Homestead, a residential planned Unit development, as recorded or to be recorded with the Wasatch County Recorder, and all amendments thereto.
- 1.17. "Project" shall mean the Subject Land, all Units, all Common Areas and Facilities and Limited Common Areas.
- 1.18. "Subject Land" shall mean the land upon which the Project is situated, as more particularly described in Paragraph A of the Recitals above, and as may be added to by amendment.
- 1.19. "Total Votes of the Association" shall mean the total number of votes appertaining to the Units in the Project, as shown in Exhibit "B" attached hereto.
- 1.20. "Unit" shall mean a portion of the Project, whether developed or undeveloped, intended for development, use, and occupancy as a residence for a single family in a manner consistent with this Amended and Restated Declaration and any amendments thereto. The term shall, unless otherwise specified, include (by way of illustration, but not limitation) separately platted lots on which a single-family, detached residence has been built and completed and that has received a certificate of occupancy, separately platted lots intended to be developed for single-family detached houses that have yet to built or yet to have received a certificate of occupancy, as well as vacant land intended for development as such. The term shall include all portions of the lot owned, any structure thereon and the Limited Common Areas and any and all

other improvements and rights appurtenant thereto. A parcel of vacant land under single ownership shall be considered a single Unit until such time as a subdivision plat is recorded in the public records of the Wasatch County Recorder relating to all or a portion of such parcel, after which the portion which is the subject of such plat shall be deemed to contain that number of Units reflected therein and the remaining portion, if any, shall continue to be treated as a single Unit. Notwithstanding anything else contained herein, the Owner of a Unit may choose to donate the Unit to the Association for use as open space within the Common Areas, in which case the Total Votes of the Association shall be proportionately adjusted.

1.21 “Water Lease” means that certain Water Lease dated January 1, 2007 between Midway City, Midway Irrigation Company and UHB, as amended. The Declarant and the Owners would prefer that the Water Lease be assigned to the Association as soon as possible. The Declarant and the Association will exercise commercially reasonable efforts to obtain Midway City’s and Midway Irrigation Company’s consent to such an early assignment. Otherwise, as currently provided under the Water Lease, upon the sale of the last lot of the Project, the Declarant will assign the lease obligation to the Association. Notwithstanding the foregoing, before and after any assignment of the Water Lease to the Association, Declarant and/or the Association shall have the right to collect from the Owner of each Unit, whether monthly or annually, the pro-rata amount of Water Lease allocable to each Unit. Once Declarant has assigned its obligations under the Water Lease to the Association, the Association may elect to collect the monthly Water Lease payment for each Unit which as of the date of this Amended and Restated Agreement is estimated to be THIRTY-TWO AND 28/100 DOLLARS (\$32.28) per unit (although under the terms of the Water Lease Midway Irrigation Company may increase the amount of the annual water lease payment based in part on increases in its costs of operation), or alternatively, elect to have the city collect the lease payment individually from each unit. Each Owner acknowledges his responsibility to make the water lease payments or reimbursements described herein without delay to Declarant and/or the Association. Any failure by the Owner to pay the same shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the date it becomes due and payable until paid, together with Declarant’s and/or the Association’s attorney fees and costs of collection. In accordance with Midway City agreements, this provision cannot be amended without Midway City’s written approval.

## ARTICLE II DIVISION OF PROJECT

2.1. Submission to the Applicable Law. All of the Subject Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a planned unit development project to be known as The Links at The Homestead. All of said Subject Land is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said property and division thereof into Lots and Units. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns (provided that any successor of any Declarant shall only be deemed to have assumed those obligations and liabilities arising after the date of any executed assignment or transfer to such successor

Declarant), and any person acquiring, leasing or owning an interest in the real property and improvements comprising the Project, their leases, heirs, executors, administrators, devisees, successors and assigns.

2.2. Division into Units. The Project is hereby divided into Units as more particularly described on the Plat. The Owner of each Unit, regardless of the size, purchase price or location of the Unit, shall have an equal undivided interest in, and right to use, the Common Areas. The Declarant, with the recordation of this Amended and Restated Declaration, hereby quit claims all of its right, title and interest in and to all of the Common Areas, as more particularly shown on the Plat, without warranty, to the Association, to be held and administered in accordance with the provisions of this Amended and Restated Declaration.

2.3. Easements. The Declarant, its successors and assigns, shall have a transferable easement over and on the Common Areas, including roads providing ingress and egress to the Project, for the purpose of doing all things reasonably necessary and proper for the construction, completion, development and sale of the Project.

### ARTICLE III IMPROVEMENTS

3.1. Description of Improvements. The Project will consist of fifty-seven (57) Units as shown on the Plat. Each of the Units has been or shall be principally constructed of wood frame, brick, stucco, stone, hardy-board, sheetrock interiors and asphalt shingle roofs, and such other materials as allowed by current building codes (unless the Owner of a Unit voluntarily chooses to contribute a Unit to the Association as open space in which case such Unit shall cease to be considered a Unit but instead shall be changed to be part of the Common Areas).

3.2. Description and Legal Status of Units. The Plat shows the number of each Unit and the Limited Common Areas which are reserved for use of each Unit's Owner. All Units and appurtenant rights shall be capable of being independently owned, encumbered and conveyed.

### ARTICLE IV NATURE AND INCIDENTS OF OWNERSHIP

4.1. Repair and Maintenance Rights and Duties of Association. Subject to the provisions in this Amended and Restated Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace the Common Areas and all improvements, lawns and landscaping thereon, excluding all Limited Common Areas, or shall contract for such maintenance, repair and replacement to assure maintenance of such areas are in good condition, reasonable wear and tear excepted.

4.2. Midway City's Rights of Maintenance. Midway City shall have the right, but not the duty, to require, and, if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal within the Common Areas if the Association fails adequately to perform such. In the event Midway City exercises this right, the City shall be entitled to recover

any associated costs and attorney fees from the Association. This section shall not be amended or deleted without the approval of Midway City.

4.3. Utilities, Repair and Maintenance Rights and Duties of Owners. Except for the Common Areas which the Association is required to maintain and repair as provided in Section 4.1 above, each Owner shall, at his sole cost and expense, pay for any and all electricity, power, gas, water, sewer and all other utilities used on or directly arising from the Owner's Unit. In addition, each Owner at his sole cost and expense shall maintain in good condition, repair and replace as necessary all exterior, interior, structural and non-structural components of all Units and all improvements and residential structures located thereon including, without limitation, the roofs, foundations, siding, stucco, cedar, hardy-board, stone, brick, doors, windows, asphalt shingles, air conditioning and heating units, appurtenant hardware and accessories. Each Owner also at his sole cost and expense shall maintain the Limited Common Areas located on his Unit as provided in Section 4.13 below. In addition, the Owner also shall repair at his sole cost and expense all damage to the Common Area for which the Owner is responsible under Section 7.9. Each Owner shall perform these maintenance, repair and replacement obligations subject to the direction of the (i) Architectural Committee with respect to the design, style, color and other oversight mandated by Article V below (except for any Units owned by Declarant that shall not be subject to such design, style, color and oversight by the Architectural Committee) and by (ii) the Board of Directors with respect to the Owner's payment of costs and expenses and the performance of basic maintenance and repairs that are not questions of style or design (except with respect to any appeals under Article V below); provided, however, each Owner shall have the exclusive right without direction or oversight from the Board of Directors to paint, plaster, panel tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors of his improvements on or to the Unit.

In the event an Owner fails to maintain his Unit including, without limitation, the Limited Common Areas located on his Unit, or to provide other maintenance, repair and/or replacements as provided in this Section 4.3 and/or Section 4.13 below in a manner which the Board deems necessary to preserve the appearance and value of the property, the Board may notify the Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien his Unit for the amount thereof.

For the purpose of performing any maintenance, repair and/or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Common Area or to other Units, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Amended and Restated Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portions of the Common Area, and shall also have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit.

4.4. Snow Removal. In addition to all other responsibilities herein, the Association shall remove snow from driveways of all Units.

4.5. Title. Title to a Unit within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.

4.6. Prohibition Against Subdivision of Unit or Units. No Owner (except for and excluding Declarant (but in no event shall Declarant be entitled to condominiumize a Unit)), by deed, plat or otherwise, shall subdivide or in any manner cause his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Plat, nor shall any Owner (except for and excluding Declarant) subdivide or partition his Unit or cause or allow more than one Unit to exist in any location where a Unit is shown to exist on the Plat.

4.7. Ownership and Use of Common Areas. The Association shall own all Common Areas for the common use and enjoyment of the Owners, subject to Sections 4.12 and 4.13 below, and the Association shall have the exclusive right and obligation to manage and maintain all Common Areas (excluding any obligation to maintain the Limited Common Areas). Each Owner shall have an irrevocable license and easement to use, occupy and enjoy the Common Areas in common with all other Owners. Except as otherwise-provided in this Amended and Restated Declaration, each Owner shall be entitled to the nonexclusive use of the Common Areas and Facilities in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules or regulations promulgated by the Association. Each Owner will be responsible for an equal share of the taxes, insurance, maintenance, water usage or lease of water rights and other costs and expenses relating to the Common Areas and Facilities.

4.8. Supervision of Use of Common Area. The Board can suspend the rights and easement of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located within the Common Area, for any period during which the payment of any assessment against the Member and his Unit remains delinquent; provided, however, that any suspension for nonpayment of any assessment shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided in this Amended and Restated Declaration.

4.8.1. The Board has the right and power, on behalf of the Association, to consent to or otherwise cause the construction of additional improvements on the Common Area and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area for the benefit of the Members of the Association; and,

4.8.2. The Board has the right and power, on behalf of the Association, to consent to or join in the grant or conveyance of easements, licenses or rights of way in on or above the Common Area for purposes not inconsistent with the intended use of the Property as a residential planned unit development.

4.9. Golf Course Easement. This Amended and Restated Declaration is subject to that certain Perpetual Easement and Equitable Servitude Agreement between Declarant and The Homestead Golf Club, Inc., recorded with the Wasatch County Recorder on 2006. That Agreement provides that the Common Areas located within the golf course easement are subject



to the easement and use of the Common Areas included therein and designated on the Plat exclusively for golf course purposes and requires that all maintenance and property tax responsibilities upon said Common Areas are the responsibility of The Homestead Golf Club, Inc.

4.10. Damage by Member. Each Member shall be liable to the Association for any damage upon any unit or upon the Common Area not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit of the Member liable for the damage and may be enforced as provided hereby for the enforcement of any other Assessment.

4.11. Damages Relating to Golfers. Each Member shall hold the Declarant and Association harmless from and relating to any and all claims, demands, liabilities, causes of action, damages, costs, losses and expenses of every kind, nature and description or character, which arise out of, are connected with, or related to, any and all damages caused by errant golf balls from The Homestead Golf Course, any trespasses, damages, assaults or other incidents which may arise out of contact with golfers and parties accompanying them.

4.12. Limited Common Areas. All areas designated as Limited Common Areas on the Plat, including without limitation each driveway designated on the Plat as Limited Common Area, shall be Limited Common Area for the exclusive use by the Owner of the particular Unit designated (subject to the Declarant's rights described in Section 15.1 below). Limited Common Areas shall be rebuilt, replaced, repaired or materially altered only with the approval and consent of the Architectural Committee, and in accordance with the provisions of this Amended and Restated Declaration, including 4.13 below.

4.13. Maintenance of Limited Common Areas. The Owner at his sole cost and expense shall maintain and repair all Limited Common Areas located on his Unit except as expressly provided in this Section. Without limiting the generality of the foregoing, the Owner shall maintain, replace as necessary and keep in a sanitary condition and in a state of good repair (as determined by the Board) all Limited Common Areas including, without limitation, the driveways to the Unit. Notwithstanding the foregoing, the Association at its sole cost and expense (to be reimbursed from those dues and fees paid by the Owners to the Association), shall remove any snow from all driveways (but excluding any patios or entry ways that shall be the sole responsibility of each Owner). Although the landscaping and lawns located about any given Unit are not part of the Limited Common Areas but are part of the Common Areas, as a point of clarification only the Association shall maintain all landscaping and mow all of the lawns located about each Unit as well as the rest of Project as provided in Section 4.1 above.

4.14. Inseparability. Title to any part of a Unit within the Project may not be separated from any other part thereof. Every devise, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the entire Unit, together with an appurtenant rights created by law or by this Amended and Restated Declaration, including appurtenant membership in the Association as hereinafter set forth, and an irrevocable license to use, occupy and enjoy the Common Areas and Facilities in common with all Owners.

4.15. No Partition. The Common Areas and Facilities shall be owned by the Association in accordance with the provisions of this Amended and Restated Declaration, and no Owner nor the Association may bring any action for partition thereof except as allowed by law.

4.16. Separate Mortgages by Owners. Each Owner shall have the right to mortgage or otherwise encumber his Unit. Neither Owner nor the Association shall attempt to or shall have the right to separately mortgage or otherwise encumber the Common Areas and Facilities or any part thereof except as to the undivided interest therein appurtenant to the Unit. Any mortgage or other encumbrance of any Unit within the Project shall be subordinate to all of the provisions of this Amended and Restated Declaration, and in the event of foreclosure the provisions of this Amended and Restated Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

4.17. Separate Taxation. Each Unit within the Project shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The Common Areas shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments and other charges on each respective Unit shall be separately levied against the Owner thereof. All such taxes, assessments and other charges on the Common Areas owned by the Association shall be separately levied against the Association except the Common Areas dedicated to the golf course. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

4.18. Mechanics' Liens. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim or notice of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same.

4.19. Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by its identifying number or symbol as indicated in this Amended and Restated Declaration or as shown on the Plat. Such description will be construed to describe the Unit and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership.

4.20. Non-exclusive Easements. All entrances to, exits from and interior roads in the Project providing access to public roads outside of the Project shall be Common Areas. These easements are for the exclusive use of the Owners, their guests, occupants, lessees and invitees, except that The Homestead, Inc. has been granted the right of access over such easements to the extent of the residents of four homes located upon the golf course. In addition thereto, an emergency exit gate will be maintained by the Association which may also be utilized by residents located below the gate for emergency exit purposes only.

4.21. Mortgages and Liens by the Association. The Association shall not attempt nor shall it have the right to mortgage or otherwise encumber the Common Areas and Facilities or any part thereof. No labor performed or material furnished for use in connection with the Common Areas and Facilities shall create any right to file a statement, claim or notice of mechanic's lien against the Common Areas and Facilities.

## ARTICLE V ARCHITECTURAL & LANDSCAPE CONTROL

5.1. Architectural Committee. The Association shall have an Architectural Committee to perform the functions assigned to it as set forth in this Amended and Restated Declaration. The Architectural Committee shall promulgate architectural design guidelines and standards, including, but not limited to, color palettes and plant materials to be used in rendering its decisions. So long as the Declarant owns any Unit in the Project, the Architectural Committee shall consist of three (3) members, each of whom shall be appointed by, and serve at the pleasure of, the Declarant. At such time as the Declarant no longer owns any Unit within the Project, the Architectural Committee shall consist of three (3) members which shall be appointed by the Board. The Architectural Committee members are not required to be Owners or Home Owners. Unless and until the Architectural Committee is appointed under this provision, the functions of the Architectural Committee shall be carried out by the Board.

5.2. Prohibition of Alteration and Improvement. The original architectural designs of the Units in the Project are referred to below as the "Original Project Design." Other than alterations or improvements made by the Declarant, no alteration of any kind to the Original Project Design, and no exterior painting or staining of any kind other than what was previously done on such Unit by the Declarant or was previously approved by the Architectural Committee and is now just being done again, shall be commenced, erected, or maintained upon the Property, until the same has been approved in writing by the Architectural Committee.

5.3. Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any alteration to the Original Project Design (other than those done by Declarant) shall be submitted to the Architectural Committee for approval as to quality of workmanship and design and harmony of external design, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to rebuild in accordance with plans and specifications for the Original Project Design, or to rebuild in accordance with plans and specifications previously approved by the Architectural Committee or Board.

The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Article and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee or Board. Any application submitted to the Architectural Committee pursuant to this Article shall be deemed denied, unless written approval or a request for additional information or materials by the Architectural Committee or Board shall have been transmitted to the applicant within forty-five (45) days after the date of receipt by the Architectural Committee or Board of all required materials.

5.4. Appeal to the Board. If an Owner is dissatisfied with a decision of the Architectural Committee regarding the Owner's application, the Owner may make a written appeal of the Architectural Committee's decision to the Board. The Board in its sole discretion may choose to hear or not hear the appeal. The Board will notify the appealing Owner within ten (10) days of its receipt of the appeal if the Board decides to hear it (any failure by the Board to respond to the appealing Owner shall be deemed to be a rejection of the appeal). If the Board chooses to hear the appeal, the Board will provide an opportunity for the appealing Owner to submit additional materials to the Board and/or meet with the Board to explain the Owner's position. Such submittals and/or meeting shall occur within thirty (30) days from the Board's notice to the appealing Owner of its willingness to review the appeal. The Board will review the additional materials and/or statement made in the presence of the Board in keeping with the objectives and policies set forth in this Amended and Restated Declaration as the same are determined, evaluated and weighed in the Board's sole discretion. The Board will communicate its written decision to the appealing Owner and the Declarant within fifteen (15) days after the later of the submission date of the additional materials from the appealing Owner or the Board's meeting with the Owner. Any approval or modified approval of the appealing Owner's proposed work or construction may contain such terms and conditions as the Board determines. In the case of disapproval, the Board may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections to the Owner's proposal. The decision of the Board shall be final and not subject to further appeal; provided, however, that until such time as the Declarant has sold the last Unit to a person intending reside on a full or part-time basis in the Project, the Declarant may within ten (10) days of the Board's written decision veto such decision.

5.5 Limited Period of Approval. If construction does not commence on an Owner's proposal or project for which plans and specifications have been approved within eighteen (18) months after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed work. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Architectural Committee or Board grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

5.6 Non-liability of Committee Members. Neither the Architectural Committee nor any member thereof shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of, or in any way connected with the performance of the Architectural Committee's duties hereunder unless due to the willful misconduct or bad faith of the Architectural Committee or member. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement or alteration, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Project generally, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

## ARTICLE VI EASEMENTS

6.1. Easements for Encroachment. If any part of a Unit encroaches or shall hereafter encroach upon any Common Area, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of one or more of the Units or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

6.2. Easements for Maintenance. The Association shall have the irrevocable right to have access from time to time to all Common Areas and to all Limited Common Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas and Facilities; provided, that the rights granted in this Section 6.2 shall not be deemed to constitute an obligation or duty by the Association to perform such maintenance, cleaning, repair and replacement of the Limited Common Areas.

6.3. Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and such rights shall be appurtenant to and pass with the title to each Unit. This right of access does not extend over Common Areas within the golf course easement.

6.4. Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Amended and Restated Declaration, including, without limitation, the right to construct and maintain in the Common Areas facilities for use by Owners generally or by the Association and its agents exclusively.

6.5 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the

Project and improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable for the prompt repair of such damage.

6.6. Easements Deemed Created. All conveyances of Units within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reverse such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

6.7. Easements Reserved by Declarant and Association. The Association shall have the power to grant and convey to any third party and the Declarant hereby reserves unto itself easements and rights-of-way, including but not limited to rights of ingress and egress, in, on, over and under the Common Areas and Facilities, for the purpose of constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project.

## ARTICLE VII RESTRICTIONS ON USE

7.1. Residential Uses Only. Each Unit contained in the Project is intended to be used for detached, single-family residential housing and is restricted to such use (unless a Unit is conveyed to the Association to be used as open space in the Common Areas). No Unit shall be used for business or commercial activity; provided, however, that nothing herein shall be deemed to prevent the Declarant or its duly authorized agent from using any Units owned by the Declarant, any Units owned by any Owners pursuant to a license or consent from such Owner to Declarant to use the same, or any part of the Common Areas and Facilities, or any of the Limited Common Areas existing between the roads of the Project and any units, as sales models or property management offices.

7.2. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. No unsightly articles shall be permitted to remain on the Project. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view except on garbage collection days. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on the Project.

7.3. Restriction on Recreational Vehicles. No boats, trailers, recreational vehicles, trucks, commercial vehicles or inoperable vehicles belonging to Owners or other residents of the Project shall be parked or stored in or upon any of the Common Areas including the Limited

Common Areas, except in such portions of the Common Areas (and the Limited Common Areas) as the Association may specify, and subject to such rules and regulations as the Association may from time to time promulgate. An exception to this rule shall be the temporary overnight parking not to exceed 24 hours for the loading or unloading of a recreational vehicle by a resident.

7.4. Power Equipment and Car Maintenance. No power equipment or car maintenance of any nature shall be permitted on the Property; provided, however, an Owner may personally wash or polish his car, but only in such Owner's Limited Common Area.

7.5. Restriction on Signs. Except as may be temporarily necessary to caution or warn of danger, and except for temporary signs, reasonable in size, design and location, for the sale of a Unit by the Declarant or other Owner thereof, no signs or advertising devices of any nature, including without limitation commercial, political, informational or directional signs or devices, shall be erected or maintained on any portion of the Project without the prior inspection and written approval of the Association. If the Association consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Association. None of the foregoing shall be construed as to limit any way Declarant's right and easement to locate and relocate its sales offices and all similar signs, banners or similar sales devices upon the Common Areas and Facilities as permitted under Section 7.1 and Article XV hereof.

7.6. Antennas and Satellite Dishes. No Owner shall be permitted to construct, use or operate his own external radio, television antenna, or other electronic antenna without the consent of the Association. No satellite dish shall exceed three feet in diameter and the location must be approved by the Association.

7.7. No Obstructions. There shall be no obstruction of the Common Areas by any Owner. Except with the prior written consent of the Association, Owners shall neither store nor leave any of their property in the Common Areas. Specifically, without limiting the generality of the foregoing, no vehicles of any kind may be parked at any time on any of the Common Areas, which include without limitations all of the roads within the Project subject to the exception in Section 7.3 above. No permanent parking (more than 48 hours in any 7-day period) shall be allowed in the front of the Unit.

7.8. Clotheslines. No exterior clotheslines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

7.9. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept in or on any Unit, the Limited Common Areas or the Common Areas, or in any other part of the Project, which may result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Unit which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority: No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each Owner shall indemnify

and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, his guests, lessees, licensees or invitees.

7.10. Rules and Regulations. The owners shall comply with all of the rules and regulations governing use of the Units and Common Areas and Facilities, as such rules and regulations may from time to time be adopted, amended or revised by the Association, in the sole discretion of its Board of Directors.

7.11. Construction Period Exemption. During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions and restrictions contained in this Amended and Restated Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions or restrictions following completion of such construction.

7.12. Pets and Animals. No animals or birds of any kind shall be raised, bred or kept in or on any Unit or in the Common Areas, except that small or medium-sized domestic dogs and cats, and common household birds, may be kept in or on units, subject to rules and regulations (including, without limitation, rules and regulations regarding the number of permitted pet(s) in each Unit) adopted by the Association and provided that they are not kept, bred or maintained for any commercial purpose and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the Project upon ten (10) days' written notice from the Association. No large dogs, such as Great Danes or St. Bernards that exceed 18 inches in height measured at the back hips may be kept in or on a Unit. Any pet allowed by the preceding portions of this Section may be present on the Common Areas only if on a leash held by a person.

7.13. No Short-Term Rentals or Leases. Owners may freely rent or lease their Units, provided that such rental or lease period shall not be less than thirty (30) days in duration and subject to all terms and conditions of this Amended and Restated Declaration and all rules and regulations adopted by the Association. In the event of any short-term rentals of Units for periods less than thirty (30) days duration, the Owner(s) violating the covenant contained herein shall be subject to (i) a special fee equal to the greater of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per night or the gross rental revenues received from such rentals plus late fees of eighteen percent (18%) per annum for any failure to pay the same when demanded by Declarant and/or the Associations, (ii) reimbursement for any physical damages and extra management and security fees caused by such rentals, (iii) the Declarant's and/or Association's legal fees and costs of collection incurred in connection with such violations, (iv) remedies of specific performance enjoining such actions, and (v) any and all other remedies provided in this Amended and Restated Declaration, the rules and regulations adopted by the Association and applicable statutes and ordinances. The remedies provided herein are non-exclusive and are cumulative.

7.14. Window Covers. Curtains and drapes (with a white lining), shutters or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No



window shall be covered with aluminum foil or similar material. No window tinting or mullions shall be allowed without the prior written approval of the Architectural Committee.

7.15. Sculptures/Flags. No outdoor sculptures and/or flags shall be permitted except by written approval of the Architectural Committee.

7.16. No Patio/Deck Storage. No storage of any kind shall be permitted on decks or patios. Patio furniture and portable barbecue grills in good condition may be maintained on decks and patios.

7.17. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 7 or elsewhere in this Amended and Restated Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

## ARTICLE VIII THE ASSOCIATION

8.1. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by said Owner. Each Unit shall have only one (1) vote appurtenant thereto, regardless of whether the Unit possesses a home with a certificate of occupancy, if it is a vacant lot or a lot with a home under construction. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Unit shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit. Unless otherwise expressly provided in this Declaration, the Association's approval of any action shall require fifty-one (51) percent of the total outstanding votes of the Association.

8.2. Board of Directors. The Board of Directors shall initially consist of three (3) members which can be increased up to as many as five (5) members upon the majority vote of the existing Board of Directors or the majority vote of the Owners at a duly called meeting of the Owners. The Declarant reserves the right to appoint all of the Board of Directors until the first of the following occurs (such period of time being referred to in this Amended and Restated

Declaration, and for purposes of the provisions of the Community Association Act under Utah Code Section 57-8a-101 et seq., as the “period of administrative control”):

(a) Seven (7) years from the date of recordation of this Amended and Restated Declaration; or

(b) The date on which fifty-two (52) of the Units in the Project have each (i) had a single family residence built upon it, (ii) received a certificate of occupancy, and (iii) had title to such Units conveyed by Declarant to the respective third-party Owners with such conveyances having been recorded with the Wasatch County Recorder.

8.3. Amplification. The provisions of this Article VIII may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the express rights or obligations of the Declarant and the Owners set forth in this Amended and Restated Declaration.

#### ARTICLE IX CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

9.1. The Common Areas. The Association shall be responsible, as described in Sections 4.1 and 4.7 and subject to the rights and duties of the Owners as set forth in this Amended and Restated Declaration, for the exclusive management and control of the Common Areas and Facilities and all improvements thereon (excluding the Limited Common Areas), including the payment of all Common Expenses defined herein. In particular, the Association shall be responsible for the maintenance of the private road and associated improvements located in the Project. The Association shall also be responsible for maintenance, repair and replacement of all Common Facilities, exteriors and roofs of each improvement or other material located within, on or used in connection with the Common Areas (except for and excluding the Limited Common Areas and the Units). The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund. Notwithstanding anything herein, the Association will be charged with snow removal from the private road which will include maintaining any gated area free of any snow or other impediment that may interfere with the use of such gate as an emergency exit. Further, the Association will enforce its agreement with adjoining property owners to maintain any gated area and emergency right-of-way free of snow or other impediments to such right-of-way which enforcement may be in addition to any enforcement by Midway City.

9.2. Manager. The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

9.3. Miscellaneous Goods and Services. The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the

proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Amended and Restated Declaration, or any other matter. In addition to the foregoing, the Association may acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Areas and insurance, bonds and other goods and services common to the Units.

9.4. Real and Personal Property. The Association may acquire, hold and own real, personal and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. All of the Common Areas and Facilities, including private water lines, shall be deeded by the Declarant to the Association. The maintenance, repair and replacement of all such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such Fund.

9.5. Rules and Regulations. The Association, by action of its Board of Directors, may make reasonable rules and regulations governing the use of the Units and of the Common Areas and Facilities, which rules and regulations shall be consistent with the rights and duties established in this Amended and Restated Declaration and which may include, without limitation, per diem charges for continuing violations of such rules and regulations in addition to all other rights and remedies the Association may possess for the actions or inactions giving rise to such violations. The Association also may take judicial action against any Owner to specifically enforce performance and/or compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain monetary damages for noncompliance therewith, as permitted by law or at equity. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

9.6. Granting of Easements. The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, utility, ingress, egress, construction and similar easements over, under, across and through the Common Areas.

9.7. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Amended and Restated Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

9.8. Reserves. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, and such reserves shall be funded from the monthly assessments as described in Article X below.

ARTICLE X  
ASSESSMENTS

10.1. Agreement to Pay Assessments. The Declarant, for and as the Owner of the Project and every part thereof on the date hereof, hereby covenants, and each Owner of a Unit by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, also shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association (whether acting through the Board or through the vote of the Association members, as provided in this Article X) for the purposes provided in this Amended and Restated Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article X.

10.2. Regular Assessments. Regular assessments shall be computed and assessed against all Units in the Project as follows:

(a) Common Expenses

(i) Annual Budget. On or before the 1st day of December of each year, the Board shall prepare, or cause to be prepared, an annual, operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Project (the "Budget"). Each such Budget, together with a written statement from the Board outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Members on or before the 15th day of December of each year. Such Budget, with any changes therein, shall be voted on and/or adopted by the Members at each annual meeting of the Members together with the approval of Declarant as described hereafter; provided, however, as set forth in Section 57-8a-215(5) of the Utah Code, during the period of administrative control, the Members may not disapprove the Budget. Said Budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said Budget shall also constitute a major guideline under which the Association shall operate during such annual period. So long as Declarant owns any Unit in the Project, Declarant's vote shall be required to approve such operating Budget. If the Association and Declarant do not both vote in favor of such current Budget then the Budget from the immediately prior year shall carry over to the current year subject to a potential increase of up to five percent (5%) in the total Common Expense Fund (defined below) which may be imposed by Declarant in its sole discretion.

(ii) Basis of the Budget. The Budget shall be based upon the Board's estimates of the cash required to provide for payment of the annual normal expenses (the "Common Expenses") arising out of or connected with the ordinary maintenance and operation of the Common Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management, governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; normal repairs and maintenance; wages for Association employees, including fees for a Manager, if any; normal utility charges; payment of the Water Lease pursuant to which all of the potable and irrigation water is provided for the Units and the Common Areas (provided, however that instead

of including within the Common Expenses those costs and expenses of the Water Lease attributable to the water usage by each individual Unit (instead of the Common Areas), the Board may in its sole discretion require each Owner to separately reimburse the Association and/or pay Midway Irrigation Company for the individual water use of each of its Units); normal and not excessive legal and accounting fees; any normal and ordinary deficit remaining from a previous period; creation of a reasonable contingency reserve; normal and ordinary sinking or reserve funds required or allowed herein; and any other normal and ordinary expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Amended and Restated Declaration or the Applicable Law.

(iii) Annual Assessments. The Board shall establish a regular, annual assessment to be paid by each Owner to pay the Common Expenses as set forth in the duly approved Budget (the "***Common Expense Fund***"). The dates and manner of payment shall be determined by the Board and may include, without limitation, monthly payments. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Board so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner be equal (except for Declarant as provided hereafter). Each monthly installment of the regular annual assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the date it becomes due and payable until paid. Failure of the Board to give timely notice of any annual or special assessment as provided in this Article shall not affect the liability of the Owner of any Unit for such assessment.

(b) Inadequate Funds. In the event the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment or in the event of any extraordinary or unpredicted costs or expenses, the Board may levy additional, special assessments in accordance with the procedure set forth in Section 10.3 below.

(c) Declarant's Obligations. Notwithstanding the preceding provisions of this Sections 10.2 and 10.1 to the contrary, until forty-five (45) Units have been conveyed by Declarant to purchasers thereof (i) the Owner of each Unit (other than Declarant) on which a home has been built which has received a certificate of occupancy shall pay as its regular, annual assessment twelve monthly installment payments of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per month (out of which \$250.00 the Owner's pro rata payment on the Water Lease shall be paid); and (ii) the Owner of each Unit (other than Declarant) that does not possess a home or does not possess a home with a certificate of occupancy shall pay as its regular, annual assessment twelve monthly installment payments of FIFTY-FIVE AND NO/100 DOLLARS (\$55.00) per month (out of which \$55.00 the Owner's pro rata payment on the Water Lease shall be paid). Once the forty-five (45) Units have been conveyed by Declarant, the Board shall set the amount of the regular, annual assessment that may be more or less than (x) \$250.00 per month for a Unit with a home and certificate of occupancy, and (y) \$55.00 per month for Unit without a home and certificate of occupancy. Notwithstanding the preceding provisions of this Sections 10.2 and 10.1 to the contrary, Declarant may from time to time in its sole discretion choose to submit itself to the provisions and regular annual assessments with twelve monthly installment payment obligations described in the foregoing Subsections 10.2(c)(i) and 10.2(c)(ii) for any such Units that Declarant owns or in the alternative Declarant may instead pay each

month an amount equal to the remaining balance of the normal Common Expenses of the Project provided that in no event shall Declarant be obligated to pay more for such remaining balance than Declarant would have paid in total if Declarant had paid the regular monthly installments described in Subsections 10.2(c)(i) and 10.2(c)(ii).

10.3. Special Assessments. In addition to the regular assessments authorized by Sections 10.1 and 10.2 above, the Board may levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association plus the affirmative vote of Declarant so long as Declarant owns any Unit in the Project, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Amended and Restated Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Subject to Section 10.5 below, any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Owners. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessments shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the date such portions become due until paid.

10.4. Reserve Fund. A portion of the Annual Assessments shall be used to fund an adequate Reserve Fund. Until otherwise modified by the Board, five percent (5%) of all Annual Assessments collected shall be applied to the Reserve Fund. In addition, upon Declarant's first sale of each Unit (as calculated from the conveyance of title to a Unit) to a third party purchaser (that shall not include a conveyance of title to any affiliate of Declarant or to the Association), the purchaser shall pay \$550.00 to the Association that shall be deposited into the Reserve Fund and shall be non-refundable. Thereafter, upon the sale of any such Unit by said purchaser (as calculated from the conveyance of title to a Unit) to a third party purchaser (that shall not include a conveyance of title to a spouse, child or trust of said purchaser for estate planning purposes or to the Association), the new third party purchaser shall pay \$350.00 to the Association that shall be deposited into the Reserve Fund and shall be non-refundable. Every three (3) years the Board may increase this \$550.00 payment and the \$350.00 payment to account for inflation. Any failure to make any of these Section 10.4 payments shall be deemed to be an unpaid assessment secured against the Unit and collectible as provided in Section 10.6.

10.5. Allocation of Assessments. The Owners of any Units on which a home has been built and which has received a certificate of occupancy shall be assessed equally unless the Board determines that an Owner's use of a Unit possessing a home with a certificate of occupancy is excessive or substantially outside the norm when compared to all of the other Units in the Project that have homes with certificates of occupancy in which case the Owner of such a Unit may be required to pay a greater assessment than these other Owners. Likewise, the Owners of any Units consisting of a vacant lot or consisting of the ownership of a lot and home which has yet to receive a certificate of occupancy shall be assessed equally unless the Board

determines that an Owner's use of such a Unit (that does not possess a home with a certificate of occupancy) is excessive or substantially outside the norm when compared to all of the other similarly situated Units in the Project in which case the Owner of such Unit may be required to pay a greater assessment than these other Owners. Notwithstanding anything else contained in this Section 10.5, Declarant shall not be required to pay the same assessments as the other Owners but may pay less or none as provided in Section 10.2(c) and/or the other provisions of this Amended and Restated Declaration.

10.6. Lien for Assessments. All sums assessed to the Owner of any Unit within the Project pursuant to the provisions of this Article X, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. The mere existence of this recorded Declaration hereby puts all parties on notice that each Unit within the Project is subject to a lien on such Unit in favor of the Association for such unpaid sums as provided in Section 57-8a-301 of the Utah Code. Any purchaser, lender or other third party is required to communicate with the Association (as provided in Section 10.8 below) to determine the amount of the sums being secured by such lien, and nothing further is required to put all such purchasers, lenders or other third parties on notice of the existence of such lien(s). However, the Association also may voluntarily elect, in its sole discretion, to provide as extra evidence of a lien for the sums assessed pursuant to this Article X, by preparing a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such extra notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded with the Wasatch County Recorder. No such extra notice of lien shall be recorded until there is a delinquency in payment of the assessment. All such lien(s) described in this Section may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay for costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid-in at any foreclosure sale, and to own, lease, mortgage or convey the subject Unit.

10.7. Personal Obligation of Owner. The amount of any regular or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

10.8. Statement of Account. Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit and payment of any reasonable fee assessed, the Board shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Unit, and (b) the amount of the current

regular assessment with respect to such Unit and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

10.9. Personal Liability of a Purchaser. A purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.

10.10. Assessments Part of Common Expense Fund. All funds received from assessments under this Article X shall be a part of the Common Expense Fund.

10.11. Amendment of Article. Except as may be necessary to conform to the law, as it may be amended from time to time, after the period of administrative control has passed, this Article X shall not be amended unless the Owners holding sixty-seven percent (67%) of the Total Votes of the Association, with the affirmative vote of Declarant so long as Declarant owns any Unit in the Project being one of the votes in favor of such amendment, consent and agree to such amendment by a duly recorded instrument.

## ARTICLE XI INSURANCE

11.1. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) Fire and Casualty Insurance. A policy or policies of insurance on the Common Areas of the Project in such amounts as shall provide for replacement thereof in the event of damage or destruction from casualty against which such insurance is customarily maintained by other projects similar in construction, design and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection as to the Common Areas. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive liability insurance coverage for the Project, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance and other use of the Project.



(c) Workers' Compensation Insurance. Workers' compensation and employers' liability insurance and all other similar insurance with respect to employees of the association, if any, in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance or Bond. Fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of employees or the Manager, destruction or disappearance of money or securities, and forgery.

11.2. Form of Insurance. Insurance coverage on the Project, insofar as possible, shall be in the following form:

(a) Casualty and Flood Hazard Insurance. Casualty and hazard insurance in a form or forms naming the Association as the insured, as trustee for the Owners and for the Declarant whether or not the Declarant is an owner, and which policy or policies shall specify the interest of each Owner (Owner's name and Unit number), and shall contain a standard, noncontributory mortgage clause in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. The Association shall furnish to each Owner, and to each Mortgagee requesting in writing the same, a certificate of coverage, including an identification of the Owner's interest.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance which names the Association as the insured, as trustee for each Owner, for the Manager, if any, and for the Declarant, whether or not the Declarant is an Owner, and which protects each Owner, the Manager, if any, and the Declarant against liability for acts or omissions of any of them in connection with the ownership, operation, maintenance or other use of the Project.

11.3. Additional Coverage. The provisions of this Amended and Restated Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Amended and Restated Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.

11.4. Adjustment and Contribution. Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

11.5. Insurance Carried by Owners. Each Owner is responsible for and may obtain insurance, at his own election and expense, providing coverage upon his Unit, and all improvements and personal property located thereon, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate; provided that if the insurer under said policy is the insurer under any policy issued pursuant to Section 11.1 through 11.3 above, then any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under any of the insurance policies obtained by the Association pursuant to this

Article. The Association shall have no obligation or responsibility to carry insurance on the Units, or any other improvements a part of or appurtenant to the Units.

11.6. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

## ARTICLE XII DAMAGE OR DESTRUCTION

12.1. Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Common Areas or Limited Common Areas of the Project upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and delivery any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to execute the powers herein granted.

12.2. Total Destruction. If damage or destruction occurs in or to the Project that is so extensive that every Owner of every Unit in the Project votes to not rebuild, repair or reconstruct the Common Areas and Limited Common Areas damaged or destroyed, then in such event and upon written agreement of every Owner, this Amended and Restated Declaration shall be terminated and each Owner shall own his Unit, and all owners together shall own all Common Areas as tenants in common, and there shall be no obligation to repair or reconstruct the damaged portions of the Common Areas or Limited Common Areas. Upon the dissolution of the Project as herein provided, a notice of such shall be filed with the Wasatch County Recorder, and upon filing of such notice, the following shall occur:

- (a) The Common Areas shall be deemed to be owned in common by the Owners as tenants in common on an equal, undivided basis;
- (b) Any liens affecting any of the Units shall remain a lien on their respective lots, but also shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Common Areas;
- (c) If a majority of the Total Votes of the Association so elects within ninety (90) days after the damage has occurred, and if allowed by the applicable governmental authorities, the Common Areas shall be dedicated as public roads in accordance with applicable statutes and ordinances, and all Owners shall join in such dedication; and
- (d) If the option described in Section 12.2(c) above is not elected, the Common Areas shall be subject to an action for partition at the suit of any Owner, in which event

the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided equally among all the Owners, after first paying out of the respective share of each Owner, to the extent sufficient for such purpose, all liens on the undivided interest in the Project owned by such Owner.

12.3. Partial Destruction. As long as any one Owner of any Unit so elects, upon the damage or destruction of any portion of the Common Areas or Limited Common Areas, the Association shall proceed to repair and reconstruct the Common Areas, and at such time as a house constituting any Unit, if damaged, is reconstructed or repaired, the Association also shall reconstruct and repair all Limited Common Areas as to that Unit so damaged. The Association shall use insurance proceeds from the insurance it is obligated to carry to accomplish such repair and reconstruction. In the event insurance proceeds are insufficient to accomplish the repair and reconstruction as required herein, then the Association shall levy a special assessment against all Owners pursuant to the provisions of Article X above to collect funds necessary to accomplish such repairs and reconstruction.

12.4. Repair or Reconstruction. As soon as possible after receiving estimates on the cost of repair or reconstruction, the Association shall, if repair or restoration is to occur, diligently pursue to completion the repair or reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.

12.5. Disbursement of Funds for Repair or Reconstruction. If repair or reconstruction is to occur, then the insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first monies disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all of the costs of such repair or reconstruction, such balance shall be distributed equally to the Owners.

### ARTICLE XIII CONDEMNATION

13.1. Condemnation. If at any time or times all or any part of the Common Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

13.2. Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

ARTICLE XIV

COMPLIANCE WITH AMENDED AND RESTATED DECLARATION AND BYLAWS

14.1. Compliance. Each Owner shall comply with the provisions of this Amended and Restated Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner, including costs and reasonable attorneys' fees.

14.2. Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Amended and Restated Declaration, or any supplemental or amended Declaration, with respect to the Association or Units within the Project, shall be enforceable by the Declarant or by any Owner of a Unit within the Project subject to this Amended and Restated Declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Amended and Restated Declaration, or in any supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association or the Declarant, shall be enforceable by the Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid, including costs and reasonable attorneys' fees.

ARTICLE XV

DECLARANT'S SALES PROGRAM

15.1. Declarant's Right to Promote and Sell the Project. Notwithstanding any other provisions of this Amended and Restated Declaration, until Declarant ceases to be a Unit Owner (hereinafter referred to as the "Occurrence"), Declarant, its successors or assigns shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of Units owned by Declarant.

(a) Sales Offices and Model Units. Declarant, its successors and assigns, shall have the right to maintain sales offices and model units. Sales offices may be located (i) in Units (at any location) owned by Declarant, (ii) in Unit(s) owned by Owners whom voluntarily lease, license or allow their Unit(s) to be used by Declarant for this purpose, or (iii) on any of the Common Areas of the Project or any of the Limited Common Areas existing between the roads of the Project and any Units. Declarant shall have the right to maintain any number of model units it may desire using the Units Declarant owns, leases and/or obtains written permission from the Owner of such Unit(s).

(b) Promotional Devices. Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or places on the Project, but any such devices shall be of sizes and in locations as are reasonable and customary.

(c) Right to Use the Common Areas and Facilities. Declarant shall have the right to use the Common Areas and Facilities of the Project and any of the Limited Common Areas existing between the roads of the Project and any Units, to entertain prospective purchasers or to otherwise facilitate Unit sales, provided said use is reasonable as to both time and manner.

15.2. Declarant's Rights to Relocate Sales and Promotional Activities. Declarant shall have the right from time to time to locate or relocate its sales offices, model units and signs, banners and similar devices, but in connection with each such location or relocation, Declarant shall observe the limitations imposed by the preceding portions of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any sales structures not a part of a Unit, fixtures, improvements, signs, banners and similar sales materials and properties.

15.3. Limitation on Improvements by Association During Sales Program. Prior to the Occurrence, the Association shall not, without the written consent of the Declarant, make any improvement to or alteration in any of the Common Areas and Facilities or any of the Limited Common Areas, other than such repairs, replacements or similar matters as may be necessary to properly maintain the Common Areas and the Limited Common Areas as they existed when initially constructed.

## ARTICLE XVI MORTGAGEE PROTECTION

16.1. Mortgage Protection. No breach of any of the covenants, conditions, restrictions and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.

16.2. Priority of Liens. No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Unit prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Unit made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.

16.3. Prior Liens Relate Only to Individual Units. All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Unit and not to the Project as a whole.

16.4. Mortgage Holder Rights in Event of Foreclosure. Any Mortgagee of a Mortgage of record which obtains title to a Unit by the foreclosure of the Mortgage on the Unit or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrued prior to the

date of the acquisition of title to such Unit by such acquirer (except for claims for the pro rata reallocation of such assessments or charges to all Units in the Project, including the mortgaged Unit). Any unpaid assessments shall be deemed to be Common Expenses collectible from all of the Units in the Project, including the Unit that has been acquired in accordance with the provisions of this Section.

16.5. Amendment. No provision of this Article XVI shall be amended without the prior written consent of at least two-thirds of all first Mortgagees as appear on the official records of Wasatch County, State of Utah, as of the date of such amendment.

## ARTICLE XVII GENERAL PROVISIONS

17.1. Intent and Purpose. The provisions of this Amended and Restated Declaration and any Supplemental or Amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a planned unit development project. Failure to enforce any provision, restriction, covenant or condition in this Amended and Restated Declaration, or in any supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

17.2. Construction. The provisions of this Amended and Restated Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Amended and Restated Declaration or any Article, Section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of anyone provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

17.3. Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address, telephone number, email address and fax number. All notices or demands intended to be served upon any person hereunder, whether Owner, Declarant or Association, shall be sent to the Owner, Declarant or Association at the address of his or its home address or offices as may be furnished to the other parties in writing from time to time, or to the Unit of each Owner, by (i) first class U. S. Mail, postage prepaid, to such address(es), (ii) over night delivery by a reputable carrier such as Federal Express or UPS to such address(es), (iii) email with first class U.S. Mail copy to such address(es), or (iv) hand-delivery to such address(es). All notice or demands intended to be served upon the Declarant shall be required to be sent with a simultaneous copy by the same form of delivery to the Declarant's legal counsel as Declarant's legal counsel's address is provided by Declarant to the Association or the Owners. Any notice or demand referred to in this Amended and Restated Declaration shall be deemed given when, as applicable (t) deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section, (u) the day after given to the over night

delivery company, (v) the same day as the date of the email (if the first class U.S. Mail copy is deposited with the U.S. Postal Service on the same date), (w) the date of hand-delivery, and (x) three (3) days after delivery to the Unit of the Owner in question.

17.4. Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.

17.5. Litigation. The Association shall not maintain any legal action against any party in behalf of the Association without the vote of fifty-one percent (51%) or more of the Total Votes of the Association; provided, that so long as Declarant owns any Unit in the Project Declarant's affirmative vote also shall be required in approval of any and all such legal action.

17.6. Amendment. Except as otherwise provided herein, this Amended and Restated Declaration may be amended after the period of administrative control has passed if Owners holding sixty-seven percent (67%) of the Total Votes of the Association (and one of which votes in favor must be the vote of Declarant so long as Declarant owns any Unit in the Project) together consent and agree to such amendment at a meeting of the Owners duly held in accordance with the provisions of the Articles, Bylaws and this Amended and Restated Declaration, which properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the Wasatch Country Recorder.

Notwithstanding anything else contained in any other provision of this Amended and Restated Declaration, the following special voting provisions shall apply:

- (a) During the period of administrative control, the Declarant may amend any portion of this Amended and Restated Declaration without holding a meeting of the Members. In such cases, the Declarant shall notify the Members of the amendment to the Amended and Restated Declaration. A certificate, signed and sworn to by two (2) officers of the Association, that the Declarant adopted the amendment, as provided above, when recorded, shall be conclusive evidence of that fact.

17.7. Effective Date. This Amended and Restated Declaration shall take effect upon recording.

17.8. Agent for Service. The person to receive service of process shall be the then current registered agent of the Association as shown on the records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

17.9. Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice. No diminution of abatement of any assessments under this Amended and Restated Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs,

maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.

17.10 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of this Amended and Restated Declaration, which shall remain in full force and effect (to the maximum extent permitted by applicable law), and such affected provision shall be construed, narrowed or eliminated only to the extent necessary to remove any such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.

17.11. Owner 's Obligations. All obligations of an Owner under and by virtue of the, provisions contained in this Amended and Restated Declaration shall continue, notwithstanding that he may be leasing, renting or selling his Unit under contract. The Owner of a Unit within the Project shall have no obligation for expenses or other obligations accruing after he conveys title to such Unit (except for any fees, late interest, reasonable attorney's fees or costs of collection incurred in connection with defaults arising on or prior to the date of conveyance).

*[This page purposely ends at this point. Signature page follows.]*



IN WITNESS WHERE OF, the undersigned Declarant has executed this Amended and Restated Declaration the day and year first above written.

DECLARANT:

RESET MIDWAY, LLC, a Utah limited liability company

By: *Richard A. Cook*  
Name: Richard A. Cook, Manager

STATE OF UTAH )  
  :SS  
COUNTY OF *Salt Lake*

The foregoing instrument was acknowledged before me this *15<sup>th</sup>* day of May, 2012 by Richard A. Cook, Manager of RESET MIDWAY, LLC, a Utah limited liability company.

*Carol S. Mackay*  
NOTARY PUBLIC

My Commission Expires:  
*9.19.2015*

Residing at: *Salt Lake City, Ut*



EXHIBIT "A"

LINKS AT THE HOMESTEAD P.U.D.

SUBJECT LAND

PLAT A:

BEGINNING SOUTH 89°54'18" WEST 1203.92 FEET ALONG THE SECTION LINE AND SOUTH 295.62 FEET FROM THE WASATCH COUNTY SURVEY MONUMENT FOR THE NORTH ONE-QUARTER CORNER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

AND RUNNING THENCE SOUTH 128.41 FEET; THENCE EAST 45.09 FEET; THENCE SOUTH 159.05 FEET; THENCE SOUTH 87°41'17" WEST 105.99 FEET; THENCE SOUTH 07°27'47" EAST 67.93 FEET; THENCE SOUTH 09°37'28" WEST 98.71 FEET; THENCE SOUTH 39°08'37" WEST 73.11 FEET; THENCE SOUTH 73°32'10" WEST 100.06 FEET; THENCE NORTH 68°34'46" WEST 35.22 FEET; THENCE SOUTH 89°00'36" WEST 234.77 FEET; THENCE NORTH 01°38'04" EAST 611.49 FEET; THENCE SOUTH 89°58'24" EAST 313.50 FEET; THENCE SOUTH 00°49'36" WEST 78.38 FEET; THENCE SOUTH 89°58'24" EAST 148.32 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.070 ACRES.

PLAT B:

BEGINNING SOUTH 89°54'18" WEST 1203.92 FEET ALONG THE SECTION LINE AND SOUTH 295.62 FEET FROM THE WASATCH COUNTY SURVEY MONUMENT FOR THE NORTH ONE-QUARTER CORNER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

AND RUNNING THENCE SOUTH 89°58'24" EAST 412.67 FEET; THENCE NORTH 87°39'07" EAST 129.07 FEET; THENCE NORTH 09°20'30" EAST 895.18 FEET; THENCE NORTH 212.68 FEET; THENCE EAST 197.77 FEET; THENCE SOUTH 699.74 FEET; THENCE SOUTH 29°15'03" WEST 325.39 FEET; THENCE SOUTH 09°01'36" WEST 408.50 FEET; THENCE NORTH 86°58'36" EAST 277.55 FEET; THENCE SOUTH 03°01'30" EAST 205.30 FEET; THENCE SOUTH 04°23'23" WEST 120.41 FEET; THENCE SOUTH 58°08'58" WEST 458.40 FEET; THENCE NORTH 68°55'56" WEST 292.29 FEET; THENCE NORTH 68°34'46" WEST 525.16 FEET; THENCE NORTH 73°32'10" EAST 100.06 FEET; THENCE NORTH 39°08'37" EAST 73.11 FEET; THENCE NORTH 09°37'28" EAST 98.71 FEET; THENCE NORTH 07°27'47" WEST 67.93 FEET; THENCE NORTH 87°41'17" EAST 105.99

FEET; THENCE NORTH 159.05 FEET; THENCE WEST 45.09 FEET; THENCE NORTH 128.41 FEET TO THE POINT OF BEGINNING.

CONTAINING 20.072 ACRES.

Parcel Nos. 00-0020-4848, 00-0020-4850, 00-0020-4854, 00-0020-4855, 00-0020-4856, 00-0020-4858, 00-0020-4861, 00-0020-4862, 00-0020-4863, 00-0020-6676, 00-0020-6677, 00-0020-6679, 00-0020-6680, 00-0020-6682, 00-0020-6683, 00-0020-6684, 00-0020-6685, 00-0020-6686, 00-0020-6687, 00-0020-6688, 00-0020-6689, 00-0020-6690, 00-0020-6691, 00-0020-6692, 00-0020-6693, 00-0020-6694, 00-0020-6695, 00-0020-6696, 00-0020-6698, 00-0020-6699, 00-0020-6700, 00-0020-6701, 00-0020-6702, 00-0020-6703, 00-0020-6704, 00-0020-6705, 00-0020-6706, 00-0020-6707, 00-0020-6708, 00-0020-6709, 00-0020-6710, 00-0020-6711, 00-0020-6712.

*[NOTE, THIS PROPERTY WAS PREVIOUSLY DESCRIBED PRIOR TO THE RECORDATION OF PLAT A OF THE SUBDIVISION FOR THE LINKS AT THE HOMESTEAD ON OR ABOUT JUNE 29, 2006 AND PLAT B OF THE SUBDIVISION FOR THE LINKS AT THE HOMESTEAD ON OR ABOUT AUGUST 2, 2007 AS FOLLOWS:*

*BEGINNING AT A POINT WHICH IS SOUTH 214.49 FEET AND EAST 1053.51 FEET FROM THE FOUND BRASS MONUMENT FOR THE SOUTHWEST CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN.*

*THENCE SOUTH 89°58'24" EAST 313.50 FEET; THENCE SOUTH 00°49'36" WEST 78.38 FEET; THENCE SOUTH 89°58'24" EAST 560.99 FEET; THENCE NORTH 87°39'07" EAST 129.07 FEET; THENCE NORTH 09°20'30" EAST 895.18 FEET; THENCE NORTH 212.68 FEET; THENCE EAST 197.77 FEET; THENCE SOUTH 699.74 FEET; THENCE SOUTH 29°15'03" WEST 325.39 FEET; THENCE SOUTH 09°01'36" WEST 408.50 FEET; THENCE NORTH 86°58'36" EAST 277.55 FEET; THENCE SOUTH 03°01'30" EAST 205.30 FEET; THENCE SOUTH 04°23'23" WEST 120.41 FEET; THENCE SOUTH 58°08'58" WEST 458.40 FEET; THENCE NORTH 68°55'56" WEST 292.29 FEET; THENCE NORTH 68°34'46" WEST 560.39 FEET; THENCE SOUTH 89°00'36" WEST 234.77 FEET; THENCE NORTH 01°38'04" EAST 611.49 FEET TO THE POINT OF BEGINNING.*

*CONTAINS: 26.14 AC]*

## EXHIBIT "B"

Unit Number	Address	Number of Votes
1	643 W. St. Andrews Dr., Midway, Utah 84049	1
2	651 W. St. Andrews Dr., Midway, Utah 84049	1
3	657 W. St. Andrews Dr., Midway, Utah 84049	1
4	480 N. 680 W., Midway, Utah 84049	1
5	466 N. 680 W., Midway, Utah 84049—was conveyed to the Association on or about February 1, 2012 to be used as open space for the Common Areas.	0
6	464 N. 680 W., Midway, Utah 84049	1
7	462 N. 680 W., Midway, Utah 84049	1
8	460 N. 680 W., Midway, Utah 84049	1
9	461 N. 680 W., Midway, Utah 84049	1
10	463 N. 680 W., Midway, Utah 84049	1
11	465 N. 680 W., Midway, Utah 84049	1
12	473 N. 680 W., Midway, Utah 84049	1
13	481 N. 680 W., Midway, Utah 84049	1
14	515 N. 680 W., Midway, Utah 84049	1
15	525 N. 680 W., Midway, Utah 84049	1
16	537 N. 680 W., Midway, Utah 84049	1
17	668 W. St. Andrews Dr., Midway, Utah 84049	1
18	660 W. St. Andrews Dr., Midway, Utah 84049	1
19	654 W. St. Andrews Dr., Midway, Utah 84049	1
20	648 W. St. Andrews Dr., Midway, Utah 84049	1
21	640 W. St. Andrews Dr., Midway, Utah 84049	1
22	632 W. St. Andrews Dr., Midway, Utah 84049	1
23	624 W. St. Andrews Dr., Midway, Utah 84049	1
24	629 W. St. Andrews Dr., Midway, Utah 84049	1
25	629 W. St. Andrews Dr., Midway, Utah 84049	1
26	620 W. St. Andrews Dr., Midway, Utah 84049	1
27	614 W. St. Andrews Dr., Midway, Utah 84049	1
28	612 W. St. Andrews Dr., Midway, Utah 84049	1
29	610 W. St. Andrews Dr., Midway, Utah 84049	1
30	604 W. St. Andrews Dr., Midway, Utah 84049	1
31	600 W. St. Andrews Dr., Midway, Utah 84049	1
32	592 W. St. Andrews Dr., Midway, Utah 84049	1
33	596 W. Bayhill Dr., Midway, Utah 84049	1
34	600 W. Bayhill Dr., Midway, Utah 84049	1
35	599 W. Bayhill Dr., Midway, Utah 84049	1
36	597 W. Bayhill Dr., Midway, Utah 84049	1
37	595 W. Bayhill Dr., Midway, Utah 84049	1
38	593 W. Bayhill Dr., Midway, Utah 84049	1
39	587 W. Bayhill Dr., Midway, Utah 84049	1

40	583 W. Bayhill Dr., Midway, Utah 84049	1
41	575 W. Bayhill Dr., Midway, Utah 84049	1
42	567 Bayhill Dr., Midway, Utah 84049	1
43	447 N. Fairway Dr., Midway, Utah 84049	1
44	443 N. Fairway Dr., Midway, Utah 84049	1
45	431 N. Fairway Dr., Midway, Utah 84049	1
46	413 N. Fairway Dr., Midway, Utah 84049	1
47	390 N. Fairway Dr., Midway, Utah 84049	1
48	400 N. Fairway Dr., Midway, Utah 84049	1
49	406 N. Fairway Dr., Midway, Utah 84049	1
50	414 N. Fairway Dr., Midway, Utah 84049	1
51	420 N. Fairway Dr., Midway, Utah 84049	1
52	430 N. Fairway Dr., Midway, Utah 84049	1
53	434 N. Fairway Dr., Midway, Utah 84049	1
54	436 N. Fairway Dr., Midway, Utah 84049	1
55	444 N. Fairway Dr., Midway, Utah 84049	1
56	452 N. Fairway Dr., Midway, Utah 84049	1
57	464 N. Fairway Dr., Midway, Utah 84049	1

# Delaware

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*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "BMJS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-SEVENTH DAY OF APRIL, A.D. 2012.



4958700 8300

120482867

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9536152

DATE: 04-27-12