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Jeffery Smith
Utah County Recorder
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR EAGLE POINT TOWNHOMES

This Declaration of Covenants, Conditions and Restrictions, hereinafter referred to as the "Declaration" is made and executed this 20th day of September, 2013, by Sunset Mountain Properties Limited Partnership, Autumn View Properties Limited Partnership, Pine Grove Properties Limited Partnership, Box Elder Properties Limited Partnership, PHI Properties, Inc., and Patterson Construction, Inc., each individually and collectively referred to herein as the "Declarant."

1. RECITALS.

- 1.1. Declarant intends, by this Declaration, to create a townhouse project, which, if and when the project is expanded to include Additional Land, will consist of up to a maximum of 400 Units, to be constructed in multiple phases or plats (the "Project").
- 1.2. Plat A of the Project shall consist of 42 Units. Plat B of the Project shall consist of 42 Units. Additional phases or plats and units may be added at the discretion of Declarant under proper entitlements from Eagle Mountain City within the boundaries of Eagle Mountain City, Utah County, State of Utah.
- 1.3. The Project is a planned unit development or "PUD" project, with common areas to be managed and maintained by and through a homeowners association. The Project is not subject to the provisions of the Utah Condominium Ownership Act of Sections 57-8-1 et seq. of the Utah Code.
- 1.4. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

NOW, THEREFORE, for the foregoing purposes, the Declarant adopts the following covenants, conditions and restrictions to govern the development, use, maintenance and management of this townhouse project.

2. DEFINITIONS.

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Section 2.

- 2.1. Act shall mean the Community Association Act (Title 57, Chapter 8a, Utah Code, as amended).
- 2.2. Additional Land shall mean the land that may be added to the Project as described in Section 1.2 above pursuant to the provisions of Section 4 below. A metes and bounds description of the Additional Land is attached hereto as Exhibit B.

- 2.3. Amendment shall mean any amendment to this Declaration made in accordance with the Declaration and the Act.
- 2.4. Assessable Unit shall mean each Unit as defined on the Plat Assessable Unit.
- 2.5. Association shall mean Eagle Point Townhomes Owners Association a Utah nonprofit corporation.
- 2.6. Board shall mean the Board of Directors of the Association, appointed or elected in accordance with this Declaration or the Bylaws.
- 2.7. Building(s) shall mean the buildings constructed as part of the Project, as described in Section 3.2.
- 2.8. Bylaws shall mean the Bylaws of Association adopted by the Board, , as amended from time to time.
- 2.9. Capital Improvement shall mean any improvement with a useful life of more than three (3) years.
- 2.10. Common Areas shall mean all portions of the Project other than the Units, as described in Section 6.1 hereof, including, without limitation, the clubhouse.
- 2.11. Common Assessments shall mean those assessments described in Section 19 to fund the Common Expenses, and include Regular Common Assessments and Special Common Assessments.
- 2.12. Common Expense Account shall mean one or more deposit or investment accounts of the Association into which are deposited the Common Assessments.
- 2.13. Common Expenses shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and all other expenses denominated as Common Expenses by this Declaration or by the Act.
- 2.14. Common Wall(s) means the walls in each Building that divide and are located between any two (2) adjoining Units in a Building. The Common Walls are used by the Owners of adjoining Units in a Building, and are subject to the provisions of Sections 8.1 through 8.4 herein.
- 2.15. Cost of Living Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967=100 compiled by the Bureau of Labor Statistics, United States Department of Labor. The Index for December 1982-1984 is the reference base index. Declarant may select any other comparable index that measures changes in the cost of living.

- 2.16. Declarant shall mean each Declarant named in the first paragraph of this Declaration and such Declarant's successors and assigns.
- 2.17. Declarant Affiliate means any person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company or corporation in which Declarant (or another Declarant Affiliate) is a general partner, manager or controlled shareholder.
- 2.18. Exempt Unit(s) shall mean each Unit in the Project while owned by Declarant or a Declarant affiliate, until the municipal authority having jurisdiction thereover issues a certificate of occupancy for the Unit.
- 2.19. Lease shall mean any agreement of the leasing or rental of any portion of the Project, including any Unit therein.
- 2.20. Limited Common Areas shall mean a portion of the Common Area allocated by the Declaration or the Act, and as may be shown on the Plat for the exclusive use of one or more, but fewer than all, of the Units.
- 2.21. 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.
- 2.22. Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbering a Unit or any part thereof or interest therein.
- 2.23. Mortgagee shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Trust Deed by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage, or (iii) any insurer or guarantor of such person or entity under such Mortgage.
- 2.24. Owner shall mean any person or entity at any time owning in fee simple a Unit within the Project as such ownership is shown by the records of the County Recorder of Utah County, State of Utah. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.
- 2.25. Plat shall mean the plat(s) for Eagle Point Townhomes Plat A or B, a Planned Unit Development (for Plat A, Plat B and all other phases or plats for the Additional Land), filed of record in the office of the County Recorder of Utah County, State of Utah.
- 2.26. Project shall mean the Property, Buildings, the Units, the Common Areas and all improvements constructed on the Property, as approved by the applicable government

authorities. The term "Project" shall include, if and when added, any Additional Land, Units, Buildings, the Common Areas and all other improvements on such Additional Land.

- 2.27. Property shall mean that certain real property situation in the County of Utah, State of Utah, Eagle Mountain City, more particularly describe in Section 3 below, on which the Units, Buildings, Common Areas, Limited Common Areas, and other improvements are or will be located. The term "Property" shall include, if and when added, any Additional Land.
 - 2.28. Regular Common Assessments shall mean the annual assessments levied by the Association to pay the budgeted Common Expenses as specified in this Declaration.
 - 2.29. Special Common Assessments shall mean assessments, which the Association may levy from time to time, in addition to the Regular Common assessments, for unexpected Common Expenses or other purposes as specified in this Declaration.
 - 2.30. Total Votes of the Association shall mean the total number of votes appertaining to all Units, as described in Section 20 hereof.
 - 2.31. Unit shall mean each townhouse within the Project designed for separate ownership and occupancy as described in Section 5 hereof. The term "Unit" shall include the parking space denoted in the Plat by the Unit's number. If and when added, Units shall also mean units later created and built on the Additional Land.
 - 2.32. Unit Number shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project as specified in the Plat, as amended.
3. DESCRIPTION OF PROPERTY AND PRIMARY CONSTRUCTION MATERIALS.
- 3.1. The Property on which the Units, the Common Areas, the Limited Common Areas and the improvements are located is situated in Utah County, Utah, Eagle Mountain City and is described in the attached Exhibit A Legal Description.
 - 3.2. The Buildings in the Project will be principally constructed of the following materials: Wooden frames with load bearing or non-load bearing walls studded with wood; LP siding; glass openings; wooden joist floors and roofs; roof surfaces with asphalt shingles; interior walls surfaced with gypsum sheets. The exterior finishes may include stucco and masonry products.
4. CONFIRMATION OF SUBMISSION TO ACT.
- 4.1. Declarant hereby confirms and acknowledges that the Project is subject to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a planned unit development known as Eagle Point Townhomes. All of said Project 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 said Project; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and benefit on the Property and shall be binding on any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

- 4.2. The Project is expandable and may include any or all of the Additional Land. Declarant has the absolute right and option, but not the obligation, to expand the Project by adding any portion or all of the Additional Land. There are no limits to Declarant's option to expand the Project nor shall such expansion require the consent of any Unit Owners. The term of Declaration is recorded, and cannot be terminated at any time, except by Declarant. Declarant can add any portion of the Additional Land to the Project at any time and from time to time as determined by Declarant in its sole and absolute discretion. There are no limitations or requirements limiting Declarant's rights in that regard, and Declarant may add any portion of such Additional Land to the Project at any time upon meeting the recording and other requirements of the Act. Declarant may designate portions of the Additional Land added to the Project as Plats, but it is not obligated to identify the Additional Land involved in each subsequent Plats (after Plat A and Plat B), nor the order in which such Additional Land will be added to the Project, if at all. No assurances can be made regarding the location of improvements on any portions of the Additional Land, and Declarant has the sole and absolute discretion to place any such improvements as it deems appropriate.
- 4.3. All Units on the Additional Land shall be restricted to residential and residential rental use in accordance with, and subject to all the use restrictions described in Section 10 below. Therefore, no portion of the Additional Land or the floor area of any of the Buildings or Units on the Additional Land shall be used for any uses other than residential and residential rental purposes, Common Areas and Limited Common Areas. While the Declarant believes that any improvements, including the Units constructed on the Additional Land, will be substantially compatible with structures constructed in Plat A and Plat B of the Project in terms of quality of construction, materials and style, no assurances are made that such will be the case. Similarly, other than the restriction to residential and residential rental use of the Units described above, no assurances are made regarding (i) what type of improvements, or the description of of the improvements, that will be made on any portion of the Additional Land, (ii) what type of Units may be created on any portion of the Additional Land, or (iii) the existence of, or the types, sizes or maximum number of Common Areas or Limited Common Areas within any portion of the Additional Land.
- 4.4. No part of the Additional Land shall be deemed to be a part of the Project and the Project shall not be expanded until and unless Declarant or its agent records a plat for

such Additional Land (or any part thereof) and an instrument submitting such Additional Land (or any part thereof) to the terms and provisions of this Declaration.

5. DESCRIPTION OF UNITS.

The boundary lines of each Unit are as set forth on the Plat and consist of the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, and windows and doors of each Unit. In addition, each Unit shall consist of the airspace above and subsurface below the land and all the area and improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Unit lines shown on the Plat, extended upwards to the heavens downward to the center of the earth. Each Unit shall be assigned and receive title to that parking space within the parking area designated in the Plat which bears the number of the Unit. By this provision, the Declarant intends each Unit to be comprised of all of the physical improvements that pertain solely to the area in which the Unit is located or that pertain solely to the improvements of that Unit, including, without limitation, all physical facilities, installations, lines, foundations, equipment, tanks, pumps, pipes, vents ducts, shafts, flues, chutes, conduits, wires and other utility installations that connect or provide service only to the applicable Unit. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; interior walls that support only the improvements within the Unit and are not supportive or load-bearing for the Building as a whole or for any other Units; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit.

The following items shall not be included in the definition of a Unit: the exterior surfaces of the Buildings, the roofs of the Buildings, and any and all physical facilities, installations, structural beams, foundations, equipment, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and utility installations that provide service to, support or covering for, or otherwise pertain to two (2) or more Units.

6. DESCRIPTION AND OWNERSHIP OF COMMON AREAS.

- 6.1. The Common Areas shall mean and include those portions of the Property that are not part of the Units, as well as the open space areas of the Project, the common landscaping of the Project, and the non-public roadways, streets and walkways, if any, within the Project, as well as any other areas in the Project designated as part of the Common Areas on the Plat, including, without limitation, the club house, landscaping, and common parking areas. The Common Areas shall mean and include, but not by way of limitation, the foundation, columns, girders, beams, supports, exterior and bearing walls that provide support for, or are load-bearing for, two (2) or more Units or a Building as a whole. The Common Areas also include the roofs and rooftops of the Buildings; the grounds and certain parking areas in the Project, if any, designated as part of the Common Areas on the Plat; all apparatuses and installations existing for common use; all utility pipes, lines or systems provide water or sewer services to two (2) or more Units; and all repairs, maintenance, clearing (snow), and replacements of any of the foregoing. Designated portions of common parking areas

or other designated portions of the Common Areas may be utilized for locating trash containers and similar items if needed by the Association.

- 6.2. All utility pipes, lines or systems that provide water, sewer, electrical or natural gas that are located outside of public streets and are not maintained by the City, or other utility company, shall be designated as "Common Utilities". All unit owners will be responsible to set up, maintain, and be responsible to pay for connecting and using City or other Common Utilities that are installed for individual Units. Each Unit shall have its own meter for utilities provided as necessary. The sewer laterals to Units may service more than one Unit; in which case, a sewer easement shall be recorded with associated plat to allow for sewer pipes and facilities to cross under neighboring units.
- 6.3. Sunset Mountain Properties Limited Partnership ("SMP") and the Association executed a "Cross Utility Access Easement Agreement" dated August 14, 2013, ("Utility Easement") whereby SMP granted to the Association a non-exclusive easement for common sewer laterals use, meter panels use and other service and access use rights as provided in the Utility Easement. The Utility Easement was recorded with the Utah County Recorder's Office on August 23, 2013. The Utility Easement is attached as Exhibit "C" and by this reference is made a part of this Declaration. Declarant, the Association, the Owners and all parties owning any interest in the Property and the Additional Land are subject to the terms and conditions of the Utility Easement.

7. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES.

Limited Common Areas shall mean any portion of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, balconies, patios, attics, rear and side yards, driveways, gardens and courtyards and other areas as indicated by the Declaration, the Plat or the Act to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only certain Units, but not all Units, shall be Limited Common Areas with respect to the Units, which they serve. Owners may not reallocate Limited Common Areas between or among Units in which they have an interest. Notwithstanding the exclusivity of their use to certain Owners, all Limited Common Areas shall be owned by the Association and not by any Owner or Owners.

8. NATURE AND INCIDENTS OF UNIT OWNERSHIP.

- 8.1. Each Unit is a parcel of real property which may be separately purchased, held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.
- 8.2. Subject to the limitations contained in this Declaration and policies, procedures and rules promulgated by the Association, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and the exclusive right to occupy and use his

Unit and any Limited Common Areas designated for exclusive use by such Owner or all Owners.

- 8.3. Except as otherwise provided herein, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors within the boundaries of such Owner's Unit. Each Owner shall keep the interior of Owner's Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any Unit should develop an unsanitary condition or fall into a state of disrepair and the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Board, the Board shall have the right, at the expense of the Owner and without liability to the Board or Association for trespass or otherwise, to enter said Unit (including any garage or improvement) and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of their Units. Except as otherwise provided herein, no Owner may subdivide or partition his Unit.
- 8.4. The Board shall have the right to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous, prohibited or unlawful activity, and for the purpose of cleaning, maintaining or repairing any Common Areas.

9. TITLE TO UNITS.

- 9.1. Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.
- 9.2. Title to part of a Unit within the Project may not be separated from any other part thereof during the period of ownership, and each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.
- 9.3. No owner shall be permitted to timeshare or to allow any other form of interval ownership or interval right-to-use form of timesharing of any Unit within the Project.
- 9.4. The Common Areas and the Limited Common Areas shall be owned in fee by the Association for the benefit of the Association and the Owners, and no Owner may bring any action for partition thereof.

- 9.5. Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas or the Limited Common Areas or any part thereof. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure of such Unit, the provisions of this Declaration shall be binding upon any Owner or successor Owner whose title is derived through foreclosure by private power of sale foreclosure, judicial foreclosure, deed in lieu of foreclosure, or other manner of transfer.
- 9.6. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto subject to the allocation provisions contained in the last sentence of this paragraph. Labor performed or service or materials furnished for the Project, if authorized by the Association and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien such Owner's proportionate fractional share of the total sums secured by such lien, which is attributable to his Unit.
- 9.7. Every contract for sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the county wherein the Project is located and its Unit Number as indicated in this 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 as described in this Declaration.

10. RESTRICTIONS ON USE.

For purposes of this Section 10, Owner shall be defined to include each Owner, his lessees, tenants, licensees, agents, representatives, guests, invitees and all other persons entering upon the Project due to Owner's acts or failure to act.

The Units and Common Areas, including but not limited to the Limited Common Areas, except as otherwise permitted in writing by the Board, shall be used in accordance with the following restrictions:

- 10.1. All Units are intended to be used for single-family residential housing purposes and are restricted to such use, provided, however, the home-based businesses which have no impact on the Project beyond the ordinary impact of residential use are permissible provided such businesses are in compliance with all applicable city and other governmental laws, rules, regulations and ordinances and such business obtain all

required business licenses. Businesses located in Units which draw frequent vehicular and foot traffic to the Unit are prohibited.

- 10.2. No noxious, destructive, offensive or unlawful activity may be carried on or placed in or upon any Unit, or in the Common Areas, or Limited Common Areas, or any part thereof; nor shall any activity be carried on by an Owner or within a Unit which shall interfere with the legal rights of other Owner or the Association, or which is or may become an annoyance or nuisance to any other Owner, the Association or to any person at any time lawfully residing in the Project. No activities shall be conducted, nor improvements constructed, in any Unit or upon any part of the Project, which are or may become unsafe or hazardous to any person or property. Without limiting the scope of the foregoing, aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit. The Common Areas and the Limited Common Areas shall be used only in a manner which is consistent with their community nature and the use restrictions applicable to the Units as provided in this Declaration and in the rules and regulations promulgated by the Association. Without limiting the scope of the foregoing sentence: (i) no automobile or other vehicle shall be parked in any other Owner's designated parking space or at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or snow removal activities undertaken to and from its various parts; (ii) no clothing, rugs, or other similar items, or wash lines of any kind may be hung, erected, or maintained outside of an Owner's Unit; (iii) no Owner shall discard or permit any items to fall from the windows of his Unit; (iv) no dogs or other pets are permitted on or about Common Areas or Limited Common Areas; provided, a dog is on a leash is permitted if it carries a dog license, is under the control of a responsible person and does not constitute a threat or nuisance; (v) each dog owner/handler must immediately collect and remove any animal droppings and dispose of them in Owner's garbage container; and (vi) each dog owner/handler may not permit the dog to enter upon any Unit other than the Owner's Unit.
- 10.3. No signs, flags or advertising devices of any nature, including, without limitation, informational or directional signs or devices or campaign, political or business signs, shall be erected or maintained on any part of the Project without prior inspection and written approval of the Board, except as may be necessary temporarily to caution or warn of danger or hazards. If an Owner determines to sell his Unit, Owner may be permitted to place an attractive "For Sale" sign on his Unit of reasonable size as determined in the sole discretion of the Board. No signs shall be permitted which advertise the lease or rental of a Unit. If the Board consents to the erection of any such designs or devices, the same shall be removed promptly at the request of the Board at Owner's expense.
- 10.4. Except as provided in Section 10.2 and except for trained assistance animals for the disabled or for similar purposes, no animal, birds, fish or pets of any kind shall be kept, raised or bred on any portion of the Project, without the prior written approval of the Board.

- 10.5. No Unit, or portions thereof, may be further divided, subdivided, partitioned, sold or conveyed so as to be held in divided ownership (except that any Unit may be acquired by one or more persons or entities as tenants in common, joint tenants, or other form of joint undivided ownership).
- 10.6. Except as otherwise permitted by this Declaration, no Owner shall, without the prior written consent of the Board, make or permit to be made any alteration, improvement or addition in or to any Unit. No Owner shall, without the prior written consent of the Board, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas or Limited Common Areas, notwithstanding Section 8.3 hereof.
- 10.7. There shall be no obstruction of the Common Areas Limited Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas; other than Limited Common Areas appurtenant to their Unit, except with the prior consent of the Board.
- 10.8. Nothing shall be done by any Owner or placed in any Unit or in the Common Areas or Limited Common Areas or any part thereof which would result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done by any Owner or placed in any Unit which would increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done by any Owner or placed in any Unit or in the Common Areas or Limited Common Areas or any part thereof which would be in violation of any applicable law, statute, rule, ordinance, regulation, permit or other validly impose requirement of any federal, state, local or municipal government authority. No damage to, or waste of, the Common Areas or Limited Common Areas or any part thereof shall be committed by any Owner as the term Owner is defined in the first paragraph of this Section 10. No Owner shall possess or permit within his Unit or the Project any illegal drugs, contraband, or dangerous substances or engage in any dangerous practice.
- 10.9. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas and the Limited Common Areas and the Project, as such rules and regulations may be modified, amended and construed by the Association in the sole discretion of it Board.
- 10.10. Any lease or rental agreement between an Owner and lessee or tenant respecting a Unit shall be subject in all respects and shall state in such agreement that lessee and tenant shall be subject in all respects to the provisions of this Declaration, the Articles the Bylaws, and the policies, rules and regulations promulgated by the Association, and that any failure by the lessee or tenant to comply with the terms of this Declaration, the Articles, the Bylaws and the policies, rules and regulations of the Association shall be shall constitute a default under the lease or rental agreement and

shall subject both the lessee/tenant and Owner to damages in favor of the Association and other Owners. In such case, the Association and Owners shall be listed as third-party beneficiaries or any rental or lease agreement. All such lease or rental agreements shall be in writing and a copy of the lease or rental agreement shall be delivered to and approved by the Association prior to commencement of the lease. An Owner shall be responsible and liable for any damage to the Project, the other Units, the Common Areas and the Limited Common Areas caused by its lessee/tenant.

In the event a Unit is owned by more than one Owner, all obligations, damages, liabilities and claims arising from such Unit or from any Owner of such Unit (and their lessees, tenants, licensees, agents, representatives, guests, invitees and all other persons entering upon the Project due to Owner's acts or failure to act), shall be joint and several as to all Owners of such Unit.

11. ASSOCIATION AND BOARD OF DIRECTORS.

11.1. Each Owner shall be entitled and required to be a member of the Association. There shall be two (2) classes of membership in the Association, as set forth in Section 20 herein. Membership will begin immediately and automatically upon a person's or entity's becoming an Owner of a Unit and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit. If title to a Unit is held by more than one person or entity, the membership appurtenant to that Unit shall be shared by all such persons or entities in the same proportionate interest 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 him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically upon conveyance of that Unit to the successor Owner of such Unit. Ownership of a Unit within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such 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 to a successor Owner. No Mortgagee, beneficiary of a trust deed or other person or entity holding a lien on a Unit may become a member of the Association or be entitled to vote in any Association matter unless and until such person or entity acquires fee title ownership of such Unit.

11.2. The Association shall be governed by the following provisions:

11.2.1. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Board of Directors consisting of at least three (3) natural persons as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws.

- 11.2.2. Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following.
- 11.2.3. To make and enforce all rules and regulations related to or affecting the operation and maintenance of the Project and the Units.
- 11.2.4. To carry out through a Manager those of the Association's functions which are properly the subject of delegation. The Manager so engaged may be (but is not required to be) an independent contractor and, at the Board's discretion, the Manager may be an agent or employee of the Association or Declarant. The Manager shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself.
- 11.2.5. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore, and to appoint committees as determined by the Board.
- 11.2.6. To operate, maintain, repair, improve and replace the Common Areas and the Limited Common Areas.
- 11.2.7. To determine and pay the Common Expenses
- 11.2.8. To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Section 19 hereinafter.
- 11.2.9. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.
- 11.2.10. To open bank accounts on behalf of the Association and to designate the signatures thereof.
- 11.2.11. To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.
- 11.2.12. To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Association or the Project in excess of \$10,000 (as measured in 2013 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in

no actual liability of funds of the Association in excess of \$10,000 shall not require Association approval.

- 11.2.13. To obtain insurance for the Association with respect to the Units and the Common Areas and the Limited Common Areas, as well as worker's compensation insurance, as needed.
- 11.2.14. To repair or restore the Project following damage or destruction or a permanent taking by the power of or in the nature of eminent domain, or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.
- 11.2.15. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.
- 11.2.16. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Declaration and the Bylaws. The Association or the Board, in their reasonable discretion, shall make available to the Owners, Mortgagees, and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules and regulations governing or affecting the Project generally, and shall provide to the Owner of a Unit and to its Mortgagee and insurer financial and other information in possession of the Association affecting the Unit of such Owner. Such information shall be provided within a reasonable time upon receipt by the Association of written request.
- 11.2.17. To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.
- 11.2.18. To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of Bylaws.
- 11.2.19. To grant conveyances, easements and rights-of-way over the Common Areas and the Limited Common Areas.
- 11.2.20. Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners, Mortgages or any other person or entity, as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own gross negligence or willful misconduct; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction

entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own gross negligence or willful misconduct, nor for acts performed by them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

- 11.2.21. When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with gross negligence or willful misconduct. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose gross negligence gave rise to the damages.
- 11.2.22. Neither the Board nor the Manager, if any, shall sell any Property of the Association except as permitted by the Act and this Declaration.

12. MAINTENANCE, ALTERATION AND IMPROVEMENT.

- 12.1. The Board, acting on behalf of the Association and subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and Limited Common Areas and all improvements thereon and shall keep the same in a good, clean attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep Limited Common Areas designated for use in connection with his Unit in a clean, sanitary and attractive condition. The Board shall be responsible for the maintenance and repair of the exterior of the Buildings, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, siding, railings, roofs and fences, cleaning, repair and maintenance of the clubhouse, swimming pool and related equipment and facilities, and the maintenance of all landscaping, fire and landscaping sprinkling systems, walkways and driveways. The Board shall also be responsible for maintenance, repair and replacement of Common Areas within Buildings and within the Project. The costs associated with the maintenance, replacement and repair of the Common Areas shall be a Common Expense.
- 12.2. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Limited Common Areas from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas or making any emergency repairs at any time and when necessary to prevent damage to the Common

Areas or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owner as is practical under the circumstances and any damage caused thereby shall be repaired by the Association.

- 12.3. Additions or Capital Improvements to the Project, which cost no more than \$10,000, may be authorized by the Board alone. Additions or Capital Improvements the cost of which exceeds \$10,000, must, prior to being constructed, be authorized by at least a majority of the undivided ownership in the Project. Any additional or Capital Improvements which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by at least sixty-seven percent (67%) of the Project's undivided ownership interest. For purposes of this Section 12.3, "materially alter the nature of the Project" shall mean any addition or Capital Improvement that changes the project from residential to any other use, such as commercial or any form of timesharing.
- 12.4. No Owner shall enlarge or otherwise modify the exterior of his Unit or Limited Common Area or add any devices or structures such as, for illustration and not by way of limitation, fences, greenhouses, solariums, room additions, enclosing decks, hot tubs, unless and until the Owner has received written consent from the Board. The Board may function by itself or may appoint a committee to be charged with the responsibility of keeping the Project's exterior and common areas consistent in appearance.

In the event the Board grants an Owner or Owners the right to convert Common Areas into Limited Common Areas or to modify Limited Common Areas into Common Areas, the entire cost of any such improvement or modification shall be borne by the affected Owner or Owners. Ownership interests in the Common Areas shall also be amended to reflect such change. The Owners need not consent to such an amendment. Moreover, the affected Owner or Owners shall be responsible for and pay all expenses associated with the preparation, execution and recordation of any amendments reflecting such conversion.

Should any such improvement or modification result in an additional cost to the Association (such as for utility insurance, painting, staining or other similar cost), such cost shall be added to the affecting Owners' monthly assessment. Further, any such additional cost resulting from such change shall be applicable to non-yearly periodic maintenance projects, such as by way of illustration, but not limited to, roofing, staining or painting, such additional cost shall also be added to any special assessment of the Owner(s).

13. INSURANCE.

- 13.1. Commencing not later than the time of the first conveyance of a Unit to a purchaser, other than Declarant or a Declarant Affiliate, the Association shall maintain, to the extent reasonable available, the following insurance coverage:
 - 13.1.1. Property insurance on the Common Areas and Limited Common Areas and Units insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, Limited Common Areas and Units, as determined by the Board. The total amount of such insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy. Provided however, that with regard to any Unit, the Declarant or Declarant's Affiliate or the purchaser of a Unit shall be obligated to obtain, at its own cost, primary insurance for such Unit as provided in Section 13.7 below, and in such case the Association's obligation to provide insurance under this Agreement as to any Unit shall be secondary, and the Association's insurance obligation shall be primary only as to the Common Areas and Limited Common Areas and portions of the Property not included within the definition of Unit as defined in Section 5 of this Agreement;
 - 13.1.2. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas, Limited Common Areas, exterior elements of the Units and other portions of the Property which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;
 - 13.1.3. Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;
 - 13.1.4. Fidelity bonding of the Board and employees or representatives of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;
 - 13.1.5. Errors and omissions insurance coverage for the Board; and
 - 13.1.6. Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

- 13.1.7. Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions: (a) The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or occupants; (b) No act or omission by any Owner will void the policy or adversely affect recovery on the policy; (c) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, occupants or Mortgagees; (d) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or occupant because of the negligent acts of the Association or other Owners or occupants; (e) statement naming the Association as the insured; and (f) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.
- 13.2. Hazard Insurance. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah.
- 13.3. Certificates of Insurance. An insurer which has issued an insurance policy under this Article 13 shall issue a certificate of insurance to the Association, and upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article 13 shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.
- 13.4. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association.
- 13.5. Payment of Insurance Proceeds. With respect to any loss to the Common Areas, Limited Common Areas or any portion of the Property covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Owner or Mortgagee. Subject to the provisions of Section 13.6, the proceeds shall be disbursed for the repair or restoration of the damage to, first, the Common Areas and Limited Common Areas and, second, the Units.
- 13.6. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Areas, Limited Common Areas or Units which is damaged or destroyed shall be repaired or replaced promptly by the Association if permitted under state or local law, except that as to the repair or restoration of any Unit, insurance maintained by an Owner for his Unit shall be used first to pay such repair or restoration expense and any insurance maintained by the Association shall be secondary. Any excess insurance proceeds not used for repair or maintenance shall either (i) be retained by

the Association as an additional capital reserve; (ii) be used for payment or operating expenses of the Association if such action is approved by the Board, or (iii) shall be distributed in equal shares to the Owners of the Units as their interest appear; all as determined by the Board in its discretion.

- 13.7. Insurance by Owner; Common Walls; Waiver. By acceptance of a deed to a Unit, each Owner hereby acknowledge his/her/its independent insurance obligations for the respective Common Wall which constitutes a portion of the Owner's Unit, and agrees to maintain in full force and effect "all-risk" property insurance with respect to the Unit owned by such Owner. Such insurance shall be in an amount equal to at least 100% of the replacement cost of such Owner's Unit exclusive of the cost of excavation, foundations and footings, and shall protect against loss or damage by fire, and all other hazards that are normally covered by the standard extended coverage endorsement. Each policy shall be carried with a company rated X or better in "Bests Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and the other adjoining Owner(s) and such policy shall require thirty (30) days notice to the Board and the other adjoining Owner(s) before the policy can be cancelled. All policy proceeds payable with respect to damage or destruction of the Common Wall shall be used by the affected Owners, to the extent necessary, to repair and restore the damage or destruction for which the proceeds are payable. Each Owner agrees to make such repair and restoration whether or not the policy proceeds are adequate for such purposes or whether or not the occurrence resulting in such damage or destruction is covered by insurance. Each Owner hereby waives all rights it may have against the other adjoining Owner(s) on account of any loss or damage to its Unit which arises from any risk covered by fire and extended coverage insurance carried hereunder, whether or not such other adjoining Owner(s) may have been negligent or at fault in causing such loss or damage. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the other adjoining Owner(s) for loss covered by such insurance. It is understood that the subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board and the other adjoining Owner(s).

14. DESTRUCTION OR DAMAGE.

- 14.1. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as its lawful attorney-in-fact and shall empower the Association with full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance

proceeds shall be payable to the Association except as otherwise provided in this Declaration.

- 14.2. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and any Buildings or improvements thereon, and the Common Areas and Limited Common Areas having substantially the same vertical and horizontal boundaries as constituted before the damage occurred.
- 14.3. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:
 - 14.3.1. The Association shall give timely written notice to any holder of any First Mortgage on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas, Limited Common Areas, or a Unit subject to such First Mortgage.
 - 14.3.2. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.
 - 14.3.3. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.
 - 14.3.4. If the proceeds of the insurance maintained by the Association are less than estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 19.1.3. hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.
 - 14.3.5. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Total Votes of the Association vote to carry out such repair and reconstruction.

If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least sixty-seven percent (67%) of the votes of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Utah County, State of Utah, a notice setting forth the facts. Upon recording of such notice, the following shall occur:

- 14.3.5.1.1. The Project 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 of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the pro-rata interest of the Owners in the Project.
- 14.3.5.1.2. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.
- 14.4. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimated of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect the repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Limited Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.
- 14.5. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Common Assessments shall constitute a fund for payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance remaining from the insurance proceeds after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally, or in the reasonable discretion of the Board, such balance remaining may be added to the Reserve Fund.
- 14.6. This Section 14 shall not be amended unless Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and recorded in accordance with the provisions of this Declaration.

15. TERMINATION.

- 15.1. Except as otherwise provided in this Declaration, including but not limited to Section 14 hereof, the Project may be terminated only by agreement of Owners entitled to vote at least eighty-five percent (85%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose at which a quorum is present.
- 15.2. All of the Owners may remove the Project from provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project.
- 15.3. A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 15.4. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 15.1 and 15.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the position of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.
- 15.5. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, the Owners and Mortgagees may enforce those liens in the same manner as any lien holder.

16. EMINENT DOMAIN.

- 16.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas, Limited Areas or one or more Units or portions thereof by the exercise of the power of eminent domain or by an action or deed in lieu of condemnation, the Board and each Owner shall be

entitle to notice thereof and the Board shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.

- 16.2. With respect to the Common Areas or Limited Common Areas , any damages or awards made pursuant to a taking shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his ownership interest in the Common Areas and in the Limited Common Areas . The provision does not prohibit a majority of the Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas or the Limited Common Areas so taken on the remaining land or on other acquired land, provided that this Declaration and the Plat are duly amended.
- 16.3. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Section 14 above and shall be deposited with the Board as trustee. Even though the damages or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Board as trustee. In the event an Owner refuses to so deposit his award with the Board, then at the option of the Board, either a Special Common Assessment shall be made against the defaulting Owner and his Unit in the amount of this award or amount of such award shall be set off against the sum hereafter made payable to such Owner.
- 16.4. If one or more Units are taken, in whole or part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:
 - 16.4.1. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit. If the amount of the award exceeds the cost to make the Unit tenantable, such excess shall be distributed to the Mortgagee to the extent of the unpaid balance of the Mortgage and the excess, if any if the Mortgage is paid in full shall be distributed to the Owner.
 - 16.4.2. If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner. The remaining portion of such Unit, if any, shall become a part of the Common Areas or a part of the Limited Common Areas and shall be placed in condition for use by all Owners or use by a limited number of the Owners in the case it is dedicated to Limited Common Areas , all in the manner approved by the Board. The ownership interest in the Common Areas or in the Limited Common Areas appurtenant to the Units that continue as part of the Project (as the case may be) shall be equitably adjusted to distribute the ownership of the Common Areas among the reduced number of Owners or of the Limited Common Areas among the specified Owners whose

Units will benefit from the Unit so dedicated; provided, if only certain specified Owners will benefit from the dedication of the portion of the Unit not condemned to a Limited Common Areas designation, such specified Owners so benefited will provide a cash adjustment to the Association to compensate the remaining unbenefited Owners either by cash disbursements or by a credit to their Annual Assessments, as the Board shall determine in its discretion..

- 16.5. Changes in Units, in the Common Areas and Limited Common Areas , in the ownership of the Common Areas and in the Limited Common Areas that are affected by the taking referred to in this Section shall be evidenced by an Amendment to this Declaration and the Plat, which need not be approved by the Owners.

17. MORTGAGEE PROTECTION.

- 17.1. The Association shall maintain current copies of the Declaration, Articles, Bylaws, and rules and regulations concerning the Project as well as books, records, and financial statements concerning the Project. Upon the written request of Owners and of Mortgagees and insurers having a security or insured's interest in a Unit the Association will provide financial and other information regarding such Unit in accordance with the procedures specified in Section 11.2.16 of this Declaration.
- 17.2. A lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessment of charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgage, or the Unit affected or previously affected by the Mortgage concerned. Once an Owner is dispossessed of title to his Unit due to foreclosure (whether judicial or non-judicial, whether due to a deed in lieu of foreclosure or by other transfer), the successor Owner shall be liable for all assessments specified in this Declaration which are made against such Unit subsequent to such transfer of ownership to the successor Owner.
- 17.3. In the event any taxes or other charges, which may or have become a lien on the Common Areas or on the Limited Common Areas are not timely paid, or in the event of the required hazard insurance described in 13.1.1 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such

insurance. Any Mortgagee, which expends funds for any of such purposes, shall be entitled to immediate reimbursement therefore from the Association.

- 17.4. No provision of this Declaration gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss or taking of all or any part of the Units or the Common Areas or Limited Common Areas.

18. AMENDMENT.

Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Utah County Recorder of an instrument executed by the Association. In such instrument, an officer or a member of the Board of the Association shall certify that the vote required by this Section for amendment has occurred. Declarant shall have the right to amend this Declaration to expand the Project to include the Additional Land, or any portion thereof, from time to time, without a vote or consent of the Owners or the Association. Declarant may also amend the Plat in connection with any such expansion of the Project without a vote or consent of the Owners or the Association. Further, Declarant may amend this Declaration to correct technical errors or inconsistencies without a vote by the Owners.

19. ASSESMENT OF UNITS BY THE ASSOCIATION.

- 19.1. The making and collection of Common Assessments by the Association from Owners of Units for their share of Common Expenses shall be pursuant to the provisions of this Declaration, the Bylaws, and decisions made by the Association and the Board, subject to the following provisions:

- 19.1.1. Declarant, for each Unit owned by Declarant which is not an Exempt Unit, and each Owner, other than Declarant, by becoming an Owner of a Unit is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. Each Unit in the Project (exclusive of the all Exempt Units) shall be liable for an equal share of the Common Expenses of the Association. Two separate and distinct funds shall be created and maintained hereunder, one for operation expenses and one for capital reserve expenses. Funds received in connection with Common Assessments under the Article 19 shall be deposited into the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit annually.

- 19.1.2. The Association may not impose a Regular Common Assessment per Unit which is more than 20% greater than the previous year's Regular Common Assessment, without first obtaining the vote of Owners, constituting a quorum, casting a simple majority of the Total Votes of the Association at a meeting of the Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate property taxes against the Units. The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less than (15) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.
- 19.1.3. In addition to the Regular Common Assessments, the Association may levy in any fiscal year, Special Common Assessments applicable to that year only. However, in any fiscal year, except otherwise provided in this Declaration, the Board shall not, without the vote or written assent of Owners, casting a simple majority of the Total Votes of the Association at a meeting or by written ballot, levy Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. All Units within the Project, except Exempt Units, shall pay an equal portion of any Special Common Assessment. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment is to required to pay an increase in real property taxes or when the special assessment against an Owner is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association, or any other governing instrument of the Association or affecting the Project. The Board shall provide notice by first class mail to all Owners of any Special Common Assessments not less than (15) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Board and the Board may permit, in its discretion, Special Common Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Assessment is imposed.
- 19.1.4. All Common Assessments (whether Regular or Special) shall be due as determined pursuant decisions made by the Board in its discretion. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and shall bear interest at the rate of twelve percent (12%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. In addition, Owners who do not pay their Common Assessments when due shall be subject to a late fee of up to fifty dollars (\$50.00), adjustable from year to year at the discretion of the Board pursuant to the Cost of Living Index. All payments of Common Assessments shall be first applied to accrued interest and late fees, and then to Common Assessment payment first due. If any Common Expense is caused by

the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit. If the Owner's percentage interests in the Common Areas and in the Limited Common Areas are reallocated, assessments for Common Expense and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

- 19.1.5. A lien shall be levied upon the applicable Unit for all Common Assessments not paid when due, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the provisions of this Declaration and the Act. The lien for unpaid Common Assessments and related charges shall be effective upon recordation of the lien in the Office of the Utah County Recorder of a written notice of lien by the Board or the Manager. The written notice of lien shall set forth the amount of the Common Assessment and related charges to the date of the issuance of the written notice of lien, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is delinquency in payment of the Common Assessment. Such lien may be enforced by foreclosure sale conducted in accordance with provisions of Utah law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages, or conducted in accordance with any other applicable law, including without limitation, the method recognized under the laws of the state of Utah for the enforcement of a mechanics lien Chapter 1, Title 38, Utah Code Ann., as amended. In any such foreclosure, the Owner shall be required to pay the 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 the Association any Common Assessments against the Unit which shall become due during the period of foreclosure. All such Common Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same for money damages as provided in Section 19.1.6 of this Declaration, or the Association may foreclose the lien in accordance with the provisions of the Act. The Board may appoint legal counsel or a title insurance company as a trustee for the purpose of exercising the power of sale foreclosure in connection with non-judicial foreclosures as provided in Title 57, chapter 1 Utah code Ann. The Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, chapter 1 Utah Code Ann. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Common Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens

and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 17.2 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The lien created hereunder shall not be deemed a Mortgage under Section 78B-6-901 Utah Code Ann., and the provisions of that section shall not bar the Association from obtaining a judgment for money damages against the Owner (as provided in Section 19.1.6 of this Declaration) without first foreclosing the lien.

- 19.1.6. The amount of any Common Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a judgment for money damages for such personal obligation shall be maintainable by the Association without first 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, the Limited Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a judgment for money damages for unpaid assessments hereunder, the Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.
- 19.1.7. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 19.1.6 shall not pass to successors in title to the Unit unless assumed by them; provided, however, that a lien to secure unpaid assessments shall not be impaired, nullified, or otherwise affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee or other lienholder described in Section 19.1.5 of this Declaration is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the filing of the notice of foreclosure, but shall not relieve any subsequent Owner from paying Common Assessment accruing to the Unit after the filing by such Mortgagee or lienholder of the notice of foreclosure.
- 19.1.8. All Exempt Units shall be exempt from the Common Assessments (including Regular Common Assessments and Special Common Assessments). Declarant shall remain a Class B Member in the Association at all times so long as it owns a Unit, notwithstanding its temporary exemption status from the required Common Assessment payments. On the date on which a Unit loses its status of being an Exempt Unit (as set forth in Section 2.16), then it shall automatically be subject to its share of Common Assessments from that date forward, and the membership pertaining to such Unit shall become a Class A membership.
- 19.2. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the

Common Areas for which the Association is responsible and for which the reserve fund was established and for costs of any litigation involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the Association's operation account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interest of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 19.1.3 hereof. At least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

- 19.2.1. Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.
- 19.2.2. Identification of the probable remaining useful life of the components identified in subparagraph 19.2.1 above, as of the date of the study.
- 19.2.3. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in subparagraph 19.2.1 above, during and at the end of its useful life.
- 19.2.4. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study less an amount, as determined by the Board in its discretion, which shall be retained in the reserve account to cover "reserve account requirements" as defined in the following paragraph.

For the purposes of this Section 19, the term "reserve account requirements" means the estimated funds, which the Board has determined or may determine are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

- 19.3. If an Owner shall at any time lease or rent his Unit and shall default in the payment of Common Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any lessee or tenant of the Owner the rent due or becoming due, and the payment of such lease or rental amount to the Board shall discharge such lessee or tenant and the Owner from the obligation of such Common Assessment, but only to the extent of the amount so paid.

20. VOTING.

The Association shall have two (2) classes of membership, each of which shall be entitled to the following voting rights:

- 20.1. Class A. Each Owner of a Unit, which is an Assessable Unit, shall be a Class A Member of the Association, and each Owner shall be entitled to one (1) vote for each Unit owned. Each Class A Membership shall be held jointly by all persons or entities who comprise the Owner of such Unit.
- 20.2. Class B. Declarant shall be a Class B Member of the Association and shall be entitled to three (3) votes for each Unit owned by Declarant as an Owner or as a designated representative of the Owner of a Unit. Declarant shall be entitled to cast three (3) votes for each such Unit even if the Unit is temporarily classified as an Exempt Unit under Section 2.16 of this Declaration.

At any meeting of the Association, each Owner of a Unit (including Class A and Class B Members of the Association), either in person or by proxy, shall be entitled to cast the number of votes pertaining to their representative Units for any matter submitted to the Association for a vote by Members.

21. EASEMENTS.

- 21.1. If any part of the Common Areas or Limited Common Areas encroaches at any time upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall exist. If any part of a Unit encroaches at any time upon the Common Areas or Limited Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall exist. Such encroachments shall extend for the entire period the encroachment exists. An encroachments shall not be deemed to be an encumbrance on the Common Areas, the Limited Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by the error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof; provided, the Association may require the removal of any encroachment by a Unit upon the Common Areas, the Limited Common Areas or any other Unit if such encroachment results from any improvement or change made to a Unit which was not first submitted in writing to and approved in writing by the Association.

- 21.2. Improvements, including Units, Common Areas and Limited Common Areas, constructed as subsequent phases or plats of the Project may encroach upon portions of the Common Areas and Limited Common Areas of earlier phases or plats of the Project; provided, in the case of an encroachment is caused by a Unit, such encroachment shall not be permitted and the Association may require the Owner of such Unit to remove such encroachment if the improvement or change made to a Unit which causes such encroachment was not first submitted in writing to and approved in writing by the Association. Otherwise, a perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted.
- 21.3. Subject to the terms and conditions of this Declaration, as amended, each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas as necessary for access to the unit he is occupying and to any Limited Common Areas appurtenant to his Unit, and shall have the right to the horizontal, vertical and lateral support of his Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit.
- 21.4. The Association shall have an easement to use the Common Areas and to the Limited Common Areas as may be necessary or convenient for the Association to perform the duties and functions it is required or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and the Limited Common Areas for use by the Owners and the Association.
- 21.5. All conveyances of Units within the Project shall be construed to grant and reserve such easements as are provided in this Declaration, even though no specific reference to an easement appears in any such conveyance.

22. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by email or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board for the purpose of service of such notice or to the address of the Unit of such Owner if no such address has been given to the Board. Notice shall be deemed given when actually received if personally delivered or the next day after delivery to the courier if sent by overnight courier; if faxed or emailed, the day the fax or email is sent. The address, fax number, or email address may be changed from time to time by notice in writing to the Board.

23. NO WAIVER.

The failure of the Board or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this

Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or institute any action, condition or restriction (collectively, a "Right") shall not act as a release, relinquishment or waiver of that Right or any other Right of the Association ; but such Right and all other Rights of the Association shall remain in full force and effect. The receipt and acceptance by the Board or its agents or designees of the payments of any Common Assessment from an Owner with knowledge that such Owner is delinquent in the payment of any other amount or has breached any term or condition of this Declaration or of the policies, rules and regulations promulgated by the Association or by the Board, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof or of the policies, rules and regulations promulgated by the Association or by the Board shall be deemed to have been made unless expressed in writing and signed by the Board.

24. ENFORCEMENT

- 24.1 All Owners and Owner's lessees, tenants, agents, representatives guests, invitees or persons residing in any Unit of an Owner, and persons under Owner's control (collectively "Owner Related Party") , shall be required to strictly comply with the provisions of the Declaration, by the Bylaws, and the rules and regulations and decisions made pursuant thereto. The Association and any aggrieved Owner shall have the right of action against any Owner and Owner Related Party who fails to comply with provisions of the Declaration, the Bylaws, the rules and regulations ,and the decisions of the Association. Failure to comply as provided in this paragraph shall constitute grounds for: (i) an action the Association or aggrieved Owner to recover sums due for damages or injunctive relief or both, r; and/or (ii) the Board to impose monetary penalties and/or temporary suspensions on an Owner's right to the use of the Common Areas or Limited Common Areas, or may impose other appropriate disciplinary actions or sanctions on such non-compliant Owner or Owner Related Party so long as any such Owner or Owner Related Party has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's or Owner Related Party's defense shall be oral or written. After the hearing , but before any disciplinary action is taken, the Owner or Owner Related Party shall be notified of the decision of the Board. The Board may delegate to the Manager the power and authority to carry out disciplinary action or sanction imposed. Provided, the Association shall not be required to give notice of non-compliance to any Owner or Owner Related Party committing an act of non-compliance if the Association, or its agents, determines in its/their sole discretion, that it deems such act of con-compliance to be in violation of any applicable law or ordinance or to constitute an immediate danger to the Project, to the Association, to the Common Areas, to the Limited Common Areas or to any other Owner or other Owner Related Party or to their property; in which case the Association may act immediately without notice to correct or remediate such act of non-compliance.
- 24.2 The Board may adopt and enforce policies, rules and regulations that are not inconsistent with the provisions of the Declaration. The Board may also adopt and enforce fines or penalties schedules, and may impose and collect fines and penalties

from Owners who violate the provisions of the Declaration, the Bylaws and the rules and regulations. All costs and expenses incurred by the Board in enforcing the provisions of the Declaration, the Bylaws, or the rules and regulations, and enforcing or collecting fines and penalties, shall be paid by offending Owner and shall be secured by a lien against the Unit owned by the offending Owner. Said lien shall be enforced in the same manner as the lien securing payment of assessments, as provided in this Declaration.

- 24.3 The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in his Unit on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Project except pursuant to:
 - 24.3.1 The judgment of a court; or
 - 24.3.2. A foreclosure for the failure of an Owner to pay assessments or fines duly levied by the Association; or
 - 24.3.3 The Association shall only be empowered to cause or require alteration or demolition of any improvement or construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.

- 25. AGENT FOR SERVICE OF PROCESS. The name and address of the person to receive service of process shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

- 26. SEVERALBILITY. The Provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

- 27. GOVERNING LAW; JURISDICTION. This Declaration shall be construed and governed by the laws of the State of Utah. Any action brought by the Association or any Owner shall be filed and maintained in the Utah state courts which shall have exclusive jurisdiction.

- 28. EFFECTIVE DATE. This Declaration shall take effect when recorded in the office of the Utah County Recorder, State of Utah. In this Declaration, the singular shall include the plural and the masculine shall include the feminine and vice versa, as the context requires.

(Signatures contained on next page)

EXHIBIT "A"

BEGINNING AT A POINT BEING NORTH 89°31'09" WEST ALONG THE SECTION LINE 849.34 FEET AND SOUTH 43.06 FEET FROM THE NORTHEAST CORNER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN;

RUNNING THENCE ALONG THE ARC OF A 155.00 FOOT RADIUS CURVE TO THE RIGHT 247.43 FEET (CURVE HAS A CENTRAL ANGLE OF 91°27'46" AND A CHORD THAT BEARS SOUTH 34°47'59" E 221.98 FEET); THENCE ALONG THE ARC OF A 1517.68 FOOT RADIUS CURVE TO THE LEFT 225.47 FEET (CURVE HAS A CENTRAL ANGLE OF 08°30'43" AND A CHORD THAT BEARS SOUTH 06°40'33" WEST 225.26 FEET); THENCE NORTH 83°24'33" WEST 291.03 FEET; THENCE NORTH 05°13'44" EAST 250.30 FEET; THENCE NORTH 09°43'27" EAST 148.95 FEET; THENCE SOUTH 80°31'52" EAST 142.57 FEET TO THE POINT OF BEGINNING.

CONTAINS 2.525 ACRES

BASIS OF BEARING= UTAH STATE PLANE COORDINATES, CENTRAL ZONE

EXHIBIT "B"
Additional Land

Eagle Point Condominiums – Exterior Boundary

Beginning at a point located North $89^{\circ}31'09''$ West along section line 376.62 feet from the Northeast Corner of Section 13, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence South along the westerly boundary of Eagle Point Subdivision Plat "A" as recorded in the office of the Utah County Recorder a distance of 983.99 feet; thence North $82^{\circ}02'58''$ West 1416.43 feet; thence North $09^{\circ}21'25''$ East 1016.59 feet; thence along the arc of a 10046.50 foot radius non-tangent curve to the left 1255.44 feet through a central angle of $07^{\circ}09'36''$ (chord bears South $80^{\circ}31'52''$ East 1254.63 feet); thence South 8.59 feet to the point of beginning.
Area = 30.246 Acres

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. Select Title Insurance Agency, Inc. hereby expressly disclaims any responsibility or liability for the accuracy of the content thereof.

EXHIBIT "C"

~~ENT-21799-2014 PG-1 of 3~~
~~Jeffery Smith~~
~~Utah County Recorder~~
~~2014-Apr-02-01:31-PM-FEE-14.00-BY-CLS~~
~~RECORDED-FOR-Select-Title-Insurance-Agency~~
~~ELECTRONICALLY RECORDED~~

**AMENDMENT TO
CROSS UTILITY ACCESS EASEMENT AGREEMENT**

Reference is made to that Cross Utility Access Easement Agreement ("Easement Agreement") made the 14th day of August, 2013, by and between Sunset Mountain Properties Limited Partnership, its successors and/or assigns ("Owners") and Eagle Point Town Homes Homeowners Association, its successors and/or assigns ("Association") relating to parcels of land described on said "Easement Agreement", recorded as Entry No. 81050:2013, on August 23, 2013, attached hereto as Exhibit "A". The Owners and Association are sometimes referred to herein individually as a "party" and collectively as the "parties".

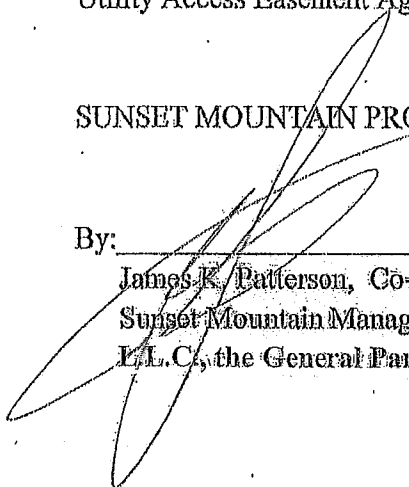
The parties hereby amend the Easement Agreement as follows:

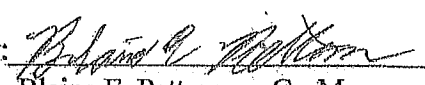
The following additional provision shall be added at the end of Section 1. of the Easement Agreement after the words "Plat A":

"provided, any such grant of cross easement shall be subject to the provisions and limitations concerning cross-easements as set forth in "Notes" section contained in Eagle Point Townhomes, Plat A, which was filed of record in the Utah County Recorder's Office."

IN WITNESS WHEREOF, the parties have executed this Amendment to Cross Utility Access Easement Agreement this 26 day of September, 2013.

SUNSET MOUNTAIN PROPERTIES LIMITED PARTNERSHIP

By: 
James K. Patterson, Co-Manager of
Sunset Mountain Management,
L.L.C., the General Partner

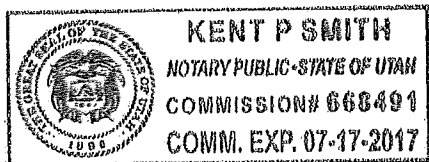
By: 
Blaine E. Patterson, Co-Manager of
Sunset Mountain Management,
L.L.C., the General Partner

EAGLE POINT TOWN HOMES HOMEOWNERS ASSOCIATION

By: 
Scott L. Dunn, Director

State of Utah)
 §
County of Utah)

On the 28th day of September, 2013, before me, the undersigned Notary Public, personally appeared James K. Patterson & Blaine E. Patterson, proven to me on the basis of satisfactory evidence to be the Co-Operating Managers of Sunset Mountain Management, L.L.C., the General Partner of Sunset Mountain Properties Limited Partnership and acknowledged to me they executed the same in their authorized capacities and that by their signatures on the instrument the parties or the entity upon behalf of which the parties acted, executed the instrument.



Kent P. Smith

Notary Public

State of Utah)
 §
County of Utah)

On this 28th day of September, 2013, personally appeared before me before me, the undersigned Notary Public, Scott L. Dunn, Director of Eagle Point Town Homes Homeowners Association, proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



Kent P. Smith

Notary Public

EXHIBIT "A"

BEGINNING AT A POINT BEING NORTH 89°31'09" WEST ALONG THE SECTION LINE 849.34 FEET AND SOUTH 43.06 FEET FROM THE NORTHEAST CORNER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN;

RUNNING THENCE ALONG THE ARC OF A 155.00 FOOT RADIUS CURVE TO THE RIGHT 247.43 FEET (CURVE HAS A CENTRAL ANGLE OF 91°27'46" AND A CHORD THAT BEARS SOUTH 34°47'59" E 221.98 FEET); THENCE ALONG THE ARC OF A 1517.68 FOOT RADIUS CURVE TO THE LEFT 225.47 FEET (CURVE HAS A CENTRAL ANGLE OF 08°30'43" AND A CHORD THAT BEARS SOUTH 06°40'33" WEST 225.26 FEET); THENCE NORTH 83°24'33" WEST 291.03 FEET; THENCE NORTH 05°13'44" EAST 250.30 FEET; THENCE NORTH 09°43'27" EAST 148.95 FEET; THENCE SOUTH 80°31'52" EAST 142.57 FEET TO THE POINT OF BEGINNING.

CONTAINS 2.525 ACRES

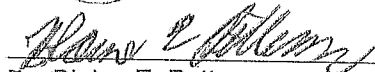
BASIS OF BEARING= UTAH STATE PLANE COORDINATES, CENTRAL ZONE

IN WITNESS WHEREOF, the Declarant has executed this instrument this 28th day of September, 2013.

DECLARANT:

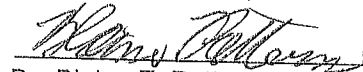
SUNSET MOUNTAIN PROPERTIES LIMITED PARTNERSHIP

By: James K. Patterson,
Co-Operating Manager of Sunset Mountain Management L.L.C., General Partner



By: Blaine E. Patterson,
Co-Operating Manager of Sunset Mountain Management L.L.C., General Partner

AUTUMN VIEW PROPERTIES LIMITED PARTNERSHIP

By: James K. Patterson,
Co-Operating Manager of Sunset Mountain Management L.L.C., General Partner


By: Blaine E. Patterson,
Co-Operating Manager of Sunset Mountain Management L.L.C., General Partner

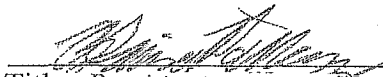
PINE GROVE PROPERTIES LIMITED PARTNERSHIP


By: Blaine E. Patterson,
Operating Manager of Pine Grove Property Management L.L.C., General Partner

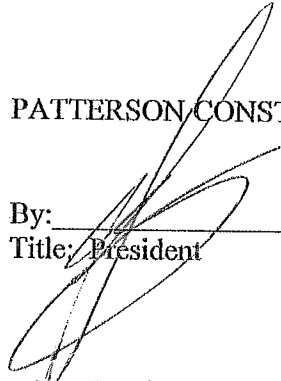
BOX ELDER PROPERTIES LIMITED PARTNERSHIP

By: James K. Patterson,
Operating Manager of Box Elder Management, L.L.C., General Partner

PHI PROPERTIES, INC.


Title: President

PATTERSON CONSTRUCTION, INC.

By: 
Title: President

(Acknowledgements on Next Page)

State of Utah)
)
County of Utah)

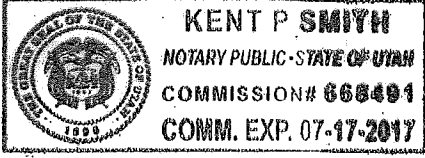
On Sept 20, 2013, personally appeared before me James K Patterson and Blaine E Patterson, whose identity is personally know to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is/they are the Co-Managers of Sunset Mountain Management, L.L.C., which is proven to be the General Partner of Sunset Mountain Properties Limited Partnership, that said document was signed by authority pursuant to the Partnership Agreement, that said partnership is in full force and effect, that as General Partner, he/they have full authority to act in behalf of said partnership, and acknowledged to me that he/they executed the same.



Kent P Smith
Notary Public

State of Utah)
)
County of Utah)

On Sept 28, 2013, personally appeared before me James K Patterson and Blaine E Patterson, whose identity is personally know to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is/they are the Co-Managers of Sunset Mountain Management, L.L.C., which is proven to be the General Partner of Autumn View Properties Limited Partnership, that said document was signed by authority pursuant to the Partnership Agreement, that said partnership is in full force and effect, that as General Partner, he/they have full authority to act in behalf of said partnership, and acknowledged to me that he/they executed the same.



Kent P Smith
Notary Public

State of Utah)
)
County of Utah)

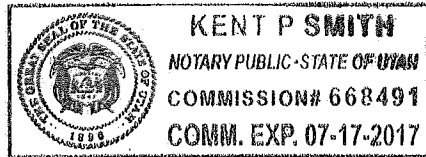
On Sept 20, 2013, personally appeared before me Blaine E Patterson, whose identity is personally know to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of Pine Grove Property Management, L.L.C., which is proven to be the General Partner of Pine Grove Properties Limited Partnership, that said document was signed by authority pursuant to the Partnership Agreement, that said partnership is in full force and effect, that as General Partner, he has full authority to act in behalf of said partnership, and acknowledged to me that he executed the same.



Kent P Smith
Notary Public

State of Utah)
) SS
 County of Utah)

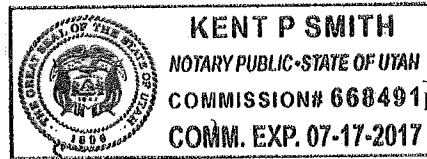
On Sept 20, 2013, personally appeared before me James K Patterson, whose identity is personally know to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of Box Elder Property Management, L.L.C., which is proven to be the General Partner of Box Elder Properties Limited Partnership, that said document was signed by authority pursuant to the Partnership Agreement, that said partnership is in full force and effect, that as General Partner, he has full authority to act in behalf of said partnership, and acknowledged to me that he executed the same.



Kent P Smith
 Notary Public

State of Utah)
) SS
 County of Utah)

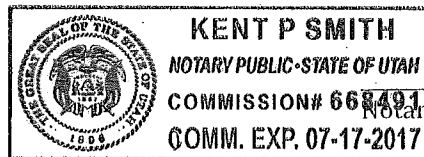
On Sept 20, 2013, personally appeared before me Blaine E Patterson, whose identity is personally know to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the President of PHI Properties, Inc., and that said document was signed by him in behalf of said corporation by authority of its Bylaws (or resolution of its Board of Directors), and said Blaine E Patterson acknowledged to me that said corporation executed the same.



Kent P Smith
 Notary Public

State of Utah)
) SS
 County of Utah)

On Sept 20, 2013, personally appeared before me James K Patterson, whose identity is personally know to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the President of Patterson Construction, Inc., and that said document was signed by him in behalf of said corporation by authority of its Bylaws (or resolution of its Board of Directors), and said James K Patterson acknowledged to me that said corporation executed the same.



Kent P Smith
 Notary Public