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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

for

**BRIO**

*A Jack Fisher Homes Planned Community  
Washington, Utah*

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BRIO**

*A Jack Fisher Homes Planned Community  
Washington County, Utah*

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the 7<sup>TH</sup> day of AUGUST, 2015, by RREF II - JFH BRILLO, LLC, a Delaware limited liability company ("Declarant," which term shall include its permitted successors and assigns of Record).

***PART ONE: INTRODUCTION TO THE COMMUNITY***

*Declarant has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of BRIO as a master planned community ("Community").*

**ARTICLE 1  
CREATION OF THE COMMUNITY**

Section 1.1 Purpose and Intent. Declarant owns or has an interest in certain parcels of real property located in Washington County, State of Utah, as more particularly described in Exhibit "A" hereto ("Original Property"), and intends, by Recording this Declaration, to establish a general plan of development for the Community. This Declaration provides a flexible and reasonable procedure for the future expansion of the Community, to include additional real property as Declarant may deem appropriate, as follows. Declarant reserves the right from time to time to add to the Community all or any portion(s) of certain other real property described in Exhibit "B" hereto ("Annexable Area"). The Original Property and the portions of Annexable Area from time to time annexed of Record to the Community by Declarant shall comprise the "Properties." An integral part of the development plan is the creation of BRIO HOMEOWNERS ASSOCIATION (the "Association"), a Utah nonprofit corporation, whose members shall be comprised of all Owners of residential real property in the Properties, to own, administer, operate, and/or maintain various common areas and community improvements, and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

Section 1.2. Binding Effect. All of the property described in Exhibit "A," and any additional property made a part of the Community from time to time in the future by Recording one or more Declaration(s) of Annexation, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, unless otherwise provided by applicable Utah law, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by a Recorded instrument signed by Members comprising the Requisite Membership Percentage, and which complies with any applicable Utah law. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

Section 1.3 Governing Documents. The Community Governing Documents consist of:

- (a) Official Plats;
- (b) This Declaration (and any and all Recorded Supplemental Declarations and/or Declarations of Annexation);
- (c) Association's Articles of Incorporation;
- (d) Association's Bylaws;
- (e) Design Guidelines (described in Article 4);
- (f) Rules and Regulations (described in Article 3); and
- (g) Resolutions of the Association's Board of Directors;

all as may be amended from time to time. The Governing Documents apply to all Owners and residents in the Community, as well as to their respective invitees. Any lease on a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

**Section 1.4. Priorities and Inconsistencies.**

(a) The Governing Documents shall be construed to be consistent with one another to the extent possible. If there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that any provision of the Declaration fails to comply with any applicable provision of Utah Code Annotated §§ 57-8a-101 *et al.*, and thereafter, the Governing Document listed first in Section 1.3 shall prevail over any lower listed Governing Document.

(b) Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and any such more restrictive provision shall not be deemed to irreconcilably conflict with this Declaration, subject to the right of Declarant to veto any such more restrictive provisions.

**Section 1.5. Enforcement.** The Governing Documents shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity, subject to the provisions of Article 15.

**Section 1.6. Term and Interpretation.**

(a) The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of the Association and the Owners of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until terminated in accordance with this Declaration.

(b) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned community and for the maintenance of the Area of Common Responsibility. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular



shall include the plural and the plural the singular, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter,

(c) The provisions of this Declaration shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or local ordinance. Subject to the foregoing, if any court of competent jurisdiction should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provision or other applications of such provision.

Section 1.7. Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 1.8. Compliance with Applicable Laws. The Association shall comply with all applicable laws, including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable law.

Section 1.9. Exhibits. Exhibits "A" and "B," attached to this Declaration, are incorporated by this reference. Amendment of such Exhibits shall be governed by Article 19 below.

## **ARTICLE 2 DEFINITIONS AND CONCEPTS**

Capitalized terms shall be defined as set forth below. Other capitalized terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions, unless otherwise defined in Utah Code Annotated §§ 57-8a-101 *et seq.* within an appropriate context.

Section 2.1. "Area of Common Responsibility": The Common Elements, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

Section 2.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of the Association, as filed with the Utah Division of Corporations.

Section 2.3. "Assessments": Each and all of Base Assessments, Special Assessments, and Specific Assessments, as applicable.

Section 2.4. "Association": Brio Homeowners Association, a Utah nonprofit corporation, and its successors or assigns.

Section 2.5. "Base Assessment": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of the Community. Any and all Special Assessments and Specific Assessments, as applicable, are in addition to Base Assessments.

Section 2.6. "Board of Directors" or "Board": The body responsible for administration of the

Association, elected or appointed in accordance with the Bylaws and this Declaration, and consistent with the Utah Revised Nonprofit Corporations Act, Utah Code Annotated §§ 16-6a-101 *et seq.*

Section 2.7. "Builder": Any Person, excluding the Declarant, who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Community for further subdivision into Units, development, and/or resale in the ordinary course of such Person's business. During the Declarant Control Period, all Builders other than Declarant's preferred Builder (Jack Fisher Homes of Southern Utah, LLC), shall be prohibited from purchasing parcels of land within the Community for the purpose of development, redevelopment or resale in the ordinary course of such Builder's business, or from constructing improvements thereon for later sale to consumers, unless otherwise approved in writing by Declarant. During the Declarant Control Period and when design review has been delegated to the Board, any plans or specifications submitted by any Person, not Declarant's preferred Builder, to the Board shall be rejected as in violation of this Declaration unless express written consent is otherwise given by Declarant.

Section 2.8. "Bylaws": The Bylaws of the Association, as may be amended from time to time.

Section 2.9. "City": The City of Washington, Utah, a Utah municipal corporation, in which the Properties are located.

Section 2.10. "Common Areas": All real property or interests therein (including, but not necessarily limited to, certain easements designated on Official Plats as pedestrian access corridor easements, public utility easements, landscape easements, drainage and/or sewer easements, and any, other such easements) owned or leased by the Association, which includes entry signage or monuments, street lights, street signs, curbs and gutters, Parks, Common Area landscaping, access and ingress/egress easements, clubhouses, recreational facilities, and otherwise as described in the Community Association Act, but otherwise shall exclude Units.

Section 2.11. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

Section 2.12. "Community": BRIO, a Jack Fisher Homes planned community.

Section 2.13. "Community Association Act": The Utah Community Association Act, Utah Code Annotated §§ 57-8a-101 *et seq.*, as may be amended from time to time.

Section 2.14. "Community Standards": The standards of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standards shall or may be established initially by Declarant and may be more specifically defined in the Design Guidelines, the Rules and Regulations (if any), and Board resolutions. Any subsequent amendments to the standards shall meet or exceed the standards set by Declarant and Board during the Declarant Control Period. Such standards may contain both objective and subjective elements. The Community Standards may evolve as development progresses and as the needs and demands of the Community change.

Section 2.15. "County": Washington County, State of Utah, together with its successors and assigns.

Section 2.16. "Declarant": RREF II – JFH Brillo, LLC, a Delaware limited liability, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale, and who is designated as Declarant in an express

Recorded assignment executed by the immediately preceding Declarant. Declarant is an affiliate of Fisher Homes of Southern Utah, LLC, a Utah limited liability company, which is also Declarant's preferred Builder for the Project.

Section 2.17. "Declarant Control Period": The period of time during which Declarant has reserved certain rights as set forth in this Declaration, and as defined in Section 6.5 below. The Declarant Control Period is a "period of administrative control" as the same is defined in the Community Association Act.

Section 2.18. "Design Guidelines": The architectural, design, and construction guidelines and application and review procedures applicable to the Properties, as promulgated and administered pursuant to Article 4, as may be amended.

Section 2.19. "Development Agreement": That certain Development Agreement between the City of Washington and Declarant dated April 13, 2014, and filed in the office of the Washington County Recorder as Doc. No. 20140032552 on October 23, 2014, including all addenda and exhibits incorporated by reference therein and all amendments thereto.

Section 2.20. "Director": A duly appointed or elected and current member of the Board of Directors of the Association

Section 2.21. "Dwelling": A single Family detached residential building located on a Unit designed and intended for use and occupancy as a residence by a single Family, but specifically excluding "manufactured housing" or mobile homes, neither of which shall be permitted as Dwellings or for portions of the Community developed as multi-family housing, each Unit intended to house a single Family within a multi-family building shall be considered a Dwelling. An approved ancillary "casita," "guest house" or "in-law suite" on a Unit shall not be a separate Dwelling, but instead, shall be deemed a part of the primary structure serving as the Dwelling on the Unit.

Section 2.22. "Family": A group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Utah laws and local health codes and other ordinances.

Section 2.23. "Governing Documents": The documents listed in Section 1.3. Any inconsistency among the Governing Documents shall be governed pursuant to Section 1.4.

Section 2.24. "Home Owner": An Owner as defined in this Declaration below, but excluding the Declarant or any Builder.

Section 2.25. "Improvement": Any structure or appurtenance thereto of every type and kind, whether above or below the land surface, placed in the Properties, including, but not limited to, Dwellings and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, garages, roads, driveways, parking areas, hardscape, streetlights, curbs, gutters, walls, perimeter walls, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 2.26. "Invitees": Each and all of the following: tenants, guests, and other invitees of Declarant or any Builder or Owner (including, as may be applicable, agents, employees, suppliers, and contractors of the same).

Section 2.27. "Limited Common Areas": Those Common Areas designated in any Supplemental Declaration or in an Official Plat as reserved for the use of a certain Unit or Units to the exclusion of other Units.

Section 2.28. "Lot": The real property of any residential Unit, as shown on an Official Plat (subject to this Declaration and the Official Plat). The term shall mean all interests in the Property which also meets the definition of a "Lot" in the Community Association Act. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling thereon. The boundaries of each Lot shall be delineated on a Recorded Official Plat. Prior to Recording of an Official Plat for a particular Parcel, said Parcel shall be deemed to contain the number of Lots designated for future residential use for such parcel on the applicable preliminary plat or site plan approved by Declarant, whichever is more current.

Section 2.29. "Majority": Unless otherwise specifically defined in a provision of the Governing Documents, a majority of those votes, Owners, or other groups, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

Section 2.30. "Manager": The Person, if any, whether an employee or independent contractor, appointed by the Board of Directors, acting under the direction of the Association, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 2.31. "Master Plan": Together the Planned Community Development Zone Application and the Schematic Plan for the Community incorporated as part of the Development Agreement and approved by the City of Washington. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Master Plan bar its later annexation to this Declaration as provided in Article 10. All Owners and Builders acknowledge that Declarant shall have the right and sole discretion to amend the Master Plan from time to time, subject only to the requirements and procedures of the City of Washington, and this Declaration shall not vest any Owner or Builder with the right to enforce any part of any Master Plan against Declarant.

Section 2.32. "Maximum Units": The maximum number of Units approved or reasonably expected to be approved for development within the Community under the Master Plan, as may be amended from time to time; provided, however, that nothing in this Declaration shall be construed to require Declarant to develop the maximum number of Units approved. The Maximum Units as of the date of this Declaration is not to exceed seven hundred eighteen (718) total Units; however, in the event that Declarant obtains approval from the City for an amended Master Plan with an increased number of total Units, then the Maximum Units shall be deemed increased consistent with the amended Master Plan and without an amendment to this Declaration. In the event that all of the real property described in Exhibit "B" hereto has been platted and annexed to the Community or is otherwise no longer available for development, then the total number of Units then platted in the Community under the Master Plan shall thereafter be deemed the Maximum Units.

Section 2.33. "Member": A Person entitled to membership in the Association pursuant to Section 6.2.

Section 2.34. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

Section 2.35. "Nonprofit Corporations Act": Title 16, Chapter 6a of the Utah Code Annotated, the "Utah Revised Nonprofit Corporations Act," as the same may be amended from time to time.

Section 2.36. "Notice and Hearing": Written notice and an opportunity for a hearing before the Board, at which the Owner concerned shall have the opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws. Notice and Hearing given to an Owner shall always comply with the requirements of the Community Association Act, when applicable.

Section 2.37. "Officer": A duly elected or appointed and current officer of the Association.

Section 2.38. "Owner": One or more Persons, which may include Declarant, or a Builder, who hold the Record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees.

Section 2.39. "Parcel": A parcel of land within the Community, conveyed by Declarant to a Builder, and/or owned by a Builder, for the purpose of constructing improvements for later sale to consumers (i.e., for further subdivision into Units, development, and/or resale in the ordinary course of such Builder's business).

Section 2.40. "Park": Certain park areas in the Properties, shown as such on a Plat or designated as such from time to time by Declarant, intended for the use and benefit of the Owners and their invitees. Parks are not anticipated to include public parks owned by the City of Washington.

Section 2.41. "PCD": The Planned Community Development application document approved by the Washington City Council on May 28, 2014 and adopted as the general development plan for the Properties as contemplated by the City's Planned Community Development Zone, along with all exhibits, addenda, amendments, and modifications thereto which may be made from time to time.

Section 2.42. "Person": A natural person, a corporation, limited liability company, partnership, trustee, or any other legal entity.

Section 2.43. "Plat": The final plat maps of portions of the Community as Recorded from time to time, as may be amended and supplemented from time to time of Record. May also be referred to as an "Official Plat."

Section 2.44. "Properties": The real property described in Exhibit "A," together with such additional property from time to time as is made subject to this Declaration in accordance with the terms and provisions hereof.

Section 2.45. "Purchaser": A Person who purchases or otherwise acquires fee title to any Lot or Unit in the Properties.

Section 2.46. "Record," "Recording," or "Recorded": To file, filing, or filed of record in the official records of the Office of the County Recorder of Washington County, State of Utah, consistent with the requirements of Title 57, Chapter 3 of the Utah Code Annotated, "Recording of Documents," as the same may be amended from time to time. The date of Recording shall refer to that date and time at which a document, map, Official Plat or other document is Recorded, as shown in the County Recorder's official record of such Recording.

Section 2.47. "Requisite Membership Percentage": The affirmative vote (or other alternative consent, as applicable) of Members holding not less than sixty-seven percent (67%) of the total votes entitled to be cast by all the Members of the Association.

Section 2.48. "Resident": Unless otherwise specified in the Governing Documents, shall mean any person who is physically residing in a Unit.

Section 2.49. "Rules and Regulations": The restrictions relating to an Owner's use of his or her Unit and conduct of Persons on the Properties, as more specifically authorized and provided for in Article 3.

Section 2.50. "Special Assessment": Assessments levied in accordance with Section 8.5. Special Assessments are additional to any and all Base Assessments and Specific Assessments, as applicable.

Section 2.51. "Special Improvement District": A service and utility district which may be created as a special purpose unit of local government in accordance with Utah law to provide certain community services and/or infrastructure to some or all of the Community.

Section 2.52. "Specific Assessment": Assessments levied against a particular Unit or Units for expenses incurred or to be incurred by the Association for purposes described in Sections 3.5, 4.8, 5.3, 7.3, 7.4, 8.5, 12.5, and/or 15.9, below (or in any other section of this Declaration specifically referring to Specific Assessments). Specific Assessments are additional to any and all Base Assessments and Special Assessments, as applicable.

Section 2.53. "Supplemental Declaration": An instrument Recorded by Declarant or with the express prior written consent of Declarant which shall be supplemental to this Declaration, and which may impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to land described in such instrument. During the Declarant Control Period, any purported Supplemental Declaration Recorded without the express prior written consent of Declarant shall be null and void.

Section 2.54. "Unit": Subject to the provisions pertaining to unsubdivided parcels of land, as set forth in Section 8.1 below: A contiguous portion of the Properties, whether improved or unimproved (other than Common Areas, and property dedicated to the public), which may be independently owned and conveyed and which is intended to be developed, used, and occupied as a Dwelling for a single Family (as shown and separately identified on a Plat). The term includes all Lots as defined herein. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The boundaries of each Unit shall be delineated on a Plat. For purposes of this Declaration, prior to Recording of an Official Plat for a particular Parcel, said Parcel shall be deemed to contain the number of Units designated for residential use for such parcel in the Master Plan or on the applicable preliminary plat or site plan approved by Declarant, whichever is more current.

**PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use, conduct, maintenance, and architecture at the Community are what give the Community its identity and make it a place which people want to call "home." Each Owner and Resident, in upholding such standards, can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards, while providing flexibility for Community Standards to evolve as the Community changes and grows over time, and as customs, requirements, technology, standards, and laws evolve.*

**ARTICLE 3  
USE AND CONDUCT**

Section 3.1. General Framework for Regulation. The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements, and restrictions governing the Properties. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Community, its Owners and residents. Therefore, this Article 3 establishes procedures for modifying and expanding the initial Rules and Regulations, and additional Rules and Regulations which may be created and revised from time to time and also sets forth initial use restrictions applicable to the Community.

Section 3.2. Rule Making Authority.

(a) Authority of Board. Subject to the Governing Documents, the Nonprofit Corporations Act, and the Board's duty to exercise prudent business judgment on behalf of the Association and its Members, and consistent with the provisions of the other Governing Documents, the Board may: (i) create, modify, and enforce reasonable Rules and Regulations governing the use of the Properties, and/or (ii) modify, cancel, limit, create exceptions to, or expand, such Rules and Regulations (all or any one or more of such actions described in the foregoing subsections (i) and/or (ii), an "Action on Rules and Regulations"). The Board shall send notice to all Owners concerning any proposed Action on Rules and Regulations at least ten (10) business days prior to the Board meeting at which such Action on Rules and Regulations is to be considered. Such notice shall be sent in the manner provided for in subsection (b) below, Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Such Action on Rules and Regulations shall become effective, after compliance with subsection (b), unless disapproved by the Requisite Membership Percentage or by Declarant (during the Declarant Control Period). The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition signed by Members representing at least ten percent (10%) of the total votes of the Association as required for special meetings in the Bylaws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then shall be subject to the outcome of such meeting.

(b) Notice. At least fifteen (15) days prior to the effective date of any action taken under subsection (a), the Board shall provide a draft copy of the new Rule or Regulation or explanation of any proposed modifications to the existing Rules and Regulations to each Owner, specifying the effective date. Said notice may be given by posting on the Association's website as permitted by the Community Association Act, or on a website maintained by the Manager or other contractor or employee of the Association for that purpose, and said notice is hereby deemed fair and reasonable. Notice may, in the discretion of the Board, also be given in lieu of or

in addition to posting on the website, by any other method permitted by the Community Association Act or the Nonprofit Corporation Act. An Owner may, by written demand, require the Association to provide all notices to that Owner by mail, as provided in the Community Association Act. The Association may charge a reasonable fee for additional copies of the revised Rules and Regulations beyond those provided to an Owner for initial notice purposes.

(c) Authority to Change Design Guidelines. During the Declarant Control Period (or express delegation by Declarant of its rights under Article 4), neither the Board nor the Association shall have any authority to modify, repeal, or expand the Design Guidelines without the written consent of Declarant. In the event of a conflict between the Design Guidelines and the Rules and Regulations, the Design Guidelines shall control.

Section 3.3 Owners' Acknowledgment: Notice to Home Owners. All Home Owners are given notice that use of their Units and the Common Areas is and/or will be limited by the Governing Documents, including, but not limited to, the Rules and Regulations, as may be amended, expanded, and otherwise modified. Each Home Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, and that the Rules and Regulations may change from time to time as provided under Section 3.2. All Purchasers of Units and subsequent Home Owners are hereby placed on notice that changes may have been adopted by the Association. Copies of the current Rules and Regulations may be obtained from the Association.

Section 3.4. Protection of Owners and Others. Rules and Regulations shall be subject to and consistent with applicable federal and state laws, applicable health codes and other ordinances, the Declaration, Bylaws, and Design Guidelines, and must be adopted without intent to circumvent or evade the requirements and provisions of any of the foregoing. Additionally, no Rule or Regulation, or any other action by the Association or Board, shall unreasonably hinder or impede the rights of Declarant and/or Builders to develop the Properties in accordance with the rights reserved to the Declarant in this Declaration. Subject to and without limiting the foregoing, no Rule or Regulation shall be adopted or enforced in violation of any of the following provisions:

(a) Equal Treatment. Specifically subject to Section 1.8 above, the Rules and Regulations shall be uniformly applied under the same or similar circumstances with regard to similarly situated Owners.

(b) Displays. There shall be no abridgement of the right of Owners to display religious and holiday signs, symbols, and decorations inside dwellings; provided that the Rules and Regulations may, to the maximum extent permitted by applicable law, regulate the time, place, manner, and duration, of any displays visible from outside the Unit. No Rule or Regulation shall regulate the content of political signs; however, Rules and Regulations may, to the maximum extent permitted by applicable law, regulate the time, place, manner, and duration, of posting such signs (including reasonable design criteria). No Rule or Regulation shall limit or regulate the display of the flag of the United States in violation of the Community Association Act or other applicable law.

(c) Household Composition. No Rule or Regulation shall interfere with the right of an Owner to use a Unit as a residence for a single Family (provided that the foregoing shall not be interpreted under any circumstances to permit any "boarding houses" or to permit any condition or residence which would violate any applicable health code or other ordinance, or any applicable state or federal law).

(d) Activities Within Dwellings. No Rule or Regulation shall interfere with the



activities carried on within the confines of Dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and may restrict or prohibit any activities that would; (1) create monetary costs for the Association or other Owners, (2) devalue property values within any portion of the Properties, (3) create a danger to the health, safety and/or welfare of residents of other Units, (4) generate excessive noise or traffic, (5) create unsightly conditions visible outside the dwelling, (6) create an unreasonable source of annoyance, or (7) otherwise violate local, state, or federal laws or regulations.

(e) **Alienation.** No Rule or Regulation shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided that no such lease shall be for a term of less than six (6) months.

(f) **Abridging Existing Rights.** If any new or amended Rule or Regulation would otherwise require an Owner to dispose of personal property which they maintained in or on the Unit prior to the effective date of such regulation, or to vacate a Unit in which they resided prior to the effective date of such regulation, and such property was maintained or such occupancy was in compliance with this Declaration and all Rules and Regulations previously in force, such new or amended Rule or Regulation shall not require that Owner to dispose of said personal property or to vacate said Unit without that Owner's written consent.

(g) **No Mobile Homes.** Notwithstanding any other provision in this Declaration, (1) each Dwelling shall be improved and used solely as a residence for a single Family and for no other purpose; and (2) no part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any "manufactured" or mobile home, or for business, commercial, manufacturing, mercantile, primary storage, vending, or any other nonresidential purposes; provided that Declarant may exercise the reserved rights described in Articles 10 or 11 of the Declaration.

**Section 3.5. Initial Use Restrictions.** Subject to the rights and exemptions of Declarant as set forth in this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Section may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, the Board, nor their respective managers, directors, officers, members, agents or employees shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein. Additional or supplemental use restrictions may also be promulgated from time to time in Recorded Supplemental Declaration(s).

(a) **Single Family and Multifamily Residences.** A building comprised of a single Dwelling shall be used for a Single Family Residence and for no other purpose. A building comprised of more than one Dwelling may be used for Multifamily residential purposes, consistent with the PCD and applicable law, provided that each Dwelling, whether a Single Family Residence or part of a larger Multifamily building, shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any "manufactured" or mobile home, or for business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering," destructive construction testing, or any other nonresidential purposes; provided that Declarant may exercise the reserved rights described in Articles 10 or 11 of the Declaration. The foregoing sentence shall not modify Article 14 or 15

below. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no such lease shall be for a term of less than six (6) months. Leases of any ancillary "casita," "guest house," or "in-law suite" or any portion of any Unit or Dwelling which is smaller than the entire Unit shall be prohibited.

(b) No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or Common Elements may be further subdivided (including, without limitation, any division into time-share estates or time-share uses); provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, or as tenants by the entirety. The terms of any such lease or rental agreement shall be made expressly subject to the Governing Documents. Any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. Absent prior written approval of the Board, in its sole discretion, no two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner may permanently remove any block wall or other intervening partition between Units.

(c) Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any applicable law. Any other provision herein notwithstanding, the Board shall not have any power whatsoever to waive or modify this restriction.

(d) Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind ("Animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, household birds or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, or in unreasonable quantities or in violation of any applicable governmental ordinance or any other provision of the Declaration, and are subject to such limitations as may be set forth in the Rules and Regulations. As used in this Section, "unreasonable quantities" shall ordinarily mean more than two (2) such pets per household, provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board, a nuisance to other Owners or residents. Subject to the foregoing, animals belonging to Owners, residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to immediately clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar improvement pertaining to animals shall be placed or permitted upon any Unit, and (b) all Owners shall comply fully in all respects with all applicable governmental ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

(e) **Nuisances.** No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings; and no plant waste, compost, bulk materials, or other debris of any kind (all, collectively, hereinafter, "rubbish and debris") shall be kept, stored or allowed to accumulate on any privately owned Unit unless stored within an enclosed structure or container which has been approved by the Board, or unless such matter is screened from view in a manner approved by the Board, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary or offensive. Without limiting the foregoing, a refuse container, the use of which has been approved by the Board, containing such materials, may be placed outside at times reasonably necessary (not to exceed eighteen (18) hours before or after scheduled trash collection hours) to permit garbage or trash pickup. No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Areas. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security or fire protection purposes), noisy or smoky vehicles, vehicles or motors leaking fluids of any kinds, large power equipment or large power tools (excluding lawn mowers and other equipment normally utilized in connection with ordinary residential landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or residents, or any equipment or item which may unreasonably interfere with television or radio reception within any Unit or the Common Areas, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Area of Common Responsibility without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. The Board shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and residents for the conduct and behavior of children and other Family members or persons residing in or visiting his Unit, and any damage to the Common Areas, personal property of the Association, or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

(f) **Exterior Maintenance and Repair; Owner's Obligations.** No property or Improvement anywhere within the Properties shall be permitted to fall into disrepair, and all property (including any Improvements) in the Properties shall at all times be kept in a safe condition, and in good condition and repair. If any Owner or Resident shall permit any Unit, which is the responsibility of such Owner or Resident to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the DRO, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner and/or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Specific Assessment pursuant to the Declaration, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment for all purposes of the Declaration. The Owner and/or Resident of the offending Unit shall be personally

liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor. The Association shall have no liability whatsoever for any damage done to an Owner's Unit as a result of such entrance and repair, provided, however, that the Association was acting in good faith.

(g) Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the Board, and any request therefor shall be subject to Article 4 of the Declaration, including, but not necessarily limited to, any condition imposed by the Board, and further shall be subject to the Owner obtaining all necessary governmental approvals. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to an initial Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the Board.

(h) Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, and any applicable governmental health authorities having jurisdiction, and has been approved in advance and in writing by the Board.

(i) No Hazardous Activities. No activities shall be conducted, nor shall any improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements, Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, except a regular barbecue fire contained within a receptacle commercially designed therefor, while attended and in use for cooking purposes, so that no fire hazard is created, or except as specifically authorized in writing by the Board (all as subject to applicable ordinances and fire regulations).

(j) No Unsightly Articles. No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, garden or maintenance equipment, or inoperable vehicle) shall be permitted to remain on any Unit so as to be reasonably visible from any street, or from any other Unit, Common Elements, or neighboring property.

(k) No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon, in, or below any Unit or the Common Areas, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat, natural gas, or other mineral or depleting asset shall be erected. Declarant hereby reserves all water rights, if and to the extent there are any water rights, pertaining to all of the Properties and all portions thereof.

(l) Alterations. There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties without the prior approval of the Board pursuant to Article 4 hereof. There shall be no violation of the setback, side yard or other

requirements of local governmental authority, notwithstanding any approval of the Board. This Section shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition.

(m) **Signs and Displays.** Subject to the reserved rights of Declarant in the Declaration (and any reserved rights of a Builder of Record with regard to such Builder's subdivision), during the Declarant Control Period no flag, flag pole, balloon, beacon, banner, sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view on any portion of the Properties, or on any public street abutting the Properties, without the prior written approval of the Declarant, including but not limited to for sale or for lease signs, and signs that display the name of an agent, realtor, brokerage, for-sale-by-owner association or service, auction service, or any other Person in the business of marketing, selling, or leasing real property in the ordinary course of business. Any sign approved in writing by Declarant shall otherwise conform to all specifications which may be promulgated (from time to time) by the Board, relating to dimensions, design, number, style and location of display. The following shall be exceptions from the prohibitions of this paragraph: (a) one home security service sign per Unit, subject to Board requirements and limitations, and/or (c) traffic and other signs installed by Declarant as part of the original construction of the Properties or required by governmental authority with jurisdiction. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable governmental ordinances. During the Declarant Control Period, the Declarant reserves to itself the right to require the Board to adopt or amend such Rules and Regulations as Declarant sees fit with respect to signs and other displays; after the termination of the Declarant Control Period, the Board shall retain the right independently to adopt or amend such Rules and Regulations. No Rule nor Regulation shall restrict the display of the flag of the United States in violation of the Community Association Act.

(n) **Improvements.**

(1) No Lot in a portion of the Community designated for single-Family Dwellings shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-Family Dwelling. No part of the construction on any Unit shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any Dwelling Unit, except one or more chimneys or vent stacks. No basketball backboard, jungle gym, play equipment, or other sports apparatus, whether temporary or permanent, shall be constructed, erected, or maintained on the Properties without the prior written approval of the Board. Apart from any installation by Declarant (or by Builder, as applicable, subject to all requirements applicable to the builder) as part of its original construction, no patio cover, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant (or Builder, as applicable) during the original construction of the Dwelling), unless the prior written approval of the Board is obtained.

(2) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and neighboring properties.

(3) No fence or wall shall be erected or altered without prior written approval of the Board. All alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the Board.

(4) Garages shall be used only for their ordinary and normal purposes. Unless constructed or installed by Declarant (or Builder, as applicable) as part of its original construction, no Owner or Resident may convert the garage on his or her Unit into living space, or use a garage for storage or otherwise use or modify a garage so as to preclude regular and normal parking of vehicles therein. The foregoing notwithstanding, Declarant (or Builder, as applicable) may convert a garage located in any Unit owned by Declarant (or Builder, as applicable) into a sales office or related purposes.

(o) Antennas and Satellite Dishes. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained on any Unit. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (1) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (2) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is mounted on the port provided in the initial design and construction of the Unit; or if reception cannot be adequately obtained at that site, then mounted on the rear of the Dwelling furthest from the street, or not more than 10 feet closer to the street from said side of the Dwelling, in a manner intended to minimize the visibility of the Permitted Device from all streets to the extent reasonably possible.

Declarant or the Association (or any Builder, with respect to such Builder's subdivision) may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant (or a Builder, with respect to such subdivision) may grant easements for installation, maintenance, repair and/or replacement of any such master or cable television service.

(p) Landscaping. Front yard landscaping (including any rear or side yard landscaping that abuts a public street, such as on a corner lot) shall be installed in conjunction with construction of a Dwelling on a Unit, and each Home Owner shall be responsible to install all other side and rear yard landscaping not later than ninety (90) days following issuance of a Certificate of Occupancy for the Dwelling on the Unit. The Home Owner shall thereafter maintain all yard landscaping in front, side and rear yards, in a neat and attractive condition, including all necessary landscaping and gardening, and shall properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation, including any originally placed on such Unit by Declarant or a Builder. The foregoing shall apply regardless of whether or not the Home Owner's yard or portions thereof are subject to view from an abutting street, streets, or Park. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. In addition, each Owner shall keep free from weeds, debris and other unsightly objects all portions of the yard on his Unit. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with the Governing Documents, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists an unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon such Owner's Unit

for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Specific Assessment enforceable in the manner set forth in the Declaration. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Unit, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

(q) Parking and Vehicular Restrictions. Generally, Home Owners should utilize first their garage and then their own driveway for parking of operable vehicles, and no overnight street parking of any vehicles shall be permitted. More specifically:

(1) No Person shall park, store, or keep on any street (public or private) or anywhere else within the Properties: any disabled, unregistered, or unlicensed vehicle; or any large commercial-type vehicle (including, but not limited to, any dump truck, cement-mixer truck, oil or gas truck, or any other similar vehicle); provided that the foregoing shall not be deemed to exclude reasonable and temporary parking on streets, where not otherwise prohibited, of moving vans, delivery trucks, maintenance vehicles, landscaping trucks, or similar vehicles, for the sole purpose of reasonably prompt loading, unloading, delivery, maintenance, and/or landscaping (but in no event shall such vehicles be permitted to remain overnight).

(2) No Person shall park, store, or keep on any street (public or private) within or abutting the Properties any recreational vehicle (including, but not limited to, any camper unit, house car or motor home, trailer, trailer coach, camp trailer, watercraft, all-terrain vehicle (ATV), vehicle designed or modified primarily for off-road use, aircraft, or mobile home); provided that such recreational vehicles may be kept or parked: (a) within an authorized "Recreational Vehicle Storage Area" (if any, designated as such by the Board) subject to all applicable Rules and Regulations; and/or (b) within an enclosed garage or behind a gate which substantially screens the recreational vehicle from view of the adjacent street, and upon a concrete pad. No canopies or coverings for recreational vehicles shall be permitted. No sewage cleanouts or electrical, water, or sewer connections designed primarily to service recreational vehicles shall be permitted to be installed. One (1) camper truck, van, or similar vehicle, up to and including one (1) ton, when used for everyday-type transportation, may be kept or parked wholly enclosed within an Owner's garage.

(3) Without limiting the foregoing, no Owner shall park, store, or keep, anywhere within the Properties, any vehicle or vehicular equipment, mobile or otherwise, deemed by the Board to be a nuisance.

(4) No Person shall perform repair or restoration of any motor vehicle, recreational vehicle (as listed above), or other vehicle, upon any portion of the Properties or on any street abutting the Properties; provided that repair and/or restoration of one vehicle shall be permitted, but only if performed wholly within an Owner's garage with the garage door closed or behind a gate which fully screens the vehicle from view of the adjacent street, for hobby and not primarily for commercial purposes; provided further that such activity may be prohibited entirely by the Board if it determines, in its reasonable discretion, that such activity constitutes a nuisance.

(5) Each Owner and/or Resident shall maintain his garage in a manner which ensures that the garage is capable of regularly and normally accommodating as many vehicles as it was originally designed to accommodate. Garages shall be kept closed at all



times, except as reasonably required for ingress to and egress therefrom.

(6) The Board may establish Rules and Regulations further governing or restricting parking (including, but not limited to, any parking associated with or upon Common Areas, or any guest parking in specifically designated areas). Notwithstanding any of the foregoing, these restrictions shall not be interpreted in such manner as to permit any activity contrary to any applicable law or governmental ordinance.

(7) The sole exception to the foregoing restrictions is that persons visiting a Home Owner may park a motor vehicle, not including any recreational vehicle or commercial-type vehicle, on the street in front of the Home Owner's Unit for up to twenty-four (24) consecutive hours. The Board may also establish additional Rules or Regulations governing visitor parking in the community.

(r) **No Waiver.** The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager if any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

**Section 3.6. Declarant Exemption.** Units owned by Declarant (and/or Builder, if applicable, subject to any obligations of the Builder to Declarant or conditions set by Declarant) which were owned or acquired by Declarant during the Declarant Control Period shall, during the Declarant Control Period and thereafter, be exempt from the provisions of this Article 3, and from any Rules and Regulations adopted by the Board hereunder, until such time as Declarant (or Builder, as applicable) conveys title to the Unit to a Home Owner; and activities of Declarant (or Builder, as applicable) reasonably related to Declarant's (or Builder's) development, construction, and marketing efforts, shall be exempt from the provisions of this Article 3, and from any Rules and Regulations adopted by the Board hereunder. This Section 3.6 may not be amended at any time without Declarant's prior written consent, and any purported amendment in violation of the foregoing shall be null and void.

#### **ARTICLE 4**

#### **ARCHITECTURE AND LANDSCAPING**

**Section 4.1. General.** No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article 4 and the Design Guidelines.

During the Declarant Control Period, Declarant approval, and thereafter Board approval, shall be required to repaint the exterior of a structure, whether or not in accordance with the originally approved color scheme, or to rebuild, whether or not in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Dwelling without approval. However, modifications to the interior of porches, patios, and similar portions of a Dwelling visible from outside the structure shall be subject to prior review and approval as set forth herein.

All dwellings constructed on any portion of the Properties shall be designed by and built in



accordance with the plans and specifications of a licensed architect or similarly licensed building designer unless otherwise approved by Declarant or its designee in its sole discretion.

This Article 4 shall not apply to the activities of Declarant during the Declarant Control Period.

**Section 4.2. Design Review.**

(a) **Review By Declarant.** Each Owner, by acquiring title to a Unit, acknowledges that Declarant, as developer of portions of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article 4 ("Work") shall be commenced on such Owner's Unit unless and until Declarant has given its prior written approval for such Work, which approval may be granted or withheld in the sole discretion of Declarant. In reviewing and acting upon any request for approval, Declarant shall be acting solely in the interest of Declarant and shall owe no duty to any other Person. The rights reserved to Declarant under this Article shall continue during the Declarant Control Period. Declarant may from time to time, but shall not be obligated to, delegate all or any portion of its reserved rights under this Article 4 to the Board. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to: (1) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (2) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. During the Declarant Control Period, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates.

(b) **Period of Declarant's Article 4 Rights.** The rights reserved to Declarant under this Article 4 shall continue through the Declarant Control Period, unless earlier terminated or expressly delegated by a written and Recorded instrument executed by Declarant.

(c) **Certain Waivers of Design Review Matters for Qualifying Builders.** The design review process may be waived by Declarant, at Declarant's option, for a Builder which has purchased real property from Declarant, and which has duly received Declarant's approval of a project plan pursuant to the process set forth in a Recorded Development Declaration satisfactory to Declarant.

(d) **Review by Board.** Upon expiration or termination of the Declarant Control Period, or upon express delegation by Declarant of its Article 4 rights: (1) the Board shall assume jurisdiction over design matters. Until such time as the Declarant Control Period expires or terminates, or unless and until such time as Declarant delegates its Article 4 rights to the Board, neither the Board nor the Association shall have any jurisdiction or authority whatsoever over design matters.

(e) **Review Fees: Assistance.** For purposes of this Article 4, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application and/or to any subsequent review(s) of any revision(s) thereto. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

Section 4.3. Design Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare the initial Design Guidelines. The Design Guidelines are intended to provide guidance to Home Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Reviewer shall make the Design Guidelines available to Home Owners and Builders who seek to engage in development or construction within the Community. In Declarant's sole discretion, such Design Guidelines may be Recorded (in which event the Recorded version, as unilaterally may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.) Declarant shall have sole and full authority to amend the Design Guidelines during the Declarant Control Period, notwithstanding a delegation of reviewing authority to the Board (unless Declarant also expressly delegates such power to amend). Upon termination or delegation of Declarant's right to amend, the Board shall have the authority to amend the Design Guidelines, with the Board's consent. Any amendments to the Design Guidelines shall be prospective only, and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

(b) Procedures. Unless a waiver contemplated by Section 4.2(a) above applies, prior to commencing any Work within the scope of this Article 4, an Owner shall submit to the relevant Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as reasonably deemed necessary to consider any application, and may require deposits by a Home Owner prior to approval or commencement of Work.

In reviewing each submission, the Reviewer may consider any factors it deems reasonably relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall, within sixty (60) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

In the event that the Reviewer fails to respond within the 60-day period, approval shall be deemed to have been given, subject to Declarant's veto right pursuant to this Section. However, no approval (whether expressly granted or deemed granted pursuant to the foregoing) shall be inconsistent with the Design Guidelines, unless a variance has been expressly granted pursuant to Section 4.5. There shall be no deemed variances.

Until expiration of the Declarant Control Period, the Board shall notify Declarant in writing within three (3) business days after the Board has approved any application relating to proposed Work within the scope of matters Declarant delegated to the Board. The notice shall be accompanied by a copy of the application and any additional information Declarant may require. During the Declarant Control Period, Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Board and the applicant.

If construction does not commence on a project for which Plans have been approved within one hundred twenty (120) days after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within ninety (90) days of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article 4, provided such activities are undertaken in strict compliance with the requirements of such resolution.

**Section 4.4. No Waiver of Future Approvals.** Each Owner acknowledges that the Person(s) reviewing applications under this Article 4 will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar applications or proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

**Section 4.5. Variances.** The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted regulations. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or other financial considerations, shall not be considered a hardship warranting a variance. Notwithstanding the above, the Reviewer may not authorize variances without the written consent of Declarant, during the Declarant Control Period.

**Section 4.6. Limitation of Liability.** The standards and procedures in this Article 4 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person, Review and approval of any application are made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring: (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Units are of comparable quality, value, size, or of similar

design, aesthetically pleasing, or otherwise acceptable to neighboring property owners; (d) that views from any other Unit are protected; or (e) that no defects exist in approved construction. Neither Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor, subcontractors, employees, or agents, whether or not Declarant has approved or featured such Person as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board and its Directors shall be defended and indemnified by the Association as provided in Section 7.6.

**Section 4.7. Certificate of Compliance.** Any Owner may request that the Reviewer issue a certificate of design compliance certifying that there are no known violations of this Article 4 or the Design Guidelines. The Association shall either grant or deny such request within forty-five (45) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate and which may violate this Article 4 or the Design Guidelines.

**Section 4.8. Cure of Nonconforming Work; Enforcement.** Any construction, alteration, or other work done in violation of this Article 4 or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the Association, or Reviewer, an Owner shall, at its own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by applicable law), may be assessed against the benefited Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Work and all Work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Work by the deadline set forth in the approval, Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the Bylaws, to enter upon the Unit and remove or complete any incomplete Work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article 4 and the Design Guidelines may be excluded from the Properties, subject to Notice and Hearing. In such event, neither Declarant, the Association, nor their officers and directors shall be held liable to any Person for exercising the rights granted by this paragraph. The Association and/or Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article 4 and the decisions of the Reviewer.

**ARTICLE 5**  
**MAINTENANCE AND REPAIR**

**Section 5.1 Maintenance of Units.** Each Owner shall maintain his or her Lot, Dwelling, Unit, and all landscaping and other improvements comprising the Unit, as well as the interior surface of any perimeter wall or fence, in a manner consistent with the Governing Documents, the Community Standards, and all applicable covenants, unless some or all of such maintenance responsibility is otherwise assumed by or assigned to the Association. In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**Section 5.2 Maintenance of Common Property.** The Association shall maintain any Common Elements, and any other property for which it has maintenance responsibility, in a manner consistent with the Governing Documents, the Community Standards, and all applicable covenants. The Owners shall be responsible for paying the costs of operating, maintaining, and insuring the Area of Common Responsibility. This may include, without limitation, the costs of maintaining any signage, entry features, rights-of-way, open space, and green space between public roads and private land, the Area of Common Responsibility, or other features which are a part of the Community.

**Section 5.3 Responsibility for Repair and Replacement.** Unless otherwise specifically provided for in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community Standards.

By virtue of taking title to a Unit, each Home Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Home Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Home Owner.

Each Home Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 4. In the event that such repair and reconstruction cannot be promptly undertaken, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community Standards and shall present a timetable for repair and reconstruction to the Board within ninety (90) days of the damaging or destructive event. The Owner shall pay any costs which are not covered by insurance proceeds.

**PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Association as a mechanism by which each Owner, as a Member, is able to participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Association's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's Membership, being the Owners of Units in the Community,*

**ARTICLE 6  
THE ASSOCIATION AND ITS MEMBERS**

**Section 6.1 Function of the Association.** The Association shall be the entity responsible, through its Board of Directors, for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and applicable laws.

**Section 6.2 Membership.** Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall constitute one Member, and may attend any meeting of the Association, but may only exercise the vote for their Unit pursuant to Section 6.7 below. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. All co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership, subject to the Governing Documents and to reasonable Board regulation.

**Section 6.3 Board of Directors.**

(a) The affairs of the Association shall be managed by a Board of Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 6.4 below) must be Members of the Association. In accordance with the provisions of Section 6.4 below, upon the formation of the Association, Declarant shall appoint the Board, which shall initially consist of three (3) Directors. During the Declarant Control Period, Declarant may unilaterally increase the Board to seven (7) Directors. After the Declarant Control Period, the Board shall consist of seven (7) Directors. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of the Nonprofit Corporations Act or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office; provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds (2/3) vote of the entire Membership may remove any Director with or without cause, other than a Director appointed by Declarant. The Owners shall not be entitled to remove the Directors appointed by Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already

expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Utah law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

(b) Managing Member. During the Declarant Control Period, the Declarant hereby reserves to itself and is hereby granted the unilateral right to appoint an individual to act as the attorney-in-fact for the Board and in its name, place and stead, and on its behalf, and for its use and benefit (the "Managing Member"), including by way of illustration but not limiting the right, power and authority to exercise or perform any act, power, duty right, or obligation whatsoever that the Board now has, or may hereafter acquire the legal right, power, or capacity to exercise or perform in connection with, arising from, or relating to any person, item, transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever. This reservation and grant is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said Managing Member.

(c) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on the Board are present.

Section 6.4 Declarant's Appointment and Removal of Board. Directors appointed by Declarant need not be Owners. Declarant shall have the power and right to appoint and remove, with or without cause, all of the initial and subsequent Directors during the Declarant Control Period.

Section 6.5 Declarant Control Period. The Declarant Control Period shall run from the date of Recording of this Declaration, to the earlier of:

(a) The date which is sixty (60) days after conveyance from Declarant to Home Owners of one hundred percent (100%) of the Maximum Units; or

(b) The date on which Declarant voluntarily and in its sole and exclusive discretion relinquishes its rights hereunder, by signing and Recording a written instrument made specifically for that purpose.

Section 6.6 Control of Board by Home Owners. Subject to and following the period of Declarant's control, as set forth in Section 6.5 above: (a) the Home Owners shall elect a Board of not less than seven (7) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director) for the unexpired portion of any term. All Directors elected by Members must be Home Owners, and each such Director shall, within thirty (30) days of his appointment or election, certify in writing that he or she is a Home Owner and has read and reasonably understands the Governing Documents and applicable provisions of the Nonprofit Corporations Act to the best of his or her ability. The Board shall elect the Officers, all of whom must be Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners of the entire Membership at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may

only be removed by Declarant.

Section 6.7 Voting. The Association shall have one class of membership, comprised of all Owners. Each Owner shall have one equal vote for each Unit in which it holds the interest required for membership under Section 6.2, provided that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.10. Notwithstanding the foregoing, or any other provision in this Declaration or any other Governing Document, during the Declarant Control Period there shall be a temporary second class of membership in which Declarant shall be the sole member, and which class shall allow the Declarant five (5) votes for each Unit in which it holds an interest. The temporary second class shall expire upon the expiration of the Declarant Control Period, and the Declarant shall thereafter be a member of the single remaining class with all other Owners. Both within and following the Declarant Control Period, Declarant exclusively shall retain and shall exercise all votes allocable to Units and/or Parcels conveyed to Builders (and each Builder, by acquiring or owning title to any portion of the Properties, shall be unconditionally deemed to have agreed to and accepted exclusive retention by Declarant of such voting rights), until each such Unit is conveyed by a Builder to a Home Owner (at which time, the Home Owner exclusively shall have the vote allocable to his or her Unit, pursuant to this Declaration). Accordingly, the total number of votes for the Association at the time of any given vote shall equal the total number of Units created under and subject to this Declaration at that time, plus, during the Declarant Control Period, an additional four (4) votes for each Unit owned by Declarant or any Builder at that time.

Where a Unit is owned jointly by co-owners, only one (1) such co-owner ("Designated Co-Owner" designated from time to time by all of the co-owners in a written instrument provided to the Secretary of the Association, shall be entitled to exercise the one (1) vote to which the Unit is entitled. Where no Designated Co-Owner has been designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. Fractional votes shall not be allowed. Absent a written instrument described above, and in the event that more than one co-owner casts a vote, the Unit's vote shall be suspended and shall not be included in the final vote tally on the matter being voted upon.

Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent.

## **ARTICLE 7**

### **ASSOCIATION POWERS AND RESPONSIBILITIES**

#### **Section 7.1 Acceptance and Control of Association Property.**

(a) To further its functions as set forth above, the Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Area of Common Responsibility, to permit use of such portions of the Area of Common Responsibility by community organizations and by others, whether nonprofit or for profit, or for the provision of goods or services for the general benefit or convenience of Owners and residents.

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to



Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error, or needed by Declarant to make adjustments in property fines.

(c) The Association shall be responsible for management, operation, and control of the Area of Common Responsibility, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Area of Common Responsibility as it deems appropriate.

**Section 7.2 Maintenance of Area of Common Responsibility.**

(a) *Generally.* The Association shall maintain, in accordance with the Community Standards, the Area of Common Responsibility, which shall include, but need not be limited to:

- (1) all portions of and structures situated upon the Common Elements;
- (2) such portions of any additional property included within the Area of Common Responsibility (which may include landscaping within public rights-of-way within or abutting the Properties) as may be dictated by the Development Agreement, this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by or on behalf of the Association;
- (3) any and all ponds, streams, and/or wetlands located within the Properties which serve as part of the storm water drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith;
- (4) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities must be identified by written notice from Declarant to the Association and shall remain a part of the Area of Common Responsibility and shall be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and
- (5) the exterior of all perimeter walls or fences initially constructed by Declarant around the Properties or which separate a Unit from Area of Common Responsibility (regardless of whether such wall or fence is located on the Area of Common Responsibility or on a Unit). Except for wrought iron and like fences or walls and/or such other fences for which the Association assumes complete maintenance responsibility, a Home Owner shall be responsible for maintaining the interior surface of perimeter walls or fences located on such Home Owner's Unit. A perimeter wall or fence shall not be a party wall or party fence as set forth in Article 13.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community Standards or otherwise in the best interests of the Association.

The Association shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation, and management of wildlife, snakes, rodents, and pests within the Area of Common Responsibility.

The Association shall not be liable for any damage or injury occurring on, or arising out of the

condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) *Continuous Operation.* The Association shall maintain any facilities or equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless the Requisite Membership Percentage or Declarant (during the Declarant Control Period) agree in writing to discontinue such operation. The Area of Common Responsibility shall not be reduced during the Declarant Control Period by amendment of this Declaration or any other means except with the prior written approval of Declarant.

(c) *Maintenance as Common Expense.* The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility and such other costs as provided in Section 7.2(a), or any other cost or expense of the Association incurred by the Association in furtherance of its functions or reasonably related thereto, shall be a Common Expense; provided that the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

Section 7.3 Insurance.

(a) *Required Coverages.* The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(1) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Area of Common Responsibility to the extent that the Association has responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(2) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, with umbrella coverage of at least \$5,000,000; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(3) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(4) Directors' and officers' liability coverage (including coverage for committee members);

(5) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all lots plus

reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(6) Such additional insurance as the Board, in its business judgment, determines prudent or necessary.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses. In addition, the Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Washington County area.

(b) *Policy Requirements.* All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured for a reasonable administrative fee to cover the cost of providing a copy or copies of the certificate.

As to the coverage for the Common Area, the policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after Notice and Hearing, that the loss is the result of the negligence or willful misconduct of one or more Owners and/or residents, or their respective Families or invitees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Elements shall be for the benefit of the Association and its Members;

(3) not be brought into contribution with insurance purchased by Owners, residents, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(6) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(7) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(8) include an endorsement precluding cancellation, invalidation,

suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(9) include an endorsement precluding the insurer from denying a claim by a Member or Owner or conditioning recovery under the policy based on or due to the negligent acts or omissions of the Association, any other Member, or any other Owner.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

(10) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and Manager, and the Owners and their residents and their respective Families and invitees;

(11) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(12) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(13) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(14) a cross-liability provision covering claims between two or more named insureds under the policy; and

(15) a provision vesting in the Board's exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

The Association shall provide Declarant with at least twenty (20) days prior written notice of any cancellation, termination, substantial modification, or non-renewal of any Association insurance policy,

(c) *Restoring Damaged Improvements.* In the event of damage to or destruction of Common Elements or other property which the Association is obligated to insure, the Board or its duty authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Elements shall be repaired or reconstructed unless the Requisite Membership Percentage or Declarant (during the Declarant Control Period) decides within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Elements shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative Improvements

are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standards.

If Members vote not to repair or reconstruct improvements on Common Elements, the foregoing provision shall also apply to all Owners within the Community with respect to insurance proceeds attributable to such Common Elements. This provision may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

(d) *Waiver of Claims.* To the extent permitted by law, the Association and each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Property, waives any claims against Declarant and its affiliates for any damages or losses for which insurance coverage is available, to the extent of such insurance coverage.

#### Section 7.4 Compliance and Enforcement.

(a) Every Owner and Resident shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after Notice and Hearing. The Board shall establish a range of penalties for such violations, with violations of the Declaration, unsafe conduct, harassment, or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation:

(1) imposing a graduated range of reasonable monetary fines which shall constitute a lien upon the violator's Unit; provided such fines shall not exceed such maximum amount as may be established from time to time by applicable state or local law. Before the Association may impose such a fine, it must first deliver, personally or by mail, a schedule of such fines to all Owners at their address as it appears on the records of the Association. In the event that any Invitee of an Owner, any Resident, or any Family or Invitee of a Resident, violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided that if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. For each failure to comply, the amount of said fine shall not exceed the maximum permitted by applicable state or local law;

(2) suspending an Owner's right to vote;

(3) suspending any Person's right to use any recreational or park facilities within the Common Elements; provided that nothing herein shall authorize the Board to limit reasonable ingress or egress to or from a Unit;

(4) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

(5) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(6) requiring an Owner, at its own expense, to remove any structure or

improvement on such Owner's Unit in violation of Article 4 and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(7) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 4 and the Design Guidelines from continuing or performing any further activities in the Properties; and

(8) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(9) in addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of Notice and Hearing:

(A) exercising other reasonable measures in any emergency situation (which shall specifically include, but not limited to, the towing of vehicles that are parked in violation of the Rules and Regulations);

(B) subject to Article 17, bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(10) In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(a) All remedies set forth in the Governing Documents shall be cumulative with any and all other remedies available at law or in equity.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(1) the Association's position is not strong enough to justify taking any or further action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(3) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(4) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable State and local laws and ordinances, and shall permit local governmental bodies to enforce their respective laws and ordinances within the Properties for the benefit of the Association and its Members.

**Section 7.5 Implied Rights; Board Authority.** Subject to the Governing Documents, and the Nonprofit Corporations Act and other applicable law, the Association may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by applicable law, all rights and powers of the Association may reasonably be exercised by the Board without a vote of the Membership. Subject to Article 17, the Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

**Section 7.6 Indemnification of Officers, Directors, and Committee Members.**

(a) **Indemnification.** The Association shall indemnify every Officer, Director, and committee member against all damages and expenses, including attorneys fees and costs, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member; provided that such obligation to indemnify shall be limited to those actions for which liability is limited under this Declaration, the Articles of Incorporation, the Bylaws, and applicable Utah law.

(b) **Claims Related to Breach of Duty.** The Association's Officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability (except as Home Owners and Members of the Association) with respect to any contract or other commitment made or action taken in good faith on behalf of the Association.

(1) Volunteer Directors, Officers, and committee members of the Association shall not be personally liable in excess of the coverage of insurance specified in subparagraph (B) below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the following requirements are met by the volunteer Director, Officer, or committee member and the Association:

(A) the Director's, Officer's, or committee member's act or omission was performed within the scope of their duties, in good faith, and not willful, wanton, or grossly negligent; and

(B) the Association maintained and had in effect (at the time of the act or omission of the director, officer, or committee member and at the time a claim was made) one or more insurance policies which included coverage for general liability of the Association and individual liability of directors, officers, and committee members for negligent acts or omissions in that capacity,

both in the amount of at least \$2,000,000.00.

(2) The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer under this subsection (2).

The Association shall indemnify and hold each such Officer, Director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 7.7 Security.** THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTIES, DESIGNED TO MAKE THE PROPERTIES SAFER THAN THEY OTHERWISE MIGHT BE. NEITHER THE ASSOCIATION, THE BOARD, THE MANAGER, NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THE ABOVE-MENTIONED PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTIES (OR ANY ONSITE ROVING PATROL OR RESOURCES, IF APPLICABLE) CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND COVENANTS TO INFORM ALL RESIDENTS OF HIS OR HER UNIT, AND THEIR RESPECTIVE FAMILIES AND INVITEES, THAT THE ASSOCIATION, THE BOARD, COMMITTEES, AND/OR ALL OTHER PERSONS INVOLVED WITH THE GOVERNANCE, MAINTENANCE, AND MANAGEMENT OF THE PROPERTIES, INCLUDING DECLARANT, ARE NOT INSURERS OF SAFETY OR SECURITY WITHIN THE PROPERTIES. ALL OWNERS AND RESIDENTS, AND THEIR RESPECTIVE FAMILIES AND INVITEES, ASSUME ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PERSONS, UNITS, THE CONTENTS OF UNITS, AND OTHER PROPERTY, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE MANAGER, NOR DECLARANT HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING ANY ENTRY GATE, ANY PATROLLING OF THE PROPERTIES, ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES. ALL OWNERS AND RESIDENTS, AND THEIR RESPECTIVE FAMILIES AND INVITEES, FURTHER ACKNOWLEDGE THAT THEY HAVE NOT RELIED UPON ANY SUCH REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.

**Section 7.8 Provision of Services.** The Association shall enter into contracts or agreements required by Declarant pursuant to the Master Plan or related agreement. Additionally, the Association shall be authorized, but not obligated, to enter into and terminate, in the Board's discretion, subject to applicable law, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Owners and residents, and their families and invitees, and to charge use and consumption fees for such services and facilities. For example only, services and facilities offered might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation,



and similar services and facilities.

**Section 7.9 Change of Services and Use of Common Elements.** The Board shall have the power and right to terminate services the Association provides or to change the use of portions of the Area of Common Responsibility during the Declarant Control Period without having to obtain the approval or consent of the Members. After the Declarant Control Period, the Board may do so only with the vote of a Majority of the voting power of the Board (provided that the Board reasonably determines that such change shall not materially or substantially adversely affect the Association and the Owners), and the written consent of Declarant (during the Declarant Control Period or until such time as Declarant expressly relinquishes such rights under this Section). Any such change shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Association and the Owners, (b) the new use is for the benefit of the Association and the Owners; (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Area of Common Responsibility; and (d) the new use is consistent with the then effective Master Plan.

**Section 7.10 View Impairment.** NEITHER DECLARANT NOR THE ASSOCIATION GUARANTEES OR REPRESENTS THAT ANY VIEW OVER AND ACROSS ANY OPEN SPACE OR COMMON AREA FROM ADJACENT UNITS OR OTHER PROPERTY WILL BE PRESERVED WITHOUT IMPAIRMENT. WITHOUT LIMITING THE FOREGOING, NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE THE OBLIGATION TO RELOCATE, PRUNE, OR THIN TREES OR OTHER LANDSCAPING EXCEPT AS SET FORTH IN ARTICLE 5. ANY EXPRESS OR IMPLIED EASEMENTS FOR VIEW PURPOSES OR FOR THE PASSAGE OF LIGHT AND AIR ARE HEREBY EXPRESSLY DISCLAIMED.

**Section 7.11 Relationship with Governmental and Tax-Exempt Organizations.** The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Elements to state or local governments, public school systems, and non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members, and residents. For purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the internal Revenue Code ("Code"), such as, but not limited to entities which are exempt from federal income taxes under Code Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time,

**Section 7.12 Cooperation with Special Improvement District.** The Association shall have the power, and is hereby authorized, to contract with and to cooperate with a Special Improvement District, if any, in order to ensure that their respective responsibilities are discharged. The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by the Special Improvement District, if applicable, is consistent with the Community Standards. Each Owner, by acceptance of a deed or Recorded contract of sale, is deemed to covenant and consent to the creation of a Special Improvement District and to promptly execute a separate document evidencing such consent, if requested to do so by Declarant.

**Section 7.13 Manager.** The Association, acting through the Board, shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, and helping the Board to enforce the Governing Documents, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be for a term not longer than one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice. In the event of any

explicit conflict between the Governing Documents and any agreement with a Manager, the Governing Documents shall prevail.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities. Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee thereof, may be a Director or Officer of the Association.

(d) As a condition precedent to the employ of, or agreement with, a Manager, the Manager (or any replacement Manager) first shall be required, at its expense, to review the Governing Documents, and any and all Association Reserve Studies and inspection reports pertaining to the Properties.

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform, all duties (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; and (3) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, In any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed),

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed of the books and records of the Association, to verify assets.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. Such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

(h) Notwithstanding any of the foregoing, the Manager shall not undertake any action requiring approval or vote of the Board or Membership (or the consent of Declarant) unless such approval or vote (or consent) shall have been first obtained, and, under no circumstances, shall the Manager undertake any action which circumvents the provisions of the Governing Documents.

**Section 7.14 Transfer of Membership; Reinvestment Fees.**

(a) The Membership held by any Home Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Home Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Home Owner who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Home Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Unit until fee title to the Unit sold is transferred, including any approved but not yet levied Assessments which accrue or are incurred prior to the Close of Escrow for the Unit. If any Home Owner should fail or refuse to transfer his Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the purchaser shall have a valid proxy from the seller of said Unit.

(b) The Association shall levy a reinvestment fee against a new Home Owner and his Unit, as set forth in further detail below. At the Close of Escrow for each initial sale of a Unit by Declarant to a Home Owner, the purchaser shall be required to pay an initial reinvestment fee to the Association, which shall be the sum of One Thousand Dollars (\$1,000) per Unit, or otherwise as established from time to time by the Board ("Initial Reinvestment Fee"). At the Close of Escrow for each subsequent sale of a Unit by a Home Owner or subsequent Home Owner (other than Declarant), each resale purchaser of a Unit shall be required to pay a reinvestment fee to the Association, which shall be the sum of Five Hundred-Dollars (\$500) per Unit, or otherwise as established from time to time by the Board ("Reinvestment Fee"). Initial Reinvestment Fees and Reinvestment Fees are in addition to, and shall not be considered as, an advance payment of, Assessments and/or Capital Contributions for a Unit.

**Section 7.15 Continuing Rights of Declarant.** Declarant shall retain the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations), After the end of the Declarant Control Period, throughout the remaining term of this Declaration, the Board shall deliver, to Declarant, notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, all Reserve Studies, and all audited annual reports. Such notices and information shall be delivered to Declarant at its most recently designated address.

**ARTICLE 8  
ASSOCIATION FINANCES**

**Section 8.1 Association Budgets for Base Assessments.** Until the Association first levies assessments, the Declarant shall generally be responsible for all Common Expenses (provided that, prior to and until conveyance to the Association by a Builder of real property and/or Improvements as Common Elements, that Builder shall be responsible for payment of all expenses of maintenance and repair of such real property and Improvements, and any and all property taxes levied from time to time upon such real property and Improvements), Thereafter, assessments for Common Expenses shall be levied annually in

accordance with this Article 8. At least sixty (60) days before the beginning of each fiscal year, the Board shall have caused to be prepared a proposed Association budget of the estimated Common Expenses for the coming year, including any contributions to be made to an Association Reserve Fund, pursuant to Section 8.3. The Association budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.6. Preparation of the annual budget may be delegated to the Manager, but every proposed annual budget shall be reviewed and approved by the Board prior to presentation to the Members.

Notwithstanding the foregoing, or any other provision in this Declaration, no Assessments shall be levied upon any large parcel or unsubdivided parcel until a final subdivision map has been Recorded on such parcel; provided that Assessments shall be levied on all Units contained in such subdivision map from and after Recordation thereof.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under this Article, in order to fund the Common Expenses. Accordingly, the formula for calculating the Base Assessment against each Unit shall be the total budget amount for the coming year divided by the total number of Units created under and subject to this Declaration. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

In the event that Common Expenses for a fiscal year exceed the aggregate Base Assessments and other assessments, then Declarant may, but shall not be obligated to, pay a subsidy (in addition to any Base Assessments paid by Declarant under this Article), which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the proposed annual Association budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Member at least thirty (30) days prior to the effective date of such budget.

If the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is deemed ratified in the foregoing manner.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget.

**Section 8.2 Budgeting for Reserves.** The Board shall cause to be prepared and reviewed at least annually a reserve budget for the Area of Common Responsibility. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Association budget adopted pursuant to Section 8.1 a transfer to reserves ("Reserve Funds") in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

The Board may adopt resolutions regarding the expenditure of Reserve Funds, including policies designating the nature of assets for which Reserve Funds may be expended. During the Declarant Control Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

**Section 8.3 Reserve Fund; Reserve Studies.** In addition to complying with the provisions of Utah Code Ann. Section 57-8a-211, as amended, regarding reserve fund analysis and maintenance, the Association shall also comply with the following requirements:

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"), (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements, (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever, (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be withdrawn without a resolution of the Board; and (vi) under no circumstances shall the Manager or any one Officer or Director acting alone be authorized to make withdrawals from the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst ("Reserve Analyst"), with sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study").

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event initially within one (1) year after the Close of Escrow to a Home Owner for the first Unit within the Properties, and thereafter at least once every three (3) years (or at such other intervals as may be required from time to time by applicable State law). The Board shall review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient; and shall make such adjustments as the Board deems reasonable and prudent to maintain the required reserves from time to time by increasing Assessments).

(d) Each Reserve Study must be conducted by a person qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation:

(1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore;

(2) an identification of the Major Components which have a remaining useful life of less than thirty (30) years;

(3) an estimate of the remaining useful life of each Major Component so identified;

(4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and

(5) an estimate of the total Annual Assessment that may be required to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study).

(e) Each Reserve Study shall be prepared in accordance with any legal requirements from time to time, as applicable, applied in each instance on a prospective basis. Subject to the foregoing sentence, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a

Unit) shall be deemed to have unequivocally agreed that the following, among others, shall be deemed reasonable and prudent for and in connection with preparation of each Reserve Study: (i) utilization, by a Reserve Analyst, of the "pooling" or "cash flow" method, or other generally recognized method, and/or (ii) utilization or reliance, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to the Reserve Fund (provided that, subject to and without limiting Sections 8.4 or 8.5 below, no assumption shall be made of such future increases in excess of ten percent (10%) per year plus a reasonable annual inflationary factor), with corresponding increases in Assessments.

**Section 8.4 Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership (if such Special Assessment is for Common Expenses). Except as otherwise specifically provided in this Declaration, any Special Assessment, greater than fifty percent (50%) of the then annual assessment, shall require the affirmative vote or written consent of the Requisite Membership Percentage (if a Common Expense), or the written consent of Declarant (during the Declarant Control Period). Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**Section 8.5 Specific Assessments.** The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items described in Section 7.8). Specific Assessments for special services may be levied in advance of the provision of the requested service; and
- (b) following Notice and Hearing, to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or Resident, or their respective Families or invitees.

**Section 8.6 Authority to Assess Owners; Time of Payment.** Declarant establishes and the Association is hereby authorized to levy assessments as provided for in this Article 8 and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit (or Parcel, as applicable) on the relevant Assessment Commencement Date, and shall be subject to the limitations and requirements set forth in Section 8.10 below. The "Assessment Commencement Date" with respect to each Unit or Parcel shall be the date on which a final subdivision plat creating such Unit or Parcel is Recorded; provided that Declarant may (but shall have no obligation to) establish a later Assessment Commencement Date uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year (or, at the option of the Board, on a quarterly or monthly basis). If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

**Section 8.7** Obligation for Assessments. Each Owner, by acquiring title to or entering into a Recorded contract of sale for any portion of the Properties, covenants and agrees to timely pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a maximum rate of eighteen percent (18%) per annum or such higher rate as the Board may establish, subject to the limitations of Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

**Section 8.8** Lien for Assessments. In accordance with the Act, and subject to the limitations of any other applicable Utah law, the Association shall have an automatic statutory lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including attorneys' fees), as set forth in further detail in Article 9 below.

**Section 8.9** Limitation on Increases of Assessments. Notwithstanding any other provision in the Governing Documents, the Base Assessments shall be limited as follows: prior to January 1, 2016, the Base Assessment per Unit shall not exceed One Hundred Fifty Dollars (\$150.00) per month. Notwithstanding any other provision to the contrary (but subject to the immediately preceding and immediately following sentences), and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 8.5, the Board may not impose a Base Assessment or Specific Assessment that is more than thirty percent (30%) greater than each of those assessments for the immediately preceding fiscal year nor impose a Special Assessment which in the aggregate exceeds fifty percent (50%) of the budgeted Common Expenses for the current fiscal year, without the Requisite Membership Percentage (if a Common Expense) or written consent of Declarant (during the Declarant Control Period). Notwithstanding the preceding sentence, in the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) with respect to the initial sale of a Unit by Declarant or a Builder to a Home Owner, then the maximum annual increase of Assessments shall be subject to any express prohibition by FHA or VA from time to time applicable to such maximum annual increase of such Assessments.

For purposes of this Section: (a) the term "Base Assessment" shall be deemed to include the amount assessed against each Unit plus a pro rata allocation of any amounts the Association received

through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased; and (b) an "emergency situation" is any one of the following:

- (1) an extraordinary expense required by an order of a court;
- (2) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (3) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which the Board could not have reasonably foreseen in preparing and distributing the budget pursuant to Section 8.2. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

**Section 8.10 Exempt Property.** The following property shall be exempt from payment of Assessments (including, but not necessarily limited to, Base Assessments, Special Assessments, and Specific Assessments):

- (a) all Common Elements (including any portions of the Area of Common Responsibility, pursuant to Section 5.1, whether or not encumbered by this Declaration);
- (b) any property dedicated to and accepted by any governmental authority or public utility;
- (c) any property owned or acquired by the Declarant during the Declarant Control Period, during and after such period, and until such time as Declarant conveys title to the Unit to a Builder or Home Owner; and
- (d) in addition, Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code, so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

**Section 8.11 Capitalization of Association.** Upon acquisition of record title to a Unit by the first Home Owner thereof, and for each subsequent transfer of title, a contribution shall be made by or on behalf of the Home Owner to the working capital of the Association in an amount to be fixed by the Declarant and disclosed to the Home Owner prior to closing upon the Unit, but not less than the amount of two (2) months'. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of any assessment. This amount shall be deposited into the purchase and sale escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

**Section 8.12 Subsidies and/or Advances by Declarant.** Declarant shall have the right, in its sole and absolute discretion, from time to time during the Declarant Control Period, to: (a) subsidize the Association, by direct payment of any and all Excess Common Expenses ("Declarant Subsidies"); and/or (b) advance funds and/or make loan(s) to the Association, to be used by the Association for the sole purpose of paying Excess Common Expenses ("Declarant Advances"). "Excess Common Expenses" for



purposes of this Section shall mean such amount, if any, of Common Expenses in excess of Assessments and non-Reserve funds reasonably available at such time to pay Common Expenses. The aggregate amount of any and all Declarant Subsidies and/or Declarant Advances, or portions from time to time respectively thereof, together with interest thereon at the rate of eight percent (8%) per annum, shall be repaid by Association to Declarant as soon as non-Reserve funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration or under applicable Utah law). Each Owner, by acceptance of a deed to his or her Unit, shall be conclusively deemed to have acknowledged and agreed to all of the foregoing provisions of this Section, whether or not so stated in such deed.

#### ARTICLE 9

#### **NONPAYMENT OF ASSESSMENTS; REMEDIES OF ASSOCIATION**

Section 9.1 **Nonpayment of Assessments.** Any Assessment or installment of an Assessment shall be delinquent if not paid within ten (10) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, late charges, and related charges, fees, and costs, as set forth in Section 8.7 above. No such late charge or related charge or interest on any delinquent installment may exceed the maximum rate or amount allowable by applicable law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or other portion of the Area of Common Responsibility or by abandonment of his Unit.

Section 9.2 **Notice of Delinquent Assessment.** If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail notice of delinquent assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and his Unit to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 9.3 **Notice of Default or Notice of Delinquent Assessment.** No action shall be brought to enforce any assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default or notice of delinquent assessment is Recorded; or (b) the date the Recorded notice of default or notice of delinquent assessment is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default or notice of delinquent assessment must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment as described in Section 8.7 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Association to enforce the lien by sale. The notice

of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Association for such purpose. The lien shall continue until fully paid or otherwise satisfied.

**Section 9.4 Foreclosure Sale.** Subject to the limitation set forth in Section 9.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of the Act, insofar as they are consistent with the provisions of Title 57, Chapter 1 of the Utah Code Annotated governing the exercise of powers of sale in Mortgages and Deeds of Trust, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default shall be provided as required by Utah Code Annotated § 57-1-24, as amended; a notice of delinquent assessment, if complying with the requirements of this Article, may serve the same purpose. Notice of time and place of sale shall be provided as required by Utah Code Annotated § 57-1-25, as amended.

**Section 9.5 Limitations on Foreclosure.** Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a fine or for a violation of the Governing Documents, unless the violation is of a type that threatens the health and welfare of the Owners and residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for a Base Assessment or Special Assessment, or any portion respectively thereof.

**Section 9.6 Cure of Default.** Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

**Section 9.7 Cumulative Remedies.** The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

**Section 9.8 Mortgagee Protection.** Notwithstanding all other provisions hereof, no lien created under this Article 9, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the beneficiary under any Recorded first deed of trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any first Mortgage upon the Unit. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the first Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

**Section 9.9 Priority of Assessment Lien.** Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and

attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced (except to the extent of assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to foreclose the lien), and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to applicable Utah law. The sale or transfer of any Unit shall not affect an assessment lien. However, subject to the provisions of this Section, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person (except to the extent of assessments which would have become due, in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien). Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his successors and assigns.

#### **PART FOUR: COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of the Community and to accommodate changes in the Master Plan which inevitably occur as a community the size of this Community grows and matures.*

#### **ARTICLE 10**

#### **ANNEXATION: EXPANSION OF THE COMMUNITY**

Section 10.1 Annexation and Expansion by Declarant. Declarant may from time to time subject to the provisions of this Declaration annex all or any portion of the property described in Exhibit "B," to the Properties covered by this Declaration, by Recording a Declaration of Annexation or Supplemental Declaration describing the property to be annexed. A Declaration of Annexation or Supplemental Declaration Recorded by Declarant pursuant to this Section shall not require the consent of any other Person (except the owner of such property, if other than Declarant).

Declarant's right to expand the Community pursuant to this Section shall expire when all property described in Exhibit "B" has been annexed and subjected to this Declaration. Until then, Declarant may transfer or assign this right to any Person who is the owner or developer of at least a portion of the real property described in Exhibit "B." Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Declarant reserves the right, but not the obligation, to annex additional property not described in Exhibit "B," to the maximum extent allowed by applicable State and local law, provided that the amount of additional property so annexed shall not exceed ten percent (10%) of the aggregate property described in Exhibit "B." Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

Annexation shall be accomplished by Recording a Declaration of Annexation or Supplemental Declaration describing the property being annexed. Any such annexation shall be effective upon the

Recording of such Declaration of Annexation or Supplemental Declaration unless otherwise provided therein. All Units subject to this Declaration, whether initially described in Exhibit "A" or annexed pursuant to a Declaration of Annexation or Supplemental Declaration, shall have equal voting rights and an equal, pro rata share of liability for Base Assessments.

**Section 10.2 Expansion by the Association.** The Association may also subject additional property to this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of the Requisite Membership Percentage at a meeting duly called for such purpose and the consent of the owner of the property. In addition, during the Declarant Control Period, the prior written consent of Declarant shall be necessary. The Supplemental Declaration shall not be valid unless signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

**Section 10.3 Additional Covenants and Easements.** During the Declarant Control Period, Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by a Person other than Declarant, then the consent of such Person shall be necessary and shall be evidenced by such Person's execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**Section 10.4 Effect of Filing Supplemental Declaration.** Any Declaration of Annexation or Supplemental Declaration Recorded pursuant to this Article 10 shall be effective upon Recording unless otherwise specified in such instrument. On the effective date of the Declaration of Annexation or Supplemental Declaration, the Units in any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration. Any Declaration of Annexation or Supplemental Declaration Recorded pursuant to this Article 10 shall comply with the requirements of State and local law as may be applicable.

**Section 10.5 Contracting of Annexable Area.** So long as relevant real property has not been annexed to the Properties subject to this Declaration, the property described on Exhibit "B" may be contracted by Declarant to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant (and all other owners, if any, of such real property), and declaring that such real property shall thereafter be deleted from Exhibit "B." Such real property may be so deleted without a vote of the Association or the approval or consent of any other Person.

## **ARTICLE 11**

### **ADDITIONAL RIGHTS RESERVED TO DECLARANT**

**Section 11.1 Withdrawal of Property.** Declarant reserves the right to amend this Declaration during the Declarant Control Period for the purpose of removing and withdrawing any portion of the Properties from the coverage of this Declaration, whether originally described in Exhibit "A" or added by Declaration of Annexation or Supplemental Declaration; provided, no property described on a particular Plat shall be withdrawn after a Unit shown on that Plat has been conveyed by Declarant to any Home Owner (other than a Home Owner in which Declarant has a direct or indirect ownership, management, or other similar interest). Such a withdrawal shall reduce the Maximum Units subject to the Declaration, the

number of votes in the Association and the Units subject to assessment. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn (if not Declarant), but shall be subject to any applicable State and local law governing such withdrawals. If the property is shown on a Plat as Common Elements, but has not yet been conveyed by deed to the Association, then the Association shall consent to such withdrawal (and shall execute and Record a quitclaim deed thereto) upon the request of Declarant.

**Section 11.2 Marketing and Sales Activities.** Declarant (and Builders, subject to Declarant's reserved rights in Article 4) may construct and maintain upon portions of the Common Elements such facilities and activities as may be reasonably required, convenient, or incidental, to the construction or sale of Units, including (but not limited to, business offices, signs, model Units, and sales offices, and shall have easements for access to and use of such facilities.

**Section 11.3 Right To Develop; Construction Easement.** Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Properties for the purpose of making, constructing, and installing such improvements to the Properties as Declarant deems appropriate in its sole discretion (subject to the extent, if any, such discretion of Declarant is expressly limited by written agreement between Declarant and a Builder). To the maximum extent permitted by applicable law, each Person that acquires any interest in the Properties acknowledges that the Community is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to changes in uses or density of the Master Plan for the Community.

**Section 11.4 Right To Designate Sites for Governmental and Public Interests.** During the Declarant Control Period, Declarant may designate sites within the Properties for governmental, educational, or religious activities and interests, including without limitation: fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. So long as such sites have not previously been conveyed by deed to the Association, the Association shall take whatever action is required with respect to such site to permit such use, including dedication of the site and/or Recordation of a quitclaim deed to the site (if so requested by Declarant).

**Section 11.5 Right to Approve Additional Covenants.** Subsequent to this Declaration, no Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted Recording without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by Recorded, written consent signed by Declarant.

**Section 11.6 Right to Approve Changes in Community Standards.** No amendment to or modification of any Rules and Regulations or Design Guidelines shall be effective without prior notice to and the written approval of Declarant during the Declarant Control Period.

**Section 11.7 Right to Merge or Consolidate the Association.** Declarant reserves the right to merge or consolidate the Association with another common interest community of the same form of ownership or make it subject to a master association.

**Section 11.8 Right To Appoint and Remove Directors During the Declarant Control Period.** During the Declarant Control Period, the Declarant may appoint, remove, and/or replace any director or officer of the Association previously appointed or elected by Declarant pursuant to this Declaration.

**Section 11.9 Right To Transfer or Assign Declarant Rights.** Any or all of the special rights and

obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided that (a) the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws; (b) no such transfer or assignment shall be effective unless it is in a Recorded, written instrument signed by Declarant; and (c) no such transfer or assignment shall be unreasonably made by Declarant with regard to any of the property set forth in Exhibit "A." The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

**Section 11.10 Easement to Inspect and Right to Correct.**

(a) *Easement.* Declarant reserves, for itself and such other Persons as it may designate, perpetual, non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Community, including Units and the Area of Common Responsibility. Declarant shall have the right to redesign, correct, or improve any part of the Community, including Units and the Area of Common Responsibility.

(b) *Right of Entry.* In addition to the above easement, Declarant reserves a right of entry onto a Unit upon reasonable notice to the Owner; provided, in an emergency, no such notice need be given. Entry into a Unit shall be only after Declarant notifies the Owner (or Resident) and agrees with the Owner regarding a reasonable time to enter the Unit to perform such activities. Each Owner agrees to cooperate in a reasonable manner with Declarant in Declarant's exercise of the rights provided to it by this Section.

Entry onto the Area of Common Responsibility and into any improvements and structures thereon may be made by Declarant at any time, provided advance notice is given to the Association; provided, in an emergency, no notice need be given.

(c) *Damage.* Any damage to a Unit or the Area of Common Responsibility resulting from the exercise of the easement and right of entry described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or Resident.

**Section 11.11 Use of "Brio" in Name of Development.** Each Person, by acquiring title to a Unit or other portion of the Properties, shall be deemed to have acknowledged and agreed that Declarant claims the sole and exclusive right to the designation "Brio," and claims the sole and exclusive right to all related trade names, trademarks, service marks and logos ("Trademarks"). Each such Person covenants and warrants that it shall not use, nor permit others to use, in any manner whatsoever, the Trademarks or any of them, without the prior written consent of Declarant. However, the Association shall be entitled to use the words "Brio" in its name.

**Section 11.12 Equal Treatment.** During the Declarant Control Period, the Association shall not, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and/or affiliates, or their respective invitees, including personnel and/or visitors, to Common Elements or other Areas of Common Responsibility;

(b) limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising, marketing, or using the Association or the Common Elements or any property owned by any of them in promotional materials;

(c) limits or prevents Purchasers of new residential housing constructed by Declarant, its successors, assigns, and/or affiliates in the Community from becoming Members of the Association or enjoying full use of the Common Elements, subject to the membership provisions of this Declaration and the Bylaws;

(d) impacts the ability of Declarant, its successors, assigns, and/or affiliates, to carry out to completion its development plans and related construction activities for the Community, as such plans are expressed in the Master Plan. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(e) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

The Association shall not at any time exercise its authority over the Area of Common Responsibility (including, but not limited to, any gated entrances and other means of access to the Properties or the Exhibit "B" Annexable Area) to interfere with Declarant's rights set forth in this Declaration or to impede access to any portion of: (1) the Properties or (2) the Exhibit "B" Annexable Area.

**Section 11.13 Other Rights.** Declarant hereby reserves all other easements, rights, powers, and authority of Declarant set forth in this Declaration.

**Section 11.14 Exemption of Declarant.** Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional improvements as Declarant deems advisable in the course of development of the Properties.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units.

(c) Prospective Purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant.

**Section 11.15 Termination of Rights.** The rights contained in this Article 11 shall terminate upon the earlier of (a) thirty (30) years from the conveyance of the first Unit to a Home Owner (provided that if Declarant still owns any property in the Properties on such thirtieth (30th) anniversary date, then such rights and reservations shall continue for one successive period of twenty (20) years thereafter), or (b) Recording by Declarant of a written statement that all new Unit sales activity has ceased in the

Community, or (e) an earlier termination date as imposed by applicable State law. (Hereafter, Declarant may continue to use the Common Elements for the purposes stated in this Article 11 only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Elements.) As set forth in section 19.1 below, the Declarant has the right to unilaterally amend this Declaration, including this Article 11, at its own discretion during the Declarant Control Period.

**Section 11.16 Future Community Center.** Declarant anticipates construction of a "community center" which, upon completion, shall be dedicated to the Association as part of the Common Facilities owned, operated and maintained by the Association, and available for use by the Association and its Members. Until completion of construction thereon, the timing of which shall be in Declarant's sole discretion, the property intended for such use shall be retained by Declarant. Said property may be platted as a Lot or Unit in a phase of the Community, or excluded from any subdivision plat and later added to the Community, also in the sole discretion of Declarant.

**Section 11.17 Notice of Start-up Fee at Initial Sale of a Unit.** At the Close of Escrow for each initial sale of a Unit from Declarant to a Home Owner, the Home Owner that is purchasing a Unit shall be required to pay a start-up fee to Declarant ("Start-up Fee"), which shall be in addition to and not in lieu of the purchase price for such Unit or any other fees set forth in this Declaration, including any fees or assessments due and payable to the Association. The amount of the Start-up Fee shall be determined from time to time by Declarant and disclosed to the purchasing Home Owner in the Real Estate Purchase Contract for the Unit or an addendum thereto. The Start-up Fee, once collected, shall be utilized and applied in the sole discretion of Declarant and for Declarant's benefit. No Start-up Fee shall be assessed or collected by Declarant in any subsequent sale of a Unit to which the Declarant is not a party, and for which the Start-up Fee has already previously been assessed and collected.

#### **PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Association, Declarant, Builders, and others within or adjacent to the Community.*

#### **ARTICLE 12 EASEMENTS**

**Section 12.1 Easements in Common Elements.** Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Elements, subject to;

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's rights set forth under Section 7.4, above, including, but not limited to, the Board's right to:
  - (1) impose reasonable Rules and Regulations with regard to use of any recreational facility situated upon the Common Elements, including rules limiting the number of Family



or guests who may use the Common Elements;

(2) suspend the right of an Owner to use any Common Elements; provided there shall be no suspension of an Owner's reasonable ingress and egress to his or her Unit:

(i) for any period during which any assessment or other charge against such Owner's Unit remains delinquent; and

(ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after Notice and Hearing;

(3) permit use of any recreational facilities situated on the Common Elements by persons other than Owners and residents (and their respective Families and invitees), upon payment of use fees established by the Board;

(4) dedicate or transfer all or any part of the Common Elements, subject to such approval requirements as may be set forth in this Declaration and subject further to the Act;

(5) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration, and subject further to the Act; or

(6) create, enter into agreements with, and grant easements to tax-exempt organizations under Section 7.11;

(d) the right of the Association to rent or lease any portion of any recreational facilities on the Common Elements on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's Family and/or invitees; and

(e) the right of the Association to require Members (and/or their Families and guests) to present activity or use privilege cards, as may be issued by the Association, for access and use of recreational facilities on the Properties.

The initial Common Elements, if any, as identified in Exhibit "A" shall be conveyed to the Association concurrent with or reasonably soon after the conveyance of the first Unit in Exhibit "A" to a Home Owner.

**Section 12.2 Easements of Encroachment.** Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

**Section 12.3 Easements for Utilities, Etc.**

(a) *Association and Utility Easements.* Declarant reserves for itself, during the Declarant Control Period, and hereby grants to the Association and all utility providers, perpetual non-exclusive

easements throughout all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(1) installing utilities and Infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways, trails, drainage systems, street lights, and signage on property which Declarant owns, upon any Common Areas, or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(2) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in the preceding subsection (a)(1); and

(3) reading utility meters.

(b) *Recorded Specific Easements.* Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and/or "B."

(c) *Property Restoration.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or Resident.

**Section 12.4 Easements To Save Additional Property.** Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Elements for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such property.

**Section 12.5 Easements for Maintenance, Emergency, and Enforcement.** Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. Any damage caused as a result of the Association fulfilling its maintenance responsibilities shall be repaired by the Association at its expense.

Declarant grants to the Association an easement and the right to enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing, or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Specific Assessment.

**Section 12.6 Easements for Related Bodies of Water and Flood Water.** Declarant reserves for

itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water located within the Area of Common Responsibility to: (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility, (b) construct, maintain, and repair structures and equipment used for retaining water; (c) maintain such areas in a manner consistent with the Community Standards; and (d) replace, remove, and/or fill in such bodies of water. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Elements and Units (but not the dwellings thereon) adjacent to or within one hundred feet (100') of bodies of water constituting a part of the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

**Section 12.7 Easements for Cross-Drainage.** Declarant hereby reserves for itself and grants to the Association easements over every Unit and the Common Elements (and other portions of the Area of Common Responsibility, to the extent practicable) for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Unit to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Board, and Declarant (during the Declarant Control Period).

**Section 12.8 Rights to Stormwater Runoff, Effluent and Water Reclamation.** Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water runoff, and effluent. This Section may not be amended without the consent of Declarant or its successor, and the rights created in this Section shall survive termination of this Declaration,

**Section 12.9 Easements for Parking; Easements for Vehicular and Pedestrian Traffic.** The Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to enforce such parking limitations and rules by all means lawful for such enforcement on public streets, including the removal of any violating vehicle, by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked for such purpose.

**Section 12.10 Easements Incident to Construction, and Marketing and Sales Activities.** In addition to the general easements for use of the Common Elements reserved herein, there shall be reserved to Declarant, its successors and assigns, and their respective invitees, during the Declarant Control Period, for access, ingress, and egress over, in, upon, under, and across the Properties, including the Common Elements (including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, marketing

and/or sales of the Properties, or any portion thereof); provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, or its Family or invitees, to or of that Owner's Unit, or the Common Elements. Additionally, Declarant hereby partially assigns to and reserves for the benefit of each Builder a concurrent right of access, ingress, and egress over, in, upon, under, and across only the property located within such Builder's subdivision (including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the Builder's use, development, marketing and/or sales of such property) subject to and only to the extent provided in the Builder's project plan approved by Declarant, or as otherwise may be approved by Declarant in writing (but without any liability to Declarant by reason of such approval); provided that no such right or easement shall be exercised by Builder in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, or its Family or invitees, to or of that Owner's Unit, or Common Elements.

**Section 12.11 Easements for Public Service Use.** In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement of any fire hydrants on portions of certain Units and/or Common Elements, and other purposes normally related thereto; and (b) local, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents, to enter upon any part of the Common Elements or any Unit, for the purpose of carrying out their official duties.

### **ARTICLE 13**

#### **PARTY WALLS AND OTHER SHARED STRUCTURES**

**Section 13.1 General Rules of Law to Apply.** Each wall, fence, driveway or similar structure built as a part of the original construction on the Units, other than a perimeter wall or fence as provided in Section 7.2, which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of this Article. Furthermore, the Board shall be empowered to adopt reasonable rules and regulations to govern relations between property owners with respect to party structures and responsibility for property damage to such structures.

**Section 13.2 Maintenance, Damage, and Destruction.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and is not repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

### **ARTICLE 14**

#### **ASSOCIATION PARKS**

**Section 14.1 Transfer of Parks to Association.** Declarant may, from time to time, convey any

park ("Association Park") to the Association, provided the conveyance is subject to the terms and conditions of the Development Agreement, and the Association acknowledges in writing that it accepts Declarant's maintenance obligations for such park.

**Section 14.2 Use and Control of Association Parks.** With respect to any Association Park, the Association to which Declarant conveys title shall have the exclusive right to program and control the use thereof; provided, however, that in all circumstances the general public shall have reasonable rights of access and use to all parks listed in the Development Agreement.

#### ***PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY***

*The growth and success of the Community as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the Community and with our neighbors, and protection of the rights of others who have an interest in the Community.*

#### **ARTICLE 15** **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

**Section 15.1 Consensus for Association Litigation.** Except as provided in this Section, the Association (and the Board) shall not commence or institute a judicial or administrative proceeding without first providing written notice of such proposed action to each Member at least twenty-one (21) days before a meeting to vote on such proposed action and obtaining the approval at such meeting of at least the Requisite Membership Percentage. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) defenses, affirmative defenses, and/or counterclaims brought by the Association in proceedings instituted against the Association; and/or (e) settlement of any of the matters set forth in the preceding subsections (a) through (d). This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 15.2 Alternative Method for Resolving Disputes.** Declarant, the Association, their officers, directors, and committee members, all Owners and other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Sections 15.3 ("Claims") shall be resolved using the procedures set forth in Section 15.4 in lieu of filing suit in any court.

**Section 15.3 Claims.** Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 15.4. However, matters of aesthetic judgment under Article 4 shall not constitute a Claim.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute Claims and shall not be subject to the provisions of Section 15.4:

- (a) any suit by the Association against any Bound Party to enforce the provisions of

Article 8;

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article 3 and Article 4;

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.4(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 15.4.

Section 15.4 Mandatory Procedures.

(a) *Notice.* Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (1) the nature of the Claim, including the Persons involved and Respondent's
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) Claimant's proposed remedy; and
- (4) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) *Negotiation and Mediation.* The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency or mediator providing dispute resolution services in the Washington County area.

If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator

and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

**Section 15.5 Declarant's Right to Repair.** Notwithstanding any other provision in this Declaration, and whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which Declarant is or may be responsible; and (b) following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant Improvement, and to take reasonable steps, if necessary or appropriate, to undertake and to perform corrective or repair work, and (c) to reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Common Element or other portion of the Properties (as applicable) from time to time in connection therewith and/or to undertake and to perform such inspection and such work; and (d) that Declarant shall unequivocally be entitled (i) to specific prior written notice of any such corrective or repair work requested (and shall not be held responsible for any corrective or repair work in the absence of such written notice), (ii) to inspect the relevant Improvement, and (iii) to take reasonable steps, in Declarant's reasonable judgment, to undertake and to perform any and all necessary or appropriate corrective or repair work. The foregoing portion of this Section shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

**Section 15.6 Arbitration.** Subject to the procedural requirements set forth in the foregoing provisions of this Article, any dispute that may arise between (a) the Association and/or Owner of a Unit, and (b) Declarant or any person or entity who was involved in the construction of any Common Element or any Unit, shall be resolved by submitting such dispute to arbitration before a mutually acceptable arbitrator who will render a decision binding on the parties which can be entered as a judgment in court pursuant to applicable Utah law. The arbitration shall be conducted according to the provisions of the Construction Industry Arbitration Rules of the American Arbitration Association. If the parties to the dispute fail to agree upon an arbitrator within forty-five (45) days after an arbitrator is first proposed by the party initiating arbitration, either party may petition the American Arbitration Association for the appointment of an arbitrator. Declarant has the right to assert claims against any contractor, subcontractor, person or entity, which may be responsible for any matter raised in the arbitration and to name said contractor, subcontractor, person, or entity as an additional party to the arbitration. Upon selection or appointment of the arbitrator, the parties shall confer with the arbitrator who shall establish a discovery schedule which shall not extend beyond ninety (90) days from the date the arbitrator is selected or appointed unless for good cause shown such period is extended by the arbitrator or such period is extended by the consent of the parties. If Declarant asserts a claim against a contractor, subcontractor, person, or entity, the discovery period may be extended, at the discretion of the arbitrator, for a period not to exceed one hundred twenty (120) days. The arbitration of a dispute between the Declarant, the Association, or any Owner of a Unit shall not be consolidated with any other proceeding unless Declarant chooses to consolidate the same with another similar proceeding brought by the Association or any

Owner of a Unit. The arbitrator shall convene the arbitration hearing within one hundred twenty days (120) from the time the arbitrator is selected or appointed. Upon completion of the arbitration hearing, the arbitrator shall render a decision within ten (10) days. The date for convening the hearing may be adjusted by the arbitrator to accommodate extensions of discovery and the addition of parties or by consent of the parties. However, unless extraordinary circumstances exist, the hearing shall be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. To the extent practicable, any hearing convened pursuant to this provision shall continue, until completed, on a daily basis. The prevailing party shall be entitled to recover its attorney's fees and costs. The costs of the arbitration shall be borne equally by the parties thereto.

**Section 15.7 Allocation of Costs of Resolving Claims.** Subject to Section 15.4(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) ("Post Mediation Costs").

**Section 15.8 Enforcement of Resolution.** After resolution of any Claim, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 15.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys' fees and court costs.

**Section 15.9 Attorneys' Fees.** In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Unit(s) involved in the action.

## **ARTICLE 16**

### **MORTGAGE PROVISIONS**

*The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties. The provisions of this Article 16 apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.*

**Section 16.1 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Unit or the Owner or Resident which is not cured within sixty (60) days;



(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

Section 16.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

Section 16.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 16.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 16.5 HUD/VA Approval. During the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance, or mortgaging by the Association of Common Elements; or material amendment of this Declaration; provided, however, that such prior approval shall not be a condition precedent if at such time HUD or VA has ceased to regularly require or issue such prior approval. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Elements shall not be deemed a conveyance within the meaning of this Section.

#### **PART SEVEN: CHANGES IN THE COMMUNITY**

*Communities, such as this Community, are dynamic and constantly evolving as circumstances, technology, needs, desires, and laws change over time. The Community and its governing documents must be able to adapt to these changes while protecting the things that make the Community unique.*

#### **ARTICLE 17**

#### **CHANGES IN OWNERSHIP OF UNITS**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date on which a copy of the Recorded instrument of transfer or conveyance is received by the Board, notwithstanding the transfer of title.

**ARTICLE 18**  
**CHANGES IN COMMON ELEMENTS**

**Section 18.1** Condemnation. If a Unit or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Elements shall be allocated as provided in applicable Utah law. If any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of the Requisite Membership Percentage or of Declarant (during the Declarant Control Period), by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Elements on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Elements to the extent available, unless within sixty (60) days after such taking, Declarant (during the Declarant Control Period) or the Requisite Membership Percentage shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Elements, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**Section 18.2** Partition. Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action partition of any portion of the Common Elements without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to the Act and other applicable Utah law.

**Section 18.3** Transfer or Dedication of Common Elements. The Association may dedicate portions of the Common Elements to the City of Washington, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 16.5 and 19.4.

**Section 18.4** Actions Requiring Member Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following actions shall require the prior approval of Members representing not less than two-thirds (2/3) of the total votes in the Association, and the consent of Declarant: merger, consolidation, or dissolution of the Association; annexation of additional property (other than that described in Exhibit "B") other than as set forth in this Declaration; and dedication, conveyance, or mortgaging by the Association of Common Elements. Notwithstanding anything to the contrary in Section 14.1 or this Section, the Association, acting through the Board, may grant easements over the Common Elements for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Elements without the approval of the Membership.

**ARTICLE 19  
AMENDMENTS**

**Section 19.1 Amendment By Declarant.** In addition to specific amendment rights granted elsewhere in this Declaration, until the end of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose. However, any such amendment shall not adversely affect the title to any Unit unless the Owner thereof consents in writing.

Furthermore, by acceptance of a deed conveying any real property described in Exhibit "B" hereto, in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the Purchaser-grantee thereof covenants that Declarant shall be fully empowered and authorized (but not obligated) at any time thereafter, to unilaterally execute and Record a Declaration of Annexation or Supplemental Declaration, adding said real property to the Community in the manner provided in Article 10, above.

Not limiting the generality of this Section, and among the other purposes for which the Declarant may unilaterally amend this Declaration, it may also do so if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statutes, rules, regulation, or judicial determination; (ii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, Federal Housing Authority – HUD or the Veterans Administration to make purchase insure or guarantee mortgage loans on the lots; and to insure no restrictions on the insurance of such mortgages within the community.

**Section 19.2 Amendment of Plat.** By acceptance of a deed conveying a Unit encumbered by this Declaration, whether or not so expressed in such deed, the grantee Home Owner thereof covenants that Declarant (or Builder of the Unit, as applicable, subject to obligations of Builder to Declarant) shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant (or said Builder, as applicable) as attorney in fact, of such grantee and his successors and assigns, to unilaterally execute and Record from time to time amendment(s) of or to the Plat, provided that any such amendment shall relate only to such property which at such time has not yet been annexed to the Properties by Recorded Annexation Amendment.

**Section 19.3 Amendment By Members.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote of written consent of the Requisite Membership Percentage. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**Section 19.4 Approval of Eligible Mortgagees.** Anything to the contrary herein notwithstanding, but without limiting Article 16 above, any of the following amendments, to be effective, must be approved by two-thirds (2/3) of all Eligible Mortgagees and Eligible Insurers at the time of such amendment, based upon one (1) vote for each first Mortgage owned or insured:

(a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to holders, insurers, and guarantors, of first Mortgages as provided herein.

(b) Any amendment which would necessitate an encumbrancer after it has acquired a Unit through foreclosure to pay more than its proportionate share of any unpaid assessment or assessment accruing after such foreclosure.

(c) Any amendment which would or could result in an encumbrance being canceled by forfeiture, or in the individual Unit not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions or to the application of insurance proceeds as set out in Section 7.3 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in termination or abandonment of the Properties or partition or subdivision of a Unit, in any manner inconsistent with the provision of this Declaration.

(f) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) assessments, assessment liens, or the subordination of such liens.

Any approval by an Eligible Holder required under this Section, or required pursuant to any other provisions of this Declaration, shall be given in writing; provided that prior to any such proposed action, the Association or Declarant, as applicable, may give written notice of such proposed action to any or all Eligible Holders, and for thirty (30) days following the receipt of such notice, such Eligible Holders shall have the power to disapprove such action by giving written notice to the Association or Declarant, as applicable. If no written notice of disapproval is received by the Association or Declarant, as applicable, within such thirty (30) day period, then the approval of such Eligible Holder shall be deemed given to the proposed action, and the Association or Declarant, as applicable, may proceed as if such approval was obtained with respect to the request contained in such notice.

A certificate or instrument, signed and sworn to by an Association Officer, that Members representing two-thirds (2/3) of the voting power of the Association have voted for any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires a written consent of Declarant or approval of Eligible Holders shall include a certification that the requisite approval of Declarant or Eligible Holders (as applicable) has been obtained or waived. The Association shall maintain in its files, for a period of at least four (4) years, the record of all such votes and Eligible Holder consent solicitations and disapprovals.

**Section 19.5 Notice of Change.** If any change is made to the Governing Documents, the Association Secretary (or other designated Officer) shall, within thirty (30) days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the change made.

**Section 19.6 Validity and Effective Date of Amendments.** No amendment may remove, revoke, or modify any right or privilege of Declarant without the prior written consent of Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be presumed conclusively that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment validly adopted by the Association shall be certified by the President or Secretary of the Association, and shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within twelve (12) months of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Nothing in this Article shall be construed to permit termination of any easement created in this Declaration or Supplemental Declaration without the consent of the holder of such easement.

**PART EIGHT: ADDITIONAL PROVISIONS**

**ARTICLE 20**  
**ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES**

Section 20.1 Additional Disclosures, Disclaimers, and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acquiring title to a Unit, or by possession of a Unit, each Owner (for purposes of this Article, and all of the Sections hereof, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), and by residing within the Properties, each resident (for purposes of this Article, the term "resident" shall include each resident, and their respective guests) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) that there is and/or will be electrical power substation(s) located on or nearby the Community (which term, as used throughout this Article, shall include all Units and Common Elements), and there are presently and may be further major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) from time to time located within or nearby the Community, which generate certain electric and magnetic fields ("EMF") around them; that, without limiting any other provision in this Declaration, Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF; and that Owner hereby releases Declarant from any and all claims arising from or relating to said EMF, including, but not necessarily limited to, any claims for nuisance or health hazards; and

(b) that the Unit and other portions of the Properties from time to time are or may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to airplane flight patterns, and/or airplane noise; and that Owner hereby releases Declarant from any and all claims arising from or relating to airplane flight patterns or airplane noise; and

(c) that the Unit and other portions of the Properties are or may be located adjacent to or nearby major roads, all of which may, but need not necessarily, be constructed, reconstructed, or expanded in the future (a) collectively, "roadways"), and subject to high levels of traffic, noise, construction, maintenance, repair, dust, and other nuisance from such roadways; and vehicles; that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to roadways and/or noise, dust, and other nuisance therefrom; and that Owner hereby releases Declarant from any and all claims arising therefrom or relating thereto; and

(d) that the Unit and other portions of the Properties are or may be located adjacent

to or nearby major water and drainage channels, major washes and major water detention and/or reservoir facilities (all, collectively, "Water Facilities"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not within Declarant's control, and over which Declarant has no jurisdiction or authority, and, in connection therewith: (1) the Water Facilities may be an attractive nuisance to children; (2) maintenance and use of the Water Facilities may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Water Facilities maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; and (3) the possibility of damage to Improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Water Facilities, as the result of non-function, malfunction, or overtaxing of the Water Facilities or any other reason; and (4) any or all of the foregoing may cause inconvenience and disturbance to Owner and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property; and that Owner hereby releases Declarant from any and all claims arising therefrom or relating thereto; and

(e) that construction or installation of improvements by Declarant, Builders, other Owners, or third parties, or installation or growth of trees and other plants, may impair or eliminate the view, if any, of or from any Unit and/or Common Elements; and that each Owner hereby releases Declarant from any and all claims arising from or relating to said impairment or elimination of view; and

(f) that residential subdivision and home construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects; and

(g) that: (i) the finished construction of the Unit and the Common Elements, while within the standards of the industry in Washington County, and while in substantial compliance with the plans and specifications, will be subject to expected minor flaws; and (ii) issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards; and

(h) that indoor air quality of the Unit and/or Common Elements may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on; and

(i) that installation and maintenance of a gated community, and/or any security or traffic control device, operation, or method, shall not create any presumption, or duty whatsoever of Declarant or the Association (or their respective officers, directors, managers, employees, agents, and/or contractors), with regard to security or protection of person or property within or adjacent to the Community; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Properties had been located within public areas and not gated; and that gated entrances may restrict or delay entry into the Properties by law enforcement, fire protection, and/or emergency medical care personnel and vehicles; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry; and

(j) that the Washington County area contains a number of earthquake faults, and that the

Properties or portions thereof may be located on or nearby an identified or yet to be identified seismic fault line; and further, that expansive or collapsible soils exist in and around the area of the Properties; and that Declarant specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to earthquakes or seismic activities, or to the condition of soils and the presence or absence of expansive or collapsible soils; and that each Owner releases Declarant from any and all claims arising from or relating to earthquakes, seismic activities, or other earth movement resulting from soil conditions or otherwise; and

(k) that the Unit and other portions of the Properties are or may be nearby major regional underground water, natural gas or other petroleum products transmission pipelines; and that malfunction of or damage to such underground pipelines may result in leakage, spillage, and/or migration of hazardous materials and pollution and/or other potentially dangerous conditions; and that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to such lines; and

(l) that the Unit and other portions of the Properties from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, roaches, rats, pigeons, snakes, or other insect or pest problems (collectively, "pests"); and that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Unit or other portions of the Properties; and

(m) that there is a high degree of alkalinity in soils and/or water in the area of the Properties; that such alkalinity tends to produce, by natural chemical reaction, discoloration, leaching and erosion or deterioration of concrete walls and other Improvements ("alkaline effect"); that the Unit and other portions of the Properties may be subject to such alkaline effect, which may cause inconvenience, nuisance, and/or damage to property; and that the Governing Documents require Home Owners to not change the established grading and/or drainage, and to not permit any sprinkler or irrigation water to strike upon any wall or similar Improvement; and

(n) that the Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard; and

(o) that the Properties, or portions thereof, are or may be located adjacent to or within the vicinity of certain other property zoned to permit the owners of such other property to keep and maintain thereon horses or other "farm" animals, which may give rise to matters such as resultant noise, odors, insects, and other "nuisance"; additionally, certain other property located or nearby the Properties may be zoned to permit commercial uses, and/or may be developed for commercial uses; and Declarant makes no other representation or warranty, express or implied, with regard to or pertaining to the future development or present or future use of property adjacent to or within the vicinity of the Properties; and

(p) that portions of Common Elements, and/or other property and landscaping which the Association must maintain, may be irrigated with reclaimed water or treated effluent water ("reclaimed water"); that pipes supplying reclaimed water may pass underground along portions of the Community; that there also may (but need not necessarily) be a pond, located in or near the general vicinity of the Community, supplied all or in part with reclaimed water; and that such reclaimed water may be malodorous and/or a potential hazard to health if ingested, and from time to time may be wind-blown across and upon the Community; and

(q) that Purchaser acknowledges having received from Declarant or a Builder information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to applicable State and local law, for the parcels of land adjoining the Properties to the north, south, east, and west, together with a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to any gaming uses. Each Home Owner is hereby advised that the master plan and zoning ordinances, and gaming enterprise districts, are subject to change from time to time. If additional or more current information concerning such matters is desired, the Home Owner should contact the appropriate governmental planning department. Each Home Owner acknowledges and agrees that its decision to purchase a Unit is based solely upon Home Owner's own investigation, and not upon any information provided by any sales agent; and

(r) that Declarant presently plans to develop only those lots which have already been released for construction and sale, and that Declarant has no obligation with respect to (i) future phases, plans, zoning, or development of other real property contiguous to or nearby the Unit; (ii) proposed or contemplated residential and other developments may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or Purchaser may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same; (iii) a Home Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and (iv) no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the provisions set forth in the foregoing or any provision of the written purchase agreement.

(s) that model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant or a Builder to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded flooring, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a Purchaser unless an authorized officer of the seller has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement; and

(t) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "nuisances." Each Home Owner acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out, and thereafter, in connection with repairs or any new construction; and

(u) that Declarant (or Builder, with regard to Units owned or developed by such Builder) shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for homes and/or Units; and

(v) that Declarant (or Builder, with regard to Units owned or developed by such Builder) shall have the right, from time to time, to design and/or to build different or varying product types or designs for new homes on portions of the Annexable Area, and that the Annexable Area may, but



need not necessarily, from time to time be annexed hereto; and

(w) that Declarant (or Builder, with regard to the residential subdivision owned or developed by such Builder) reserves the right, until the Close of Escrow of the last Unit in the Properties, in its sole discretion, to accommodate Declarant's (or Builder's, as applicable) construction activities, and sales and marketing activities; and

(x) that Declarant reserves the right, until the Close of Escrow of the last Unit In the Properties, to unilaterally enter upon, and/or to control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties; and

(y) that Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration; and

(z) that Declarant has reserved certain easements, rights and powers, as set forth in this Declaration; and

(aa) that each Owner understands, acknowledges, and agrees that Declarant has reserved certain rights in the Declaration, which may limit certain rights of Purchasers and Owners other than Declarant.

**Section 20.2 Releases.** By acquiring title to any portion of real property in the Properties, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have understood, acknowledged and agreed to all of the disclosures and disclaimers set forth herein, and to release and hold harmless Declarant and the Association and to release Declarant, the Board, the Association, and to the extent applicable, any Builder, and each of their respective officers, managers, agents, employees, suppliers, and contractors from any and all claims, causes of action, loss, damage or liability (including, but not limited to, any claim for nuisance or health hazard, property damage, bodily injury, and/or death) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences, or other matters described in the foregoing Section 20.1.

## **ARTICLE 21**

### **GENERAL PROVISIONS**

**Section 21.1 No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

**Section 21.2 Severability.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 21.3 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

**Section 21.4 Constructive Notice and Acceptance.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

**Section 21.5 Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail or by any other method specifically authorized by Utah law. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notice by personal delivery shall be deemed to have been given at time of delivery.

**Section 21.6 Limited Liability.** Except to the extent expressly prohibited by any applicable Utah law, neither Declarant nor Association, nor any Director or Officer, any committee representative, nor any agent or employee respectively thereof shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith. The Association shall indemnify every present and former Officer and Director and every present and former committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

**Section 21.7 Indemnity.** Each Owner shall, to the maximum extent permitted by law, indemnify and hold free and harmless each and every one of: Declarant, Association, any director, or any officer, agent, employee, or committee representative, respectively of Declarant, Association, and/or their respective partners, members, divisions, subsidiaries and affiliated companies, (if any), and their respective employees, officers, directors, members, shareholders, agents, professional consultants and representatives, and all of their respective successors and assigns (collectively, "Indemnitees") from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of the Owner, any contractor or subcontractor employed by the Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with; (a) any work by or of the Owner within the Properties and/or the performance of the Owner's obligations with respect to any and all Improvements designed, installed, constructed, added, altered or remodeled by the Owner pursuant and subject to the Governing Documents, including, without limitation, any such loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) any use of the Unit, or any part thereof, (ii) any defect in the design, construction of, or material in, any structure or other Improvement upon the Unit, (iii) any defect in soils or in the preparation of soils or in the design and accomplishment of grading, including a spill of any contaminants or hazardous materials in or on the soil, (iv) any accident or casualty on the Unit or in the Properties, (v) any representations by Owner or any of its agents or employees, (vi) a violation or alleged violation by the Owner, its employees or agents, of any applicable law, (vii) any slope failure or subsurface geologic or groundwater condition, (viii) any work of design, construction, engineering or other work with respect to the Unit or Properties provided or performed by or for the Owner at any time whatsoever, or (ix) any other cause whatsoever in connection with Owner's use of the Unit or the Properties, or Owner's performance under this Declaration, or any other Governing Document; or (b) the negligence or willful misconduct of Owner or its agents, employees, licensees,

invitees or contractors in the development, construction, grading or other work performed off the Properties by Owner pursuant to the Governing Documents, or any defect in any such work. Notwithstanding anything to the contrary contained in any of the documents referenced in the preceding sentence, Owner agrees and acknowledges that Indemnitees shall not be liable to Owner for any Liabilities caused by (i) any act or omission of Indemnitees with respect to the review of the Owner's Improvements and/or the drawings or specifications related to the Owner's Improvements, or (ii) any inspection or failure to inspect the construction activities of Owner by any of the Indemnitees, or (iii) any direction or suggestion given by any of the Indemnitees with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Owner's Improvements, or the failure to give any such direction or suggestion, or for any Liabilities which are covered by insurance or would be covered by insurance required to be maintained by the Owner, and Owner expressly waives any such Liabilities and releases Indemnitees therefrom. The covenants in this Section and the obligations of each Owner, and shall be binding on the Owner until such date as any claim or action for which indemnification or exculpation may be claimed under this Section is fully and finally barred (or, if applicable, fully and finally resolved, and any payment required thereby has been made in full).

**Section 21.8 Business of Declarant.** Except to the extent expressly provided herein or as required by applicable law, during the Declarant Control Period, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's improvement and/or development of the Properties.

**Section 21.9 Compliance with the Act.** It is the intent of Declarant that this Declaration and the Community shall be in all respects consistent with, and not in violation of, applicable provisions of the Act. In the event any provision of this Declaration is found to irreconcilably conflict with or violate such applicable provision of the Act, such offending provision of the Declaration shall be severed herefrom; provided, however, that if such severance shall impair the integrity of this Declaration, said offending provision shall be deemed automatically modified or severed herefrom, to the minimum extent necessary to conform to the applicable provision of the Act. Notwithstanding any other provision set forth herein, if any provision of the Act should, in the future, be removed or made less burdensome (from the perspective of Declarant), as a matter of law, then the future change in such provision shall automatically be deemed to have been made and reflected in this Declaration.

*(remainder of page intentionally left blank)*

Section 21.10 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the day and year first written above,

DECLARANT:

RREF II-JFH BRILLO, LLC,  
a Delaware limited liability company

By: RREF II-JFH BRILLO MEMBER, LLC,  
a Delaware limited liability company

Its: Manager

By: RIALTO REAL ESTATE FUND II, LP,  
a Delaware limited partnership

Its: Sole Member

RIALTO PARTNERS GP II, LLC,  
a Delaware limited liability company

Its: General Partner

By: Anthony Seijas

Senior Officer: Anthony Seijas

Title: VP

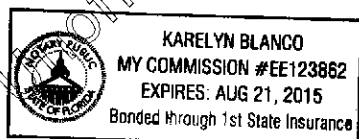
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, a Notary Public in and for the State of Florida on the 07 day of August, 2015, by Anthony Seijas, as VP of JF BRILLO DEL SOL DEVELOPMENT, LLC, a Utah limited liability company, the Project Manager and Authorized agent of RREF II-JFH BRILLO, LLC, a Delaware limited liability company, who produced \_\_\_\_\_ as identification or is personally known to me, and who acknowledged to me that <sup>\*</sup>she executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL]



KB  
Notary Public

**EXHIBIT "A"**  
**TO DECLARATION OF CC&RS for BRIO – A JACK FISHER HOMES PLANNED COMMUNITY**

**LEGAL DESCRIPTION OF ORIGINAL PROPERTY**

BEGINNING AT A POINT S00°20'24"W, 1296.01 FEET ALONG THE SECTION LINE AND WEST 170.45 FEET FROM THE EAST 1/4 CORNER OF SECTION 10, T42S, R15W, SLB&M, RUNNING THENCE S15°41'23"W, 47.48 FEET; THENCE S74°18'37"E, 142.00 FEET; THENCE S72°28'16"E, 140.76 FEET; THENCE N20°57'57"E, 95.00 FEET; THENCE S69°02'03"E, 269.69 FEET; THENCE S20°57'57"W, 106.00 FEET; THENCE S69°02'03"E, 317.13 FEET; THENCE N04°50'16"E, 93.32 FEET; THENCE S85°09'44"E, 59.00 FEET; THENCE S04°50'16"W, 293.07 FEET; THENCE S87°58'24"E, 139.39 FEET; THENCE S07°49'42"W, 186.08 FEET; THENCE S68°38'43"W, 286.26 FEET; THENCE N78°54'30"W, 115.84 FEET TO A POINT ON A 701.50 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S49°39'18"W; THENCE SOUTHEASTERLY 403.38 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 32°56'47"; THENCE S07°23'55"E, 134.83 FEET TO THE POINT OF CURVE OF A 854.50 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S01°37'24"E; THENCE SOUTHEASTERLY 46.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°05'32"; THENCE S88°31'52"E, 226.49 FEET; THENCE N34°44'26"E, 478.08 FEET TO THE POINT OF CURVE OF A 188.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS N82°58'29"W; THENCE SOUTHWESTERLY 18.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°33'23" TO THE POINT OF CURVE OF A 212.00 FOOT RADIUS REVERSE CURVE; THENCE SOUTHWESTERLY 41.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°06'46"; THENCE S01°28'08"W, 317.82 FEET; THENCE S46°28'13"W, 43.13 FEET; THENCE S00°00'37"E, 7.00 FEET TO A POINT ON THE NORTHERLY LINE OF BUENA VISTA BOULEVARD, A PUBLIC ROADWAY, AS SHOWN ON THE BUENA VISTA BOULEVARD ROADWAY DEDICATION PLAT FILED AS DOCUMENT NO. 634748 IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONG SAID NORTHERLY LINE OF BUENA VISTA BOULEVARD THE FOLLOWING TWO (2) COURSES: N88°31'52"W, 451.84 FEET TO THE POINT OF CURVE OF AN 840.00 FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE SOUTHWESTERLY 218.01 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°52'12" TO A POINT ON THE SOUTH LINE OF SECTION 11, T42S, R15W, SLB&M; THENCE S89°59'23"W, 10.53 FEET ALONG THE SECTION LINE; THENCE N11°54'50"E, 8.89 FEET TO THE POINT OF CURVE OF AN 850.50 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S13°50'04"E; THENCE NORTHEASTERLY 33.93 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°17'08" TO THE POINT OF A 27.00 FOOT RADIUS REVERSE CURVE; THENCE NORTHEASTERLY 40.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 85°51'08"; THENCE N07°23'55"W, 117.24 FEET TO THE POINT OF CURVE OF A 589.00 FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY 548.41 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 53°20'49"; THENCE N60°44'44"W, 428.18 FEET; THENCE S80°46'08"W, 13.55 FEET; THENCE S34°15'12"W, 115.44 FEET TO THE POINT OF CURVE OF AN 18.00 FOOT RADIUS TANGENT CURVE TO THE LEFT;

THENCE SOUTHEASTERLY 29.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 94°59'57"; THENCE S29°15'16"W, 50.00 FEET; THENCE S60°44'44"E, 76.87 FEET; THENCE S34°15'12"W, 264.59 FEET; THENCE S25°03'33"W, 67.47 FEET; THENCE S08°12'31"W, 69.92 FEET; THENCE S00°14'02"W, 109.30 FEET; THENCE N89°45'58"W, 98.06 FEET; THENCE S26°43'01"W, 27.93 FEET TO THE POINT OF CURVE OF A 15.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS S00°14'02"W; THENCE SOUTHWESTERLY 15.70 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°57'58" TO THE POINT OF CURVE OF A 175.00 FOOT RADIUS REVERSE CURVE; THENCE SOUTHWESTERLY 40.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°17'50" TO THE POINT OF CURVE OF A 125.00 FOOT RADIUS REVERSE CURVE; THENCE SOUTHWESTERLY 88.77 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°41'13" TO A POINT ON THE SOUTH LINE OF SAID SECTION 10, SAID POINT ALSO BEING THE NORTHEAST CORNER OF MILLCREEK SPRINGS TOWNHOMES AMENDED FILED AS DOCUMENT NO. 20080006962 IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N89°45'58"W, 713.86 FEET ALONG THE SECTION LINE AND THE NORTH LINE OF MILLCREEK SPRINGS TOWNHOMES, AND THE NORTH LINE OF MILLCREEK SPRINGS SUBDIVISION FILED AS DOCUMENT NO. 20070019994 IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, TO THE 1/16TH CORNER; THENCE N00°28'24"E, 749.57 FEET ALONG THE 1/16TH LINE; THENCE N72°42'14"E, 131.80 FEET; THENCE N48°03'46"E, 163.74 FEET; THENCE N00°28'24"E, 49.14 FEET; THENCE S89°31'36"E, 30.00 FEET; THENCE N00°28'24"E, 131.49 FEET TO THE POINT OF CURVE OF A 700.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS N04°12'59"E; THENCE NORTHWESTERLY 31.53 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°34'50"; THENCE N00°28'24"E, 340.65 FEET; THENCE N02°16'19"E, 39.08 FEET; THENCE N02°36'15"E, 103.78 FEET; THENCE N09°38'31"E, 75.54 FEET; THENCE N12°15'36"E, 80.44 FEET; THENCE N03°39'17"E, 79.02 FEET; THENCE N00°28'24"E, 91.00 FEET; THENCE S89°31'36"E, 365.75 FEET TO THE POINT OF CURVE OF A 15.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 73.56 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE S89°31'36"E, 25.00 FEET; THENCE S00°28'24"W, 17.79 FEET; THENCE S89°31'36"E, 154.32 FEET TO THE POINT OF CURVE OF A 375.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N74°45'39"E; THENCE SOUTHEASTERLY 180.54 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27°35'01"; THENCE S42°49'22"E, 108.06 FEET TO THE POINT OF CURVE OF A 467.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS S45°53'30"E; THENCE SOUTHWESTERLY 248.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°32'22"; THENCE S76°25'52"E, 102.00 FEET TO THE POINT OF CURVE OF A 365.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S76°25'52"E; THENCE NORTHEASTERLY 18.38 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°53'06"; THENCE S73°32'46"E, 168.10 FEET TO THE POINT OF BEGINNING.

CONTAINING 51.833 ACRES.

**EXHIBIT "B"**

**TO DECLARATION OF CC&RS for BRIO – A JACK FISHER HOMES PLANNED COMMUNITY**

**LEGAL DESCRIPTION OF THE ANNEXABLE AREA**

**PARCEL A**

BEGINNING AT A POINT N0°46'14"E 534.65 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON THE CENTERLINE OF A PROPOSED FUTURE 110.00 FOOT WIDE ROADWAY, SAID POINT ALSO BEING ON THE ARC OF A 1750.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N25°36'33"E; THENCE EASTERLY 753.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°39'17"; THENCE S89°02'44"E 507.13 FEET ALONG SAID PROPOSED FUTURE ROADWAY CENTERLINE TO THE CENTERLINE OF THE PROPOSED EXTENSION OF MAIN STREET; THENCE ALONG SAID PROPOSED MAIN STREET CENTERLINE THE FOLLOWING THREE COURSES: S0°57'16"W 1864.19 FEET TO THE POINT OF CURVATURE OF A 2500.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHERLY 116.04 FEET THROUGH A CENTRAL ANGLE OF 2°39'34"; THENCE S3°36'50"W 11.85 FEET TO A POINT ON THE NORTH LINE OF "OASIS LEISURE HOMES PHASE 1" SUBDIVISION AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AS ENTRY #483351; THENCE S89°59'57"W 40.08 FEET ALONG SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID SUBDIVISION, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF MAIN STREET AS DEDICATED ON SAID SUBDIVISION PLAT; THENCE S3°36'56"W 348.81 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE N89°59'23"E 29.04 FEET TO THE NORTHWEST CORNER OF PROPERTY DESCRIBED IN DOCUMENT NO. 20090009623 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONG SAID PROPERTY THE FOLLOWING THREE (3) COURSES: S3°36'56"W 69.54 FEET TO THE POINT OF CURVATURE OF A 2011.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY 74.54 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°07'25"; THENCE S1°28'08"W 508.79 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF "BUENA VISTA BOULEVARD" ROADWAY DEDICATION AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AS ENTRY #634748; THENCE N88°31'52"W 73.77 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE; THENCE N0°00'37"W 7.00 FEET; THENCE THENCE N46°28'13"E 43.43 FEET; THENCE N1°28'08"E 317.82 FEET TO THE POINT OF CURVE OF A 212.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S88°31'52"E; THENCE NORTHEASTERLY 41.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°06'46" TO THE POINT OF CURVE OF A 188.00 FOOT RADIUS REVERSE CURVE; THENCE NORTHEASTERLY 18.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°33'23"; THENCE S34°44'26"W 478.08 FEET; THENCE N88°31'52"W 226.49 FEET TO THE POINT OF CURVE OF A 854.50 FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE SOUTHWESTERLY 46.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°05'32"; THENCE N7°23'55"W 134.83 FEET TO THE POINT OF CURVE OF A 701.50 FOOT

RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY 403.38 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 32°56'47"; THENCE S78°54'30"E 115.84 FEET; THENCE N68°38'43"E 286.26 FEET; THENCE N7°49'42"E 186.08 FEET; THENCE N87°58'24"W 139.39 FEET; THENCE N4°50'16"E 293.07 FEET; THENCE N85°09'44"W 59.00 FEET; THENCE S4°50'16"W 93.32 FEET; THENCE N69°02'03"W 317.13 FEET; THENCE N20°57'57"E 100.00 FEET; THENCE N69°02'03"W 269.69 FEET; THENCE S20°57'57"W 95.00 FEET; THENCE N72°28'16"W 140.76 FEET; THENCE N74°18'37"W 142.00 FEET; THENCE N15°41'23"E 47.48 FEET; THENCE N73°32'46"W 168.10 FEET TO THE POINT OF CURVE OF A 365.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS S73°32'46"E; THENCE SOUTHWESTERLY 18.38 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°53'06"; THENCE N76°25'52"W 102.00 FEET TO THE POINT OF CURVE OF A 467.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S76°25'52"E; THENCE NORTHEASTERLY 248.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°32'22"; THENCE N42°49'22"W 108.06 FEET TO THE POINT OF CURVE OF A 375.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT; THENCE NORTHWESTERLY 180.54 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27°35'01"; THENCE N89°31'36"W 154.32 FEET; THENCE N0°28'24"E 17.79 FEET; THENCE N89°31'36"W 25.00 FEET TO THE POINT OF CURVE OF A 15.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N89°31'36"W; THENCE NORTHWESTERLY 23.56 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE N89°31'36"W 365.75 FEET; THENCE S0°28'24"W 91.00 FEET; THENCE S3°39'17"W 79.02 FEET; THENCE S12°15'36"W 80.44 FEET; THENCE S9°38'31"W 75.54 FEET; THENCE S2°36'15"W 103.78 FEET; THENCE S2°16'19"W 39.08 FEET; THENCE S0°28'24"W 340.65 FEET TO THE POINT OF CURVE OF A 700.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N6°47'49"E; THENCE SOUTHEASTERLY 31.53 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°34'50"; THENCE S0°28'24"W 131.49 FEET; THENCE N89°31'36"W 30.00 FEET; THENCE S0°28'24"W 49.14 FEET; THENCE S48°03'46"W 163.74 FEET; THENCE S72°42'14"W 131.80 FEET TO A POINT ON THE 1/16TH LINE; THENCE N0°28'24"E 1911.83 FEET ALONG THE 1/16 LINE (EAST LINE OF PROPERTY DESCRIBED IN DOCUMENT NO. 174473 AND THE EAST LINE OF PROPERTY DESCRIBED IN DOCUMENT NO. 20080006560 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER) TO THE 1/16 CORNER (NORTHWEST CORNER OF THE NE 1/4 OF THE SE 1/4 OF SECTION 10); THENCE S89°08'42"E 100.00 FEET ALONG THE 1/16 LINE; THENCE N0°41'15"E 336.31 FEET; THENCE N57°32'01"E 89.60 FEET; THENCE N0°41'09"E 268.43 FEET; THENCE N5°41'25"W 675.34 FEET; THENCE N68°38'58"E 363.99 FEET TO A POINT ON THE CENTERLINE OF SAID FUTURE 110.00 FOOT WIDE ROADWAY, SAID POINT BEING ON THE ARC OF A 1750.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N68°38'58"E; THENCE SOUTHEASTERLY 1314.59 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 43°02'25" TO THE POINT OF BEGINNING.

CONTAINING 128.286 ACRES MORE OR LESS.



**PARCEL B**

ALSO, BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 10, 11, 14 AND 15 OF TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, RUNNING THENCE N89°45'58"W 613.61 FEET ALONG THE SECTION LINE TO THE POINT OF CURVE OF A 125.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS S87°07'19"E; THENCE NORTHEASTERLY 88.77 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°41'13" TO THE POINT OF CURVE OF A 175.00 FOOT RADIUS REVERSE CURVE; THENCE NORTHEASTERLY 40.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°17'50" TO THE POINT OF CURVE OF A 15.00 FOOT RADIUS REVERSE CURVE; THENCE NORTHEASTERLY 15.70 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°57'58"; THENCE N26°43'02"E 27.93 FEET; THENCE S89°45'58"E 98.06 FEET; THENCE N0°14'02"E 109.30 FEET; THENCE N8°12'31"E 69.92 FEET; THENCE N25°03'33"E 67.47 FEET; THENCE N34°15'12"E 264.59 FEET; THENCE N60°44'44"W 76.87 FEET; THENCE N29°15'16"E 50.00 FEET TO THE POINT OF CURVE OF AN 18.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS N29°15'16"E; THENCE NORTHWESTERLY 29.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 94°59'57"; THENCE N34°15'12"E 115.44 FEET; THENCE N80°46'08"E 13.55 FEET; THENCE S60°44'44"E 428.18 FEET TO THE POINT OF CURVE OF A 589.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 548.41 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 53°20'49"; THENCE S7°23'55"E 117.24 FEET TO THE POINT OF CURVE OF A 27.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 40.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 85°50'59" TO THE POINT OF CURVE OF A 850.50 FOOT RADIUS REVERSE CURVE; THENCE SOUTHWESTERLY 33.93 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°17'08"; THENCE S11°54'51"W 8.89 FEET TO A POINT ON THE SECTION LINE; THENCE S89°59'23"W 158.66 FEET ALONG THE SECTION LINE TO THE SOUTHEASTERLY CORNER OF WASHINGTON CITY PROPERTY AS DESCRIBED IN DOCUMENT NO. 20070059801 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONG THE BOUNDARY OF SAID WASHINGTON CITY PROPERTY THE FOLLOWING SIX (6) COURSES: NORTH 4.89 FEET; THENCE N17°51'09"W 49.99 FEET; THENCE N85°19'29"W 75.43 FEET; THENCE N78°17'22"W 128.44 FEET; THENCE S84°37'41"W 39.58 FEET; THENCE S0°20'30"W 81.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 11.960 ACRES MORE OR LESS.