

**MASTER DECLARATION OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS AND RESERVATION  
OF EASEMENTS  
FOR  
MT. SARATOGA  
  
A Master Planned Community**

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FOR  
MT. SARATOGA  
A MASTER PLANNED COMMUNITY**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATIONS OF EASEMENTS FOR MT. SARATOGA a Master Planned Community is adopted by DCP Saratoga LLC, a Utah limited liability company ("Declarant"), in its capacity as the owner of the Mt. Saratoga Master Planned Community ("Community") located in Saratoga Springs, Utah County, State of Utah and more particularly described on Exhibit "A" ("Property"), which is attached hereto and incorporated herein by this reference. By executing and recording this Declaration, Declarant hereby declares that the Property is being made subject to the covenants, conditions, restrictions, easements, and assessments as provided herein. The Declaration, and any supplement hereto, shall run with the title to such Property, shall govern the Community and use of such Property, and shall be binding upon current and future owners of any portion of the Property and their respective heirs, successors, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Property. By taking title to Property in the Community, all Owners join in and accept the intent, purposes, and objectives of this Declaration and agree to be bound by it.

**RECITALS**

A. Declarant is the owner of the Property constituting certain real property in Saratoga Springs, Utah County which is set forth and described in Exhibit A attached hereto and made a part hereof.

B. Declarant is developing the Property as a master planned community to be known as "Mt. Saratoga". It is currently anticipated that the Community will contain about 2,400 residential Units along with commercial, church, and civic lots. The Community will also contain Common Area as defined below, intended to be used and enjoyed by the Owners pursuant to the provisions of this Declaration, and open spaces that will be dedicated to the public and maintained by the City.

C. In furtherance of the development plan for the Community, Declarant, has created or will create the Mt. Saratoga Master Association, Inc. ("Association") to which the Declarant in due course will delegate and assign, among other things, (1) the powers of owning, maintaining, and administering the Common Areas, (2) the duties of administering and enforcing this Declaration, (3) the duties of collecting and disbursing the assessments and charges hereinafter created in connection with the operation, maintenance, repair, and replacement of the Common Area; and (4) other functions and obligations of the Association.

D. Declarant reserves the right to amend and supplement this Declaration from time to time, in the discretion of Declarant, to formally include additional real property within the Community and to cause such additional property to become subject to the terms and conditions of this Declaration, or to accomplish other purposes desired by Declarant.

E. The Association and Community are not a cooperative.

NOW, THEREFORE, Declarant does hereby declare that the Property, as defined and described herein, shall be held, sold, conveyed, transferred, leased, subleased, used and occupied subject to the covenants, conditions, restrictions, and easements set forth herein, all of which shall run with the Property and all portions thereof and shall be binding upon all parties having or acquiring any right, title, or interest in and to all or any portion of the Property, and the respective heirs, successors, and assigns of such parties.

## ARTICLE I Definitions

Defined Terms. Unless the context clearly indicates otherwise, certain terms used in this Declaration shall have the meanings set forth in this Article 1. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1. Act shall mean and refer to the Utah Community Association Act, codified beginning at §57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. Additional Covenants shall mean any additional restrictions, conditions, or covenants imposed on a Unit or Owner as part of a Neighborhood Association or as part of a discrete Neighborhood within the Community. If the Additional Covenants are more restrictive than the provisions of this Declaration, the more restrictive covenant shall control. The Association shall have standing and authority to enforce any such Additional Covenants. Additional Covenants shall, prior to being recorded, require the approval of the Declarant during the Period of Declarant Control, and thereafter the Board, unless otherwise provided herein.

1.3. Articles shall mean the Articles of Incorporation of the Mt. Saratoga Master Association, Inc., as such Articles may be amended from time to time

1.4. Assessments shall mean any charge imposed or levied by the Association against Units including but not limited to annual assessments, special assessments, individual assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.

1.5. Association or Master shall mean the Mt. Saratoga Master Association, Inc., a Utah nonprofit corporation organized to own and/or administer and manage the Common Area, to govern the operation and maintenance of the Community, and to implement the provisions of this Declaration.

1.6. Board shall mean the Association's Board of Directors which shall be the governing board responsible to operate, govern, and manage the affairs of the Association.

1.7. Builder shall mean a Person who purchases one or more unimproved or improved lots or parcels of land within the Community for further subdivision or development and resale in the ordinary course of their business. Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, to further the purposes of this Declaration and to enhance the development of specific Neighborhoods, Declarant

may extend any of the rights it has reserved under this Declaration with respect to development, marketing, and sale of property in the Community to such Builders as it may designate from time to time.

1.8. Bylaws shall mean the Bylaws of the Association as set forth in Exhibit "B" attached hereto, as such bylaws may be amended from time to time.

1.9. Church Parcel or Civic Parcel shall mean a Parcel designated on the Plat for Church/Civic development.

1.10. City shall mean and refer to the City of Saratoga Springs

1.11. Commercial Parcel shall mean a Parcel designated on the Plat for commercial development

1.12. Common Area shall mean all the real property, Improvements, facilities, and equipment owned or managed by the Association, or which have been, from time to time, formally designated as areas to be used in common, or as designated as Common Area on the Plat. The Common Area includes, by way of illustration and not limitation, detention basins, park strips, Community monuments, and landscaped portions of roadways. Common Area shall not include (i) any roads and associated utilities dedicated to and accepted by the City; (ii) any roads owned or controlled by a Neighborhood Association; (iii) any open space and/or parks dedicated to and accepted by the City; (iv) any open space, parks, or other landscaped areas owned or controlled by a Neighborhood Association.

1.13. Common Expenses shall mean any and all costs and expenses (including allocations for Reserves) incurred or assessed by the Master in the performance and preservation of its rights, duties, and obligations

1.14. Community shall mean the Mt. Saratoga Master Planned Community as it exists at any time.

1.15. Declarant shall mean DCP Saratoga LLC, a Utah limited liability company, and its successors or assigns

1.16. Declaration shall mean this Master Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Mt. Saratoga, a Master Planned Community, as amended from time to time

1.17. Design Guidelines shall mean the design guidelines adopted by the Declarant in accordance with this Declaration, as amended from time to time. Following the Period of Declarant Control, Design Guidelines may also include the design guidelines adopted by the Association in accordance with this Declaration, as amended from time to time.

1.18. Design Review Committee or Committee shall mean the Design Review Committee established for the Community to ensure compliance with the Design Guidelines pursuant to Article IX hereof.

1.19. Development Agreement shall mean any agreement executed by and between the City and Declarant pertaining to the development of any portion of the Community

1.20. Development Plan shall mean the community plan for the Community approved by the City as the same may be amended from time to time, including without limitation, village plans, preliminary plans, and the final plats recorded with the Public Records. The

Development Plan is not intended to set forth the final approved configuration of all elements of the Community.

1.21. Director or Board Member shall mean a member of the Board.

1.22. Governing Documents shall mean and refer to the Declaration, Plat, Articles, Bylaws, and any Rules adopted by the Board.

1.23. Guest shall mean any family member, tenant, or invitee of an Owner, or any family member, tenant, or invitee of such a person.

1.24. Improvements shall mean and include all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, planting, planted trees and shrubs, and related fixtures and equipment

1.25. Manager shall mean a person(s) or entity, if any, selected by the Board to manage the affairs of the Association and Community.

1.26. Member shall mean a member in the Association through ownership of a Unit within the Community. Any Owner of a Unit is automatically a member of the Association.

1.27. Mortgage shall mean any mortgage, deed of trust, or other security instrument given to secure a loan from an institutional lender in the which a Unit or any part of the Property is encumbered. No Mortgage executed by an Owner of a Unit shall be construed to constitute a lien or other encumbrance upon any other Unit or upon the Common Areas.

1.28. Mortgagee shall mean any Person named as the mortgagee or beneficiary under a Mortgage or any successor-in-interest to such person or entity. The term "First Mortgagee" shall include any Mortgagee who, by virtue of the Owner's Mortgage holds a first and prior lien upon any lot of Unit superior to the lien of any other Mortgagee.

1.29. Neighborhood shall mean one or more of the distinct neighborhood communities within the Community created by Declarant or with permission of Declarant that may be included in a Neighborhood Association; be subject to a Neighborhood declaration; or be subject to Additional Covenants . A Neighborhood may be comprised of Units of more than one housing type and may include Units that are not contiguous.

1.30. Neighborhood Association shall mean a separate condominium or owners association created by or with the approval of Declarant to administer Additional Covenants applicable to a particular area or portion of the Community, such as a portion of the Community developed as condominiums or having special requirements. The jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

1.31. Neighborhood Common Area shall mean certain real property owned by a Neighborhood Association for the exclusive use or primary benefit of the Units within such Neighborhood. Neighborhood Common Area may include, without limitation, such things as roadways, curbs and gutters, sidewalks, entry features, recreational facilities, open space, landscaping, landscaped medians, and cul-de-sacs. The Declarant may designate property as Neighborhood Common Area and assign it to a particular Neighborhood Association on the recorded plat depicting such property, in the deed conveying such property to the Neighborhood Association, or in the supplement by which the property is submitted to the

terms of this Declaration. A Neighborhood Association or its declarant may create Neighborhood Common Area within a Neighborhood to be maintained at the cost and expense of the Neighborhood Association provided that such Neighborhood Common Area is not created from the Common Area of the Association without the written consent of the Declarant and Association.

1.32. Occupant shall mean any party, whether such party shall be an individual, corporation, limited liability company, joint venture, or partnership which has purchased, leased, rented, or otherwise acquired the right to occupy and use any Unit or any portion thereof, whether or not such right is exercised.

1.33. Owner shall mean any party, including Declarant, holding title of record to any Unit as reflected with the Public Records (including without limitation contract purchasers under executory contracts of sale), but excluding those Persons having such interest merely as security for the performance of an obligation. For purposes of membership in the Association and being obligated to pay Assessments levied against Units by this Declaration, the term shall refer to Owners of the Units. If a Unit has more than one Owner, all co-owners are jointly and severally obligated to perform the responsibilities of the Owner under this Declaration, but such co-owners shall appoint one person to be the Owner for purposes of voting hereunder. Every Owner is automatically a Member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the Bylaws. If an Owner is a corporation, trust, limited liability company, or other legal entity, its membership rights may be exercised by any officer, director, member, manager, or trustee, or by an individual the Owner designates from time to time in writing to the Association's secretary. The term "Owner" shall not refer to any party that shall have such interest solely as security for performance of any obligation, including a Mortgage.

1.34. Period of Declarant Control shall mean the period of time during which the Declarant may act as the Board of Directors, appoint Board Members, or exercise other rights as designated herein. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Units, and all of the Additional Land that may be annexed, have been conveyed to purchasers other than a Declarant or its successors, assigns, and affiliates; or (ii) the Declarant executes and records a written waiver of its right to control the Association. The Special Declarant Rights contained within this Declaration may last beyond the Period of Declarant Control for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then all Special Declarant Rights not waived shall remain in full force and effect.

1.35. Person shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.36. Plat shall mean a final plat of the Property or any portion of the Property which shall be prepared, submitted and approved in accordance with applicable ordinances of the City and which shall, either prior to or subsequent to the recordation of this Declaration, be recorded with the Public Records, as may be amended from time to time.

1.37. Property shall mean the real property located in Saratoga Springs, Utah as described on Exhibit "A" attached hereto.

1.38. Public Records shall mean the Office of the County Recorder of Utah County, Utah.

1.39. Rules shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board for the Association. Pursuant to §57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule making process.

1.40. Supplement shall mean a document recorded with the Public Records by the Declarant during the Period of Declarant Control to make real property subject to the terms of this Declaration which (i) describes such property, (ii) declares that such property is subject to this Declaration, and (iii) is signed and acknowledged by Declarant. A Supplement may also include any Additional Covenants recorded against a Neighborhood by Declarant that may only be applicable to the Units and land within that Neighborhood.

1.41. Unit shall mean a subdivided lot or condominium unit within the Community depicted as a separately identified parcel or unit on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as an attached or detached residence for a single family and is sometimes referred to as a "Residential Unit". The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other Improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit. The term does not include Common Area, any Neighborhood Common Area, or property dedicated to the public.

## ARTICLE II General

2.1. **General Purposes.** Declarant intends to develop the Community as a mixed-use master planned community with neighborhoods having various attached and unattached single-family Residential Units, Common Areas, and recreational open space. Declarant intends that this Declaration (i) establish and provide for the continued maintenance of the Community as an attractive and desirable residential community, (ii) preserve and add long term value to the Property for the benefit of the Owners, (iii) create and preserve open space with an integral park system that shall be dedicated to the public and maintained by the City, and (iv) create the Association to enforce the terms of this Declaration and to establish Rules regarding the maintenance, governance, and use of the Property within the Community. The Community may also contain schools, churches, and a business/commercial area, none of which shall be governed by this Declaration or be Members of the Association unless so declared by Declarant; however, such areas may be given easement rights as determined by Declarant. School, churches, and business/commercial lots will be governed by a separate declaration recorded by Declarant, as Declarant sees fit.

2.2. **Densities.** The Community will contain approximately 2,400 Units. The densities for the Community are generally defined in the Development Plan and Development Agreement and may be further set forth or clarified between Declarant and the City.

2.3. **Association.** Declarant has or will create the Association as a Utah non-profit corporation. The Members of the Association will be the Owners (including Declarant) of Units within the Community. Declarant intends to delegate and assign to the Association the powers of owning, maintaining, and administering the Common Area, the duties of administering and enforcing this Declaration, and of levying and collecting the Assessments and charges herein created.

2.4. **Declaration.** Declarant hereby declares that the Property and any and all Improvements that shall at any time be located upon any portion of the Property shall be held, sold, conveyed, transferred, designed, constructed, operated, maintained, leased, subleased, and occupied subject to the provisions of this Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, and liens provided, referred to, or incorporated herein, all of which shall run with the Property and all of which shall burden, benefit, and be binding upon Declarant, all other Persons having or acquiring any right, title, or interest therein, and their respective successors, assigns, heirs, devisees, and personal representatives.

2.5. **Supplement to or Removal of Declaration.** At any time during the Period of Declarant Control, Declarant may add or remove any real property to or from the terms of this Declaration upon City approval and by recording with the Public Records a document which (i) describes such property, (ii) declares that such property is or is not subject to this Declaration, and (iii) is signed and acknowledged by Declarant. Supplements by which real property is submitted to the terms of this Declaration may be necessary when new Neighborhoods are added to the Community. Removal of property may be necessary for schools, churches, commercial property, and other lots that shall be governed by other declarations or are otherwise not subject to this Declaration for residential Units.

2.6. **Form of Conveyancing.** Any deed, lease, mortgage, deed of trust, purchase contract, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit \_\_\_\_ of Mt. Saratoga Master Planned Community, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded \_\_\_\_\_, \_\_\_\_ as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the official records of the Utah County Recorder, State of Utah, and as identified and described in the Master Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Mt. Saratoga, a Master Planned Community, recorded \_\_\_\_\_, \_\_\_\_\_, as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, of the official records of the Utah County Recorder, State of Utah. TOGETHER WITH a right and easement in and to the Common Area described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).



Whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

2.7. **Right to Develop and Market.** Notwithstanding anything in this Declaration to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant's right to develop and market the Community and to exercise the rights reserved by Declarant as herein provided. Such rights reserved to Declarant, include, without limitation, the right to maintain a reasonable number of promotional, advertising, and/or direction signs, or similar items at any place(s) on the Property, provided that any such item is of a size and in a location that is reasonable and customary, is of professional quality, and does not violate any City ordinance or regulation.

2.8 **After-Acquired Title.** In the event that as of the date of the recordation of this Declaration, Declarant shall not be the holder of record of legal title to any portion of the Property, then all of Declarant's right, title, and interest in such portion of the Property, whether such right, title, and interest shall arise by reason of a contract for deed or otherwise, shall be deemed to be equitable title, and such equitable title shall be deemed to be subject to and bound by this Declaration and all of the easements, covenants, conditions and restrictions and other provisions herein contained. In the event that fee simple title to any portion of the Property shall become vested in Declarant at any time after the execution, delivery, and/or recordation of this Declaration, then any such real property shall immediately and automatically, without the necessity of the execution, delivery, or recordation of any other document or instrument, become subject to and bound by this Declaration and all of the easements, covenants, conditions, restrictions, and other provisions herein contained.

2.9. **Enforcement.** Unless otherwise specifically set forth herein, Declarant, Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all easements, covenants, conditions, restrictions, liens, charges, rights, and/or duties now or hereafter imposed by the provisions of this Declaration. The prevailing party in an enforcement action shall be entitled to recover its reasonable attorneys' fees and costs. Failure of Declarant, Association, or any Owner to enforce any easement, covenant, condition, restriction, lien, charge, right and/or duty contained herein on any one or more occasion shall not be deemed a waiver of the right to do so on any subsequent occasion. The Association may also enforce, by any proceeding at law or in equity, all obligations imposed against a Neighborhood Association, in which case the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

### ARTICLE III Administration of Property

3.1. **Construction of Improvements.** No Unit or Improvements shall be constructed within the Community, nor shall there be any alteration, repainting, or refurbishing of the exterior of any existing Unit or other Improvement unless and until complete plans and specifications therefor have first been submitted to and approved by the Design Review Committee as set forth in Article IX; provided, however, that the consent of the Design Review Committee shall not be required for any repair, repainting or refurbishing of an existing Improvement if upon completion of such repair, repainting or refurbishing the Improvement shall be in compliance with plans and specifications previously approved by the Design

Review Committee for such Improvement. Approval from the Design Review Committee is not required for Improvements to be constructed by Declarant or, if so authorized by Declarant, a Builder.

**3.2. Maintenance of Improvements.** All Units, Common Area, and other Improvements shall be continuously maintained so as to preserve a well-kept appearance of a first-class development. The Association shall be responsible for the maintenance of the Common Area. Unless provided otherwise by a Neighborhood declaration that gives a Neighborhood Association the obligation and responsibility, each Owner shall be required, at its sole cost and expense, to maintain its Unit in a clean, safe, and orderly manner and in accordance with the provisions of this Declaration. Owners are responsible for the maintenance, repair, and replacement of his Unit and any other Improvements thereon, including, without limitation, all exterior and interior surfaces, roofs, foundations, windows, gutters, concrete steps, porches, patios, decks, fencing, landscaping, and all else within the Unit or lot. If the Master reasonably determines in its sole discretion that the level of exterior maintenance on any Unit or Unit Improvement located on an Owner's and/or Neighborhood Association's property or the maintenance of a vacant portion of the Property is unacceptable, the Master shall so notify the Owner and/or Neighborhood Association in writing, and the Owner and/or Neighborhood Association shall have thirty (30) days thereafter to correct the deficiencies specified in such notice. If, in the Master's opinion, the Owner and/or Neighborhood Association shall fail to correct the stated deficiencies within said thirty (30) day period, the Master may order the necessary work (the "Required Maintenance") performed at the Owner's and/or Neighborhood Association's expense. The cost of the Required Maintenance shall be assessed to said Owner as an Individual Assessment. Notwithstanding the foregoing, the Master shall have no right or obligation to maintain, repair, or replace any Unit, or any Improvement situated on a Commercial Parcel or a Church or Civic Parcel as identified on the Plat(s).

**3.3. Landscaping.** Declarant shall be responsible to cause landscaping to be initially planted upon the Common Area. After such initial planting, the Master shall be responsible for maintenance of the same, and costs and expenses incurred for such maintenance shall be a Common Expense; provided, however, that the Master shall be entitled to the actual benefit of any warranty that may be related to such initial planting. The Association shall maintain the park strip areas along Mt. Saratoga Blvd., Talus Ridge Drive, and Pony Express even if such areas are dedicated to the public. No landscaping shall be installed upon a lot, nor shall there be any alteration of any landscaping, unless and until complete plans for such landscaping or alteration of existing landscaping have first been submitted to and approved by the Design Review Committee; provided, however, that approval from the Design Review Committee for landscaping to be installed by Declarant is not required. Each Owner shall be required to keep such Owner's lot free from rubbish, debris, fire hazards, or any unsanitary, unsightly or offensive condition and to conduct such weed abatement, rubbish, and debris removal and other maintenance as shall be required to cause said lot to be maintained in compliance with standards established by the Master, or, in the event the Master shall not have established such standards, then such maintenance shall, at a minimum, be in compliance with applicable ordinances of the City.

**3.4. Common Area.** The real property upon which Common Area is located shall ultimately be owned by the Association unless dedicated to the City. The Association shall

manage, administer, and maintain the Common Area; provided, however, that nothing contained herein shall preclude the Master from entering into contracts with other parties, including a Manager, to perform tasks related to the management, administration, and maintenance of the Common Area. All costs and expenses incurred in connection with such management, administration, and maintenance of the Common Area, including specifically, but without limitation, any capital improvement which is made by the Master upon or within the Common Area (except the initial capital cost) and the cost of the acquisition of any Common Area, shall constitute a Common Expense. Declarant shall have the right to determine what Improvements, if any, shall be initially constructed upon the Common Area.

#### **ARTICLE IV Association**

4.1. **The Association.** The administration of the Property shall be by the Association, which shall exist for the sole purpose of performing the functions and providing the services contemplated by this Declaration. The Association shall be operated as a nonprofit corporation.

4.2. **Neighborhood Associations.** Portions of the Property have special distinctions that require or make desirable the establishment of a separate condominium or owners association to administer Additional Covenants or responsibilities applicable to that particular area. Declarant shall have the right to establish Neighborhood Associations within the Property. Nothing herein shall be construed as requiring the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association. Any Neighborhood Association shall be responsible for administering the Additional Covenants applicable to the Property within its jurisdiction and for maintaining any Neighborhood Common Area. A Neighborhood Association may promulgate rules and requirements in addition to and more stringent than those of the Association, but the Owners of Units in the Neighborhood Association are still subject to the Rules of the Association unless a different rule and requirement applicable to the Neighborhood Association is approved in writing that is signed by the Declarant or Association. A Neighborhood Association's declaration of covenants, conditions, and restrictions shall be approved by Declarant before it may become effective.

4.3. **Association Membership.** Each Owner shall be entitled and required to be a Member of the Master. An Owner shall become a Member of the Master immediately and automatically upon becoming an Owner and shall cease to be a Member immediately and automatically upon ceasing to be an Owner as evidenced in the Public Records. Membership in the Association shall be appurtenant to the real property within the Community and shall not be transferred except upon the transfer of title to said real property and then only to the transferee of title thereto. Any transfer of title to a Unit or portion of the Property shall operate automatically to transfer the Owner's rights as a Member of the Master appurtenant thereto to the new Owner thereof. Any attempted separate transfer shall be void.

4.4. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their interest pertaining to the Unit owned by that Owner at any meeting of the Owners, but only one (1) vote shall be cast per Unit. Notwithstanding the foregoing, Members shall have no voting rights until after the termination of the Period of Declarant Control unless otherwise directed by Declarant. Until after the

termination of the Period of Declarant Control, or except as otherwise determined by the Declarant, Declarant shall have the sole right, authority, and discretion to administer and direct the affairs and management of the Association.

4.5. **Voting.** Each Member shall be entitled to vote on all matters brought before the Members for a vote thereon. Unless otherwise specifically provided, a majority of the votes present, in person or by proxy, and entitled to vote on any matter before the Master, shall be required to approve such matter.

4.6. **Multiple Ownership.** Only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than establishing a quorum.

4.7. **Meetings.** Following the termination of the Period of Declarant Control, there shall be a meeting of the Members not less often than once each calendar year as specified in the Bylaws. During the Period of Declarant Control, no such meeting shall be required.

4.8. **Board of Directors.** During the Period of Declarant Control, the Declarant shall have the authority to act as the Board or to appoint Directors. Following the termination of the Period of Declarant Control the Board shall be elected and comprised of individuals as further established in the Bylaws. Declarant appointed Directors shall not be bound by any qualification requirements in the Bylaws.

4.9. **No Personal Liability and Indemnification.** Each past and present Director (including the Declarant and its appointees) shall be entitled to indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Director to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE V Budget and Assessments

5.1 **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Area and for the administration, management, and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted.

5.2 **Covenant to Pay Assessments.** Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided

shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

- (a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorneys' fees, if any, against the latter for his share of any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Manager setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth. Otherwise, the personal obligation for any delinquent Assessment, together with interests, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.
- (b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

**5.3. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of the following: promoting the safety and welfare of the Owners; effecting the management, maintenance, care, preservation, and protection of the Community; enhancing the quality of life in the Community; and maintaining and enhancing the value of the Community including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

**5.4. Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly, quarterly, semi-annual, or annual installments, on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

**5.5. Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to five-hundred dollars (\$500) per Unit, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with

funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Area; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over five-hundred dollars (\$500) in a calendar year may be levied if approved by a majority of Owners who are present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

**5.6. Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents; (b) costs associated with the maintenance, repair, or replacement of Common Area caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee (see Section 5.15 below); (e) expenses incurred by the Association as a result of any Additional Covenants recorded against the Unit; and (f) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.

**5.7. Declarant Assessment Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as the earlier of the following two events occurs: (1) the physical structures are substantially completed, certificates of occupancy are issued, and the Units are sold or rented by Declarant; or (2) Declarant elects in writing to pay the Assessments. This exemption right may be assigned by Declarant to a Builder while the Builder is developing or constructing a portion of the Community.

**5.8. Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than Individual Assessments) shall be imposed upon all Units equally at a uniform rate.

**5.9. Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident of the Unit of the Owner.

**5.10. Certificate of Payment.** The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for

Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of \$25 (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

5.11. **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Property, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment at the discretion of the Board of Directors.

5.12. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.13. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.14. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of Common Area. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a reserve account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.15. **Reinvestment Fee.** Subject to the terms and conditions of Subsection (b) below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section. If established by the Board, the Board or its agent shall record and is hereby authorized to record, a notice or amended notice of this Reinvestment Fee covenant against all Units, consistent with the following terms and conditions:

- (a) Upon the occurrence of any sale, transfer, or conveyance (as applicable, a "Transfer") of any Unit, but excluding the initial sale or Transfer to Declarant or an affiliate or successor of Declarant or Builder, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by applicable law.

- (b) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:
- (i) Any Transfer to Declarant or an affiliate or successor of Declarant.
  - (ii) Any Transfer exempted by Utah Code §57-1-46.
  - (iii) Any Transfer to the Association or its successors.
  - (iv) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded to remove clouds on title.
  - (v) Any Transfer of Lots from Declarant to a Declarant related entity, as determined in the sole discretion of the Declarant.

The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

## ARTICLE VI

### Effect of Nonpayment of Assessments and Remedies

6.1. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

6.2. **Collection Charge.** If any Assessment is delinquent, the Owner may be obligated to pay interest at the rate of eighteen percent (18%) per annum, in addition to a collection charge and/or such other late fee penalty established by the Board. Until paid, such collection charge, interest, and/or late fees shall constitute part of the Assessment lien provided below. Late fees may be assessed each month until the delinquent Assessment, including all of its accompanying charges, costs, and attorneys' fees, is paid in full.

6.3. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- (a) The Association may suspend such Owner's voting rights.
- (b) The Association shall have a lien against each Unit for any Assessment levied against the Unit and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Unit from the date on which the Assessment, fine, or charge is due. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the Public Records against the Unit with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully



paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before this Declaration was recorded; a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Unit. The Association through its duly authorized agents, may bid on the Unit at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Unit.

- (c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Unit Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- (d) If the delinquent Owner is leasing his Unit or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.
- (e) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.
- (f) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.
- (g) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

6.4. **Power of Sale.** The Owners hereby convey and warrant pursuant to Utah Code Ann. §57-1-20 and §57-8a-302 to the Association's attorney of record, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Declaration.

## ARTICLE VII Easements

7.1. **Easements Reserved by Declarant.** As to the Property, Declarant hereby reserves to itself and its assigns the following easements:

- (a) Construction Easements and Related Rights. Declarant hereby reserves for the benefit of Declarant and its assigns (including without limitation Builders) the right from time to time:
  - (i) to install utilities and infrastructure to serve the Community, including without limitation electricity, water, sewer, phone, communications cables, and storm water and drainage systems;

- (ii) to construct, inspect, maintain, repair, and replace any utilities or Improvements necessary or required for the full development of the Community on the Property owned by Declarant or a Builder, on the Common Area and easements as designated on the Plat, and on portions of lots outside of the building areas of Units which may be designated on a Plat;
  - (iii) to establish and use nonexclusive perpetual utility and other easements, leases, permits, or licenses on, over, upon, across, above, under and through the Common Areas for uses including, but not limited to, access roads, paths, sidewalks, pathways, trails, clubhouse, pool, playgrounds, mailbox structures, sprinkler systems and other landscaping changes, Improvements and appurtenances (including without limitation, removal of trees and other vegetation subject to any necessary governmental approvals), ponds, drainage facilities, monuments, recreational areas and amenities, parking areas, conduit installation areas, storage facilities for supplies and equipment, earth walls and other roadway supports, lights, and signage;
  - (iv) to create other interests, reservations, easements, exceptions and exclusions for the best interest of the Association and for the benefit of any Owner or all Owners, provided that any such action taken and any easement, lease, permit or license, interest, reservation, exception or exclusion established does not unreasonably impair the use of the Units designated on a Plat;
  - (v) to dedicate roads, streets, alleys, rights of way, open space, or easements, including easements in the areas designated as open space and storm water management reservation, to public use all as shown on the Plat;
  - (vi) to construct and maintain offices, prefabricated structures, booths or other structures for administrative, sales, and promotional purposes relating to the Community during its development and marketing; and
  - (vii) to further the purposes of this Declaration and to enhance the development of specific Neighborhoods, Declarant may extend any of the rights it has reserved under this Declaration with respect to development, marketing, and sale of property in the Community to such Builders as it may designate from time to time.
- (b) Landscaping and Drainage Easements. Declarant hereby reserves for itself and its assigns an easement across the Property (except the portions thereof occupied by Improvements) and within all Common Area:
- (i) to revegetate, beautify, or maintain portions of the Property located adjacent to road rights of way;
  - (ii) to beautify and maintain portions of the Property to the extent necessary, in Declarant's judgment, to mitigate through landscaping, any potential visual impact of the Community;

- (iii) to revegetate portions of the Property in order to control erosion, to beautify the Property or to restore the Property to a natural condition after damage by natural or man-made causes;
  - (iv) to preserve, improve, maintain, restore and revegetate natural and man-made storm drainage ways across the Property, including the building areas of the Property which include drainage ways, and to convey water in those drainage ways; and
  - (v) to construct, operate, maintain, repair, and replace storm detention and water quality structures on the Property, including within the building areas of lots or Units where necessary to adequately control surface water.
- (c) Easements for the Benefit of Owners. Declarant hereby reserves for the benefit of the Association and all the Owners, the following described perpetual non-exclusive easements over all portions of the Common Area designated on the Plats, for the use and enjoyment of the Owners and Units in accordance with this Declaration: Easements, including any necessary access rights, for the installation, maintenance, and repair of utilities and services; for drainage over, across and upon adjacent lots for water from normal use of adjoining lots; and for the construction, maintenance, and repair of earth walls, slopes, retaining walls and other supports, provided that any such action taken or any other use of such easements does not unreasonably impair the use of the Units or lots affected thereby. Declarant also reserves any other easements referred to on any Plat as reserved by Declarant for the use and enjoyment of the Association.
- (d) Path Easements. Declarant or Builder may cause certain Units to be subject to an easement permitting Owner or public access trails, paths, or walkways within the boundaries of such Units (a "Path Easement"). Any Path Easement shall be shown and described on a plat recorded in the Public Records, and no Path Easement shall be newly created on a Unit conveyed to an Owner without the written consent of the Owner. Declarant grants to the Association a perpetual, non-exclusive easement on, over, under, through, and across any such Path Easement for maintenance purposes, and the Owners and occupants of all Units shall have an easement permitting the use of the Path Easements for the intended purposes. In addition, the public may be granted similar use rights over any Path Easement. The use of any Path Easement shall be subject to the Rules of the Association. The Association shall maintain the Path Easements as a Common Expense in the case of a Path Easement created by the Declarant or accepted in writing as Common Area of the Association, and the Builder or Neighborhood Association shall maintain the Path Easements in the case of a Path Easement created by the Builder that is not accepted as Association Common Area or that is designated as Neighborhood Common Area. No Owner or other person shall place or construct any improvement or thing within a Path Easement area without the Association's prior written consent, which consent may be withheld in the Association's discretion, and no Owner or person shall take any action that otherwise interferes with the exercise of the easement rights provided under

this Subsection. Neighborhoods are not required to provide public easements unless they choose to.

**7.2. Easements for Benefit of Association.** Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement over, upon, across, above, under and through the Property and each portion thereof to exercise any right held by or obligation imposed upon the Association under this Declaration or any other documents recorded in the Public Records. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner of the Unit, except in cases of emergency. Declarant hereby grants to the Association easements over the Property and Community as necessary to enable the Association to fulfill its obligations, duties, maintenance responsibilities, and enforcement rights under this Declaration. 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; to inspect for compliance with this Declaration; and to enforce this Declaration. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

**7.3. Other Easements.** The Property shall be subject to the following easements in addition to those created in this Declaration:

- (a) Easements on Plats and of Record. The Property shall be subject to all easements shown on any Plat, and to any and all easements recorded in the Public Records.
- (b) Parking. The Association is hereby empowered to establish "parking" and "no parking" areas within the Common Area and throughout the Community, as well as other parking Rules unless so prohibited by the City. The Association is authorized to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle.
- (c) Easements for City and County Public Service Use. Declarant hereby reserves and covenants for itself and all future Owners within the Community, easements for any City, county, state and federal public services, and for public utilities, including but not limited to, the right of the police to enter upon any part of the Property for the purpose of enforcing the law.
- (d) Cable Television, Internet Service, and Similar Utilities. Declarant hereby reserves easements in, upon, over, across and through the Property for the installation of a cable television system, internet service, or similar utilities, together with the right to grant and transfer such easements.

**7.4. Nature of and Creation of Easements.** Unless otherwise set forth herein, any easement reserved in this Declaration shall be deemed to be nonexclusive, and each easement in favor of an Owner shall be deemed to be appurtenant to and for the benefit of the Unit owned by such Owner. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect upon recordation of this Declaration in the Public Records, whether or not referred to, reserved and/or granted in any instrument of conveyance.

7.5. **Limitation on Owner Easement.** Each Owner's appurtenant right and easement of use and enjoyment respecting the Common Areas shall be subject to the following:

- (a) The right of the Association to govern by reasonable Rules the use of the Common Area so as to provide for the enjoyment of the Common Area in a manner consistent with the collective rights of all of the Owners;
- (b) the right of the City, and any other governmental or quasi-governmental body having jurisdiction over the Property within the Community, to enjoy access and rights of ingress and egress over and across any open area contained within the Common Area for the purpose of providing police and fire protection and providing any other governmental or municipal service; and
- (c) the right of the Association to dedicate or transfer any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Declarant during the Period of Declarant Control, or afterwards by the Association; provided that such dedication or transfer following the Period of Declarant Control must first be approved by the affirmative vote or written consent of a majority of all Owners.

7.6. **Additional Reservation of Rights.** Notwithstanding any provision to the contrary, the Declarant also reserves the non-exclusive right and power to grant and record such specific easements consistent with this Declaration or the general purposes of this Declaration as it deems necessary to develop the Property. Declarant hereby reserves for itself and its duly authorized agents, successors, and assigns the non-exclusive right and power to grant any homeowners or condominium association it may designate and their respective members an easement over the Common Area for the purpose of enjoyment, use, and access. Any homeowners or condominium association granted such rights shall be obligated to share in the costs of the maintenance of such areas as reasonably determined by the Declarant. Notwithstanding any provision to the contrary, Declarant reserves the right to deny access to the City or any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms acceptable to Declarant.

7.7. **Minimal Interference.** All work associated with the exercise of the easements described in this Article shall be performed so 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 make reasonable efforts to restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work.

## ARTICLE VIII OWNERS' RIGHTS AND OBLIGATIONS

8.1. **Owners' Easements of Enjoyment.** Every Owner and the Owner's Occupants and Guests shall have a non-exclusive right and easement of ingress and egress and of enjoyment in, to and over the Common Areas, which right and easement shall be appurtenant to and shall pass with fee title to the Owner's Unit, subject to the rights of the Association as set forth in this Declaration, including the right of the Association to suspend the voting rights and rights to use the Common Area (except, if necessary for ingress and egress to the Owner's Unit) by an Owner for any period during which (i) any Assessment against such

Owner's Unit remains unpaid and delinquent or (ii) any other material violation of this Declaration continues to exist after ten (10) days written notice to Owner, including without limitation any infraction of the Rules. The Common Area shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Owners of Units set forth herein and in the Rules.

8.2. **No Exemption from Liability.** No Owner shall be exempt from personal liability for Assessments to be levied by the Association, nor shall the Unit owned by such Owner be released from the liens and charges thereof by waiver of the use and enjoyment of the Common Area or by abandonment of the Owner's Unit.

8.3. **Duties.** It shall be the duty of each Owner to abide by the provisions of the Governing Documents. It shall also be the duty of each Owner to pay any and all Assessments legally assessed pursuant to this Declaration for the maintenance of the Common Area and the other purposes set forth herein.

8.4. **Maintenance and Repairs.** Each Owner shall, at the Owner's own cost, maintain the Owner's Unit in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Unit shall either rebuild the same within a reasonable time or shall raze the remains thereof and landscape the Unit's lot so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Community. In addition, each Owner shall also be responsible for mowing, weeding, irrigating, and otherwise maintaining the landscaping in any park-strip between the road and sidewalk in from of the Owner's Unit or the landscaping within that portion of any other adjacent Common Area or public or private right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public or private right-of-way, but only to the extent such area is reasonably or logically associated with such Unit and the maintenance burden of such adjacent is a reasonable, proportionate, and ancillary to the maintenance of the Owner's property. Owners may not remove or replace trees, shrubs, or similar vegetation from these areas without the written permission of the Design Review Committee. Trees within these adjacent areas may also be maintained by the City or the Association. A change in the painting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Design Review Committee pursuant to its procedures. Subject to such Design Review Committee approval, all repainting/staining and other maintenance of the exteriors of the Units shall be performed by or at the direction of (and at the expense of) the Owners of such Units, and the Owners shall maintain their Units in a good and attractive condition and excellent state of repair and in compliance with this Declaration and the Design Guidelines. No Owner shall neglect his Unit or fail to take all reasonable steps to keep the same in a good and attractive condition and state of repair at all times. If an Owner fails to repair and maintain such Owner's Unit pursuant to the standards set forth in this Declaration or Design Guidelines, the Board may provide written notice to such Owner of such failure (a "Maintenance Notice"). If an Owner (a) fails to take the maintenance or repair action specified in a maintenance notice within thirty (30) days, or (b) fails to begin such action within thirty (30) days and diligently proceed until completion to the extent such maintenance or repair actions cannot reasonably be completed within thirty (30) days, the Association shall have to right to perform such maintenance or repair action as the cost and expense of such Owner as an Individual Assessment pursuant to Section 5.6 of this

Declaration. In addition, an Owner may be fined for any failure to timely take the maintenance or repair action specified in a Maintenance Notice.

8.5. **Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments, or for any fines levied by the Association for an Owner's violation of the provisions of the Declaration or the Rules promulgated by the Association from time to time.

8.6. **Maintenance by Neighborhood Association.** Without limiting the ultimate responsibility of the Owners in a Neighborhood to care for such property, a Neighborhood Association shall maintain its Neighborhood Common Area and any other property for which it has maintenance responsibility in a manner consistent with this Declaration. Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within such Neighborhood Common Area or public right-of-way lying between the boundary of its common area and any wall, fence, or curb located on the common area or public right-of-way. A Neighborhood Association shall not remove or replace trees, shrubs, or similar vegetation without prior approval of the Association. If the Neighborhood Association fails to fulfill its duties under this Section, the Association may demand compliance and provide for such maintenance, in which case all costs and expenses incurred by the Association shall be paid within ten (10) days after demand by the Neighborhood Association. Nonpayment of such shall be subject to interest at the rate of 18% per annum. If the Association initiates legal action against the Neighborhood Association for failing to comply with these requirements and other obligations set forth in this Declaration, the prevailing party shall be entitled to its attorneys' fees and costs.

## ARTICLE IX Design Review

9.1. **Design Guidelines.** Subject to the City's ordinances and building codes, Declarant intends to cause all of the Property to be developed and all of the Common Area to be constructed and completed pursuant to the Development Plan, Development Agreement, and Declarant's Design Guidelines. Design and construction of the Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and the Design Guidelines, including without limitation (i) Exhibit "C" attached hereto, as may be amended from time to time, and (ii) such other building and design criteria for the Community that may be approved from time to time or amended from time to time by the Design Review Committee. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Community be equal or superior to that utilized for original construction. Notwithstanding any provision to the contrary, all original construction completed by Declarant (or by a Builder with a partial written assignment of these rights from Declarant) pursuant to the initial Design Guidelines adopted by Declarant, as they may be amended from time to time, shall be and is hereby approved without regard to the approval procedures set forth below. Declarant (or by a Builder with a partial written assignment of these rights from Declarant) shall have the right to create specific or additional guidelines on any given phase of the Community during the construction of the Community.

9.2. **Unit Quality and Size.** The size and quality material restrictions for the Units within the Community shall be set forth in the Design Guidelines as amended and approved by the Design Review Committee.

9.3. **Design Review Committee.** The Design Review Committee shall consist of three (3) individuals, who need not be Owners. The members of the Design Review Committee shall be appointed by Declarant during the Period of Declarant Control, and thereafter by the Board. The members of the Committee may also be Directors. The Committee may utilize professional consultants including an architect, a landscape architect, or a civil engineer. The Committee shall have and exercise all of the powers, duties, and responsibilities set out in this Declaration and shall meet on such schedules as may be established by its chairman. A majority of its members shall constitute a quorum and the majority of its members present at the meeting shall be sufficient to approve action. Actions may also be approved by unanimous written consent of all Committee members.

9.4. **Approval by Design Review Committee.** Except for original construction by Declarant (or a Builder with a partial written assignment of such rights from Declarant), no Improvements of any kind, including, without limitation, Units, dwellings, ponds, recreational amenities, parking areas, mailboxes, fence, walls, garages, driveways, flag poles, curbs, and satellite dishes shall ever be erected, altered, refinished or repainted (unless of the same finish or color as the original), or removed from any lands within the Property, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on any lands comprising the Property, unless the complete plans and specifications therefor ("Plans and Specifications") complying with the Design Guidelines requirements are approved by the Design Review Committee prior to the commencement of the work. The Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design, and existing structures within the Community; the building bulk or mass of any buildings or structures within the Community, their location with respect to topography, existing trees, finished grade elevations, and harmony of landscaping with the natural setting and surroundings; and shall ascertain whether the Improvements conform to the Design Guidelines then in effect, under this Declaration.

9.5. **Approval Procedure.** Two (2) copies of the complete Plans and Specifications must be submitted to the Design Review Committee for approval or disapproval. The Plans and Specifications shall be considered delivered when received by the Committee who shall approve or disapprove the Plans and Specifications in writing within thirty (30) days of receipt. In the event the Committee fails to take any action within the thirty-day (30) period of time, it shall be deemed to have approved the materials submitted except in those respects that such material is not in conformity with the provisions of this Article, as to which respects it shall be deemed disapproved. The Committee shall disapprove Plans and Specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Article. In the event of a conflict between the Design Guidelines and the applicable regulations or ordinances of the City or any other governmental entity having jurisdiction, the more stringent requirement shall prevail to the extent possible, and the latter shall prevail to the extent it is not legally possible to comply with the most stringent requirement.



9.6. **Construction.** Once begun, any construction, landscaping, or alterations approved by the Design Review Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such construction, landscaping, or alteration, and with the express permission of the Committee, the Person(s) carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity, provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. The Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect construction or other activities authorized for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

9.7. **Review Fees.** The Design Review Committee may retain third-party professionals and charge reasonable fees for its review of Plans and Specifications as shall be determined from time to time by the Committee. Such fee(s) shall be reasonable in relation to the work performed and shall be applied uniformly. The costs for any third-party professionals may be added to the fees charged for the review of the Plans and Specifications.

9.8. **Variances.** The Design Review Committee has the authority to deviate from the requirements contained in the Design Guidelines in extenuating circumstances, when to do otherwise would create an unreasonable hardship or burden for an Owner in the sole discretion of the Committee. The Committee does not, however, have authority to allow deviation from the requirements of the City.

9.9. **General Standards.** The Design Review Committee shall exercise its best judgment to see that all Improvements, construction, landscaping, and alterations on the lands within the Community conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines and this Declaration.

9.10. **Ultimate Responsibility.** Each Owner shall at all times conform and comply with all approved Plans and Specifications for the Improvements on such Owner's lot or Unit and otherwise conform and comply in all respects with the Design Guidelines and this Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction over the Unit.

9.11. **Procedure for Appeal.** In the event Plans and Specifications submitted to the Design Review Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; provided, however, a written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Committee to properly apply the Design Guidelines or provisions of this Article shall be received by the Board not more than 30 days following such disapproval or deemed disapproval. Within 30 days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Committee properly applied the Design Guidelines, or the provisions of this Article. In the event the Board fails to render such decision within said 30-day period, such disapproval or deemed disapproval of the Committee shall be deemed to have been affirmed by the Board.

9.12. **Non-Liability of Design Review Committee Members.** Neither Declarant, the Board, the Design Review Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Association or to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful or intentional misconduct of the Design Review Committee. The Design Review Committee shall review and approve or disapprove all Plans and Specifications submitted to it solely on the basis of compliance with the Design Guidelines, any applicable provision of this Article, aesthetic considerations, and the overall benefit or detriment that would result to the immediate vicinity of the proposed construction or alteration and the Community generally. The Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building or other codes.

9.13. **Variance in Event of Reconstruction.** Any Owner whose lot or Unit has suffered damage may apply for approval to the Design Review Committee for reconstruction, rebuilding, repainting, or repair of the Owner's lot or Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in compliance with the then applicable Design Guidelines.

9.14. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant (or a Builder if so assigned by Declarant), or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Community. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Units, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Community so long as the location of such model homes and the opening and closing hours are approved by the Design Review Committee, and the construction, operation, and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The Committee may also permit Units and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the City and any Rules of the Association. Any Units constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Units within the Community, and no Unit shall be used as a model home for the sale of Units not located within the Community.

## **ARTICLE X Restrictions**

10.1. **Rules and Regulations.** The Association, through the Board, has authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Property is maintained and used in a manner

consistent with this Declaration and the Bylaws. The Association, through the Board, is also authorized to levy fines for violations of any such Rules.

10.2. **Use.** Units shall be occupied and used only as a private single-family residence. Common Areas are to be used in a manner consistent with their community nature and use restriction.

10.3. **Nuisance.** No noxious, illegal, or offensive activity shall be carried on upon the Property nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Property in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. Any violation of the Governing Documents shall be deemed a nuisance.

10.4. **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Property or used therein unless the same and its proposed use are approved by the Board of Directors. Trailers, temporary construction offices, sheds, and other similar temporary structures shall be permitted for construction purposes during the actual construction of the Improvements.

10.5. **Signs.** All signs which may be viewed from the exterior of any Unit must be reviewed and approved in advance by the Design Review Committee. Any sign installed by Declarant shall not be subject to review and approval by the Design Review Committee. All signs shall also be in compliance with applicable municipal ordinances and regulations.

10.6. **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made upon the Property, unless such work is done within the Unit's garage or is otherwise allowed by the Board in the Rules.

10.7. **Unightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and Limited Common Areas and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit and Limited Common Area unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board of Directors.

10.8. **Pets.** Household pets are allowed unless prohibited by a Neighborhood Association declaration, but no pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Property. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to requirements for registration and the use of leashed and noise barking limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or

untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles.

**10.9. Leases.** The leasing of Units is permitted unless prohibited within a Neighborhood Association declaration. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing, a copy of which shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Owner shall be permitted to lease his/her Unit for transient, hotel, or seasonal purposes. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. In the event that the Owner fails to act accordingly, the Board may, without obligation to, initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.

**10.10. Parking.** Parking is prohibited where so indicated by the Board or where prohibited by law. Vehicles shall not be parked at any location within the Property, which would impair vehicular or pedestrian access, or snow removal. The Board may adopt Rules relating to the size and dimensions of the vehicles parked within the Community; relating to the admission and temporary parking of vehicles within the Community; and the use of the undesignated or unassigned parking spaces identified on the Plat, if any, the right to remove or cause to be removed any vehicles that are improperly parked, the time visitor spaces may be used and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

**10.11. No Subdivision of Unit.** No Unit shall be further subdivided without the prior written consent of Declarant for so long as Declarant owns any portion of the Property. Declarant shall, in the exercise of its sole discretion, be permitted to grant or withhold such approval. Upon any reconfiguration of a Unit, Declarant shall cause to be prepared and recorded an amendment to the Plat which shall set forth the boundaries of the reconfigured Unit. No signature of any Mortgagee or any Owner, other than Declarant, shall be required on any such amendment. At such time as Declarant shall cease to be an Owner of any portion of the Property, no Unit shall be further subdivided without the prior written consent of the Board, who may withhold consent in its sole discretion.

**10.12. Residential Occupancy and Commercial Activity Limits.** No business use and trade may be conducted in or from any Unit unless:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (b) the business activity conforms to all zoning requirements for the Community;
- (c) the business activity does not involve persons coming onto the Property who do not reside in the Community or door-to-door solicitation of residents;
- (d) such business is legal within the meaning of all applicable statutes of the state of Utah and all ordinances of municipal authorities; and

- (e) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, as may be determined in the sole discretion of the Board of Directors.
- (f) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section.

10.13. **Neighborhood Restrictions.** A Neighborhood declaration or Supplement may provide Additional Covenants, (with permission of Declarant) more stringent than those provided in this Declaration. This includes, without limitation, pet restrictions, leasing restrictions, and parking restrictions.

## ARTICLE XI Mortgagee Protection

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

11.2. **Notice of Noncompliance to Mortgagee.** From and after the time a Mortgagee makes written request to the Master therefor, the Master shall notify such Mortgagee in writing in the event that the Owner of a Unit encumbered by the Mortgage held by such Mortgagee neglects, for a period of sixty (60) days or more, to cure any failure on the part of such Owner to perform any of its obligations under this Declaration.

11.3. **Priority of Assessment Lien.** The lien or claim against a Unit for unpaid Assessments levied by the Master pursuant to this Declaration shall be subordinate to a Mortgage affecting such Unit which has been recorded prior to the date such Assessment became due. A Mortgagee who comes into possession of the Unit pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or delivery of a deed or assignment in lieu of foreclosure, except that such Mortgagee shall be responsible for the payment of a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Units, including the Unit in which the Mortgagee is interested. No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not being a burden to a Mortgagee coming into possession pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a Mortgagee, a successor in title to a Mortgagee or the Unit affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Unit).

11.4. **Financial Information.** Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Master during reasonable business hours. From and after the time a Mortgagee makes written request to

the Master therefor, and at the expense of such Mortgagee, the Master shall furnish to such Mortgagee copies of such financial reports or writings summarizing or reflecting the financial position or history of the Community as may be prepared for distribution to or use by the Owners generally.

**11.5. Article Supersedes Others.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Master with respect to the subject concerned.

**11.6. Notices to Mortgagee.** Any notice to a Mortgagee under this Article shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first-class mail, postage prepaid, and addressed to the Mortgagee at the address specified in writing to the Association by the Mortgagee for notices. Any such notice shall be given in the manner specified in Section 15.1 of this Declaration.

## **ARTICLE XII Insurance**

**12.1. Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

**12.2. Property Insurance.** The Association shall obtain property casualty and fire insurance for the Common Area but shall have no obligation to insure an Owner's Unit or other Improvements or property of an Owner.

**12.3. Comprehensive Public Liability Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

**12.4. Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

**12.5. Directors and Officers Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of

claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the Manager.

12.6. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

12.7. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

12.8. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

12.9. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

12.10. **Owner Insurance.** Each Owner shall be responsible to purchase and maintain in force appropriate hazard, content, and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances. The Association is not required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

**ARTICLE XIII  
Special Declarant Rights**

13.1. **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- (a) Any Improvements shown on the Plat;
- (b) Any Units upon all or any portion of any additional land added to the Property; and
- (c) Any other buildings, structures, or improvements that Declarant desires to construct on the Property, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Property.

13.2. **Expandable Property.** The Declarant herewith expressly reserves the right and option to expand the Property by the annexation of additional land, or portions thereof, and Units to be constructed thereon, all in accordance with the provisions of this Section.

- (a) The Community may be expanded by the addition of other real property, such real property or portions thereof where applicable being referred to as "Additional Land".

- (b) Expansion or contraction of the Community by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.
- (c) Declarant's right to expand or contract the Project shall not expire until the Declarant elects in writing to not add Additional Land to the Project or the Period of Declarant Control ends.
- (d) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein.
- (e) The Declarant simultaneously with the submission of Additional Land to the Property shall prepare and record in the Public Records, a supplemental Plat pertaining to such Additional Land to be added showing the location and dimensions of each Unit created from and located upon such Additional Land, and the Unit designation of each Unit so created.
- (f) To submit or withdraw Additional Land to the Project, the Declarant shall record a Supplemental Declaration in the office of the Utah County Recorder setting forth that an expansion or contraction of the Project has occurred. Such Supplemental Declaration shall include: (i) a description of the Additional Land added or withdrawn from the Project; and (ii) shall reference this Declaration and state that the provisions of this Declaration apply to the Additional Land, or that the Additional Land is no longer subject to the provisions of this Declaration.

**13.3. Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

- (a) the right to maintain sales offices, model Units, and signs advertising the Property or any Unit at any location in the Property;
- (b) the right to use easements throughout the Common Areas as set forth in this Declaration;
- (c) the right to appoint or remove members of the Board during the Period of Declarant Control;
- (d) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (g) right to withdraw land from the Property for up to fifteen (15) years from the date this Declaration is recorded with the Public Records.
- (a) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.



**13.4. Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which: (i) the Period of Declarant Control expires; (ii) the Declarant no longer owns a Unit and has no plans to add more Units on the Additional Land; or (iii) fifteen (15) years after this Declaration is recorded with the Public Records. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

**13.5. Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

**13.6. Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) ten (10) years after the Declaration is recorded, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any Improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally constructed or created by Declarant.

**13.7. Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign all or some of its rights created or reserved under this Declaration to any Person. Such transfer, conveyance, or assignment shall be effective upon recording in the Public Records.

**13.8. Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.

**13.9. Voting.** During the Period of Declarant Control, any matter voted upon by the Owners shall not become effective unless the matter is approved in writing by the Declarant.

**13.10. Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the initial management of the Association or the design, initial construction, condition, or sale of any part of the Property and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving any Claim.

- (a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being

individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- (i) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
  - (ii) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
  - (iii) The proposed remedy;
  - (iv) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
  - (v) that the Person alleged to be responsible for the acts giving rise to the Claim shall have one hundred and eighty (180) days to cure or resolve the Claim.
- (b) Within sixty (60) days of providing the Notice, 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.
- (c) In the event that the Claim is not resolved following the meeting, or if the meeting fails to take place within the sixty (60) day period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following the conclusion of the one hundred and eighty (180) day cure period provided in the Notice.
- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
- (i) Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
  - (ii) Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least seventy-two (72) hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
  - (iii) Receive approval at the meeting from two-third (2/3) of the Owners to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable; and
  - (iv) Allow the one hundred and eighty (180) day right to cure period to expire.
- (e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant,

stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys' fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys' fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.

- (f) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any proceeding of a Claim, (2) any institution, prosecution or maintenance of, or intervention in a proceeding of a Claim by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the proceeding of a Claim; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) sixty-seven percent (67%) of Owners, and (b) not less than seventy-five percent (75%) of the Directors; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.
- (g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.
- (h) The dispute resolution procedures described in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, without limitation, §57-8a-228.

#### **ARTICLE XIV Amendments**

##### **14.1. General Amendment Requirements.**

- (a) Amendments by Declarant. Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended by the

Declarant without any additional approval required, and no other amendment shall be valid or enforceable without the Declarant's prior written consent.

- (b) Amendments by Association. After termination of the Period of Declarant Control, amendments to this Declaration shall be proposed by either a majority of the Board of Directors or by at least forty percent (40%) of the Owners. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Owner's. Any amendment(s) shall be effective upon recordation in the Public Records. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the signature of any one officer, director, manager, member, principal, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.

#### **ARTICLE XV Miscellaneous Provisions**

15.1. **Notices.** Any notice to be given to an Owner, a Mortgagee, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

- (a) Notice to an Owner shall be delivered personally, by email, or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. Notice by email shall be deemed delivered when sent. Notices may also be sent to Owners as otherwise allowed by the Act.
- (b) Notice to a Mortgagee shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Mortgagee in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Mortgagee. Any address for a Mortgagee that is found on a document recorded on the title of a Unit shall be deemed an office of the Mortgagee. Any notice so deposited in the mail shall be deemed delivered upon deposit.
- (c) The Declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner(s), or to any Mortgagee(s), in any manner that this Section allows, shall be deemed conclusive proof of such mailing.

- (d) Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the statutory agent of the Association; or if there is none, to the President and Secretary of the Association. The Association shall, however, have the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplement and such Supplement may be filed for this purpose alone upon approval of the Board of Directors.

15.2. **Condemnation.** In the event that all or any part of the Common Area is taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be used first to pay costs and expenses incurred to restore the remaining portions of the Common Area to the condition that existed prior to such taking and any portion that shall remain thereafter shall be retained by the Association and deposited into its operating or reserve accounts. Costs and expenses incurred in restoring such Common Area or other areas which shall be in excess of said condemnation award allocable to the Common Area shall be a Common Expense and may be included in a Special Assessment made to all Owners. Subject to the rights of any Mortgagee, should the Improvements on any Unit be taken by eminent domain or be conveyed by the Owner by deed in lieu thereof, the proceeds therefrom shall be used first to restore the remaining Improvements on the Unit and then distributed to the Owner.

15.3. **Duration and Termination.** This Declaration shall continue in perpetuity unless and until the Members vote by not less than ninety-percent (90%) of all Members of the Association to terminate the Declaration and dissolve the Association. In the event this Declaration is terminated pursuant to this Section, this Declaration shall be terminated by recording a notice with the Public Records and the Association shall be dissolved in accordance with Utah law.

15.4. **Violation Creates Nuisance.** Any violation of any provision, covenant, condition or equitable servitude contained in this Declaration or any Rules, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any party entitled to enforce the provisions of this Declaration.

15.5. **Violation of Law.** Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any Unit or Improvements within the Property, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

15.6. **Consent in Lieu of Vote.** In any case in which the Act or this Declaration requires the vote of a stated percentage of Owners for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least the stated percentage of the voting interests. The following additional provisions shall govern any application of this Section:

- (a) all necessary consents must be obtained prior to the expiration of sixty (60) days after the first consent is given by any Owner; and

- (b) any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

**15.7. Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

**15.8. Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

**15.9. Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing or leasing a Unit in this Association that Association and the Declarant, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association as required by this Declaration. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE DECLARANT HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROPERTY.

**15.10. Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

**15.11. Captions.** The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall the same be used to limit or amplify, the terms and provisions hereof.

15.12. **Invalidity of Provision.** If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole. This Declaration shall be interpreted by the laws of the state of Utah.

15.13. **Exhibits.** All exhibits to this Declaration are incorporated herein by this reference.

15.14. **Effective Date.** This Declaration and any amendment hereto, shall take effect upon its being filed for record with the Public Records.

IN WITNESS WHEREOF, Declarant hereby executes this Declaration.

DATED this 21 day of June, 2018.

**DCP Saratoga LLC**  
a Utah limited liability company

By: Joe B. Pierce

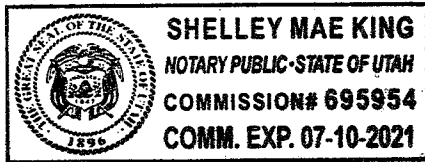
Name: Joseph B. Pierce

Title: Authorized Signer

STATE OF UTAH )  
COUNTY OF Utah ) ss:

The foregoing instrument was acknowledged before me this 21 day of June, 2018 by Joe Pierce, Manager of DCP Saratoga LLC, a Utah limited liability company, and said person duly acknowledged to me that DCP Saratoga LLC executed the same.

Shelley King  
NOTARY PUBLIC



## EXHIBIT A

**MT. SARATOGA, A MASTER PLANNED COMMUNITY  
PROPERTY LEGAL DESCRIPTION**

**PARCEL A**

A portion of Sections 16 and 21, Township 5 South, Range 1 West, Salt Lake Base & Meridian, located in Saratoga Springs, Utah, more particularly described as follows:

Beginning at the Northeast Corner of Section 21, Township 5 South, Range 1 West, Salt Lake Base & Meridian; thence N88°57'29"W along the Section Line 243.91 feet to the westerly line of the Utah Power & Light Company property as defined by survey; thence S5°03'00"W along said westerly line 2662.71 feet to the Quarter Section Line; thence N89°11'06"W along the Quarter Section Line 913.66 feet to the west line of that real property described in Deed Entry No. 25092:2013 in the Official Records of the Utah County Recorder; thence along said real property the following two (2) courses: S0°25'08"W 881.29 feet; thence S89°34'01"E 842.75 feet to the westerly line of the Utah Power & Light Company property as defined by survey; thence S5°03'00"W along said westerly line 929.06 feet to the south line of the Utah Power & Light Company property as defined by survey; thence along said south line northeasterly along the arc of a 544.00 foot radius non-tangent curve to the left (radius bears: N25°29'07"W) 8.46 feet through a central angle of 0°53'29" (chord: N64°04'08"E 8.46 feet) to the east line of that real property described in Deed Entry No. 4952:2006; thence S0°00'18"E along said real property 253.32 feet to the centerline of Fairfield Road; thence S52°38'12"W along said centerline 988.76 feet to the south line of said Section 21; thence N89°50'39"W along the Section Line 815.95 feet; thence N0°18'01"E 66.00 feet; thence N89°50'39"W 445.51 feet; thence N89°09'33"W 1337.07 feet; thence N0°00'38"E 1438.30 feet; thence N89°09'33"W 265.00 feet; thence N0°00'38"E 830.99 feet; thence N61°54'36"W 141.52 feet; thence N49°30'57"W 433.45 feet to the Quarter Section Line; thence N89°11'06"W along the Quarter Section Line 574.34 feet to the West 1/4 Corner of said Section 21; thence N0°12'36"E along the Section Line 1259.34 feet to the southerly line of that real property described in Deed Entry No. 83615:2009; thence along said real property the following two (2) courses: N33°39'41"E 1378.72 feet; thence N0°00'19"W 252.99 feet to the North Line of said Section 21; thence S89°00'57"E along the Section Line 41.52 feet to the west line of that real property described in Deed Entry No. 13804:2006; thence N0°15'47"E along said real property 73.56 feet to the northerly line of the Utah Power & Light Company easement as described in Deed Entry No. 4633:1970 and defined by survey; thence N33°57'27"E along said northerly line 2065.85 feet to the intersection with that real property described in Deed Entry No. 24119:2008; thence along said real property the following three (3) courses: N78°02'41"E 32.97 feet; thence N11°49'36"W 32.01 feet; thence N33°57'27"E 814.01 feet to the southerly right-of-way line of Highway 73; thence N78°12'20"E along said right-of-way line 235.19 feet to the Quarter Section Line; thence S0°23'05"W along the Quarter Section Line 651.34 feet to the northerly line of that real property described in Deed Entry No. 822:2006; thence along said real property the following seventeen (17) courses: N65°39'53"E 283.43 feet; thence N88°24'59"E 355.06 feet; thence S62°03'18"E 559.95 feet; thence N54°53'34"E 305.11 feet; thence N23°32'32"W 24.369 feet; thence northwesterly along the arc of a 1050.64 foot radius non-tangent curve to the right (radius bears: N66°29'51"E) 208.68 feet through a central angle of 11°22'48" (chord: N17°48'45"W 208.33 feet); thence N12°07'21"W 544.62 feet; thence N57°07'21"W 141.74 feet to a point also being on the southerly right-of-way line of Highway 73; thence N78°12'20"E along said right-of-way line 294.77 feet; thence S32°52'39"W 139.36 feet; thence S12°07'21"E 544.62 feet; thence along the arc of a 954.64 foot radius curve to the left 156.00 feet through a central angle of 9°21'45" (chord:



S16°48'14"E 155.82 feet); thence N30°49'00"E 240.09 feet; thence N40°46'27"E 158.96 feet; thence N71°01'41"E 369.74 feet; thence N67°13'11"E 178.58 feet; thence S34°08'41"E 138.69 feet; thence S46°39'59"E 560.70 feet to the East Line of Section 16, T5S, R1W, SLB&M; thence S0°21'55"W along the Section Line 2124.85 feet to the point of beginning.

Contains: ±677.51 Acres

**PARCEL B**

A portion of the Southeast Quarter of Section 21, Township 5 South, Range 1 West, Salt Lake Base & Meridian, located in Saratoga Springs, Utah, more particularly described as follows:

Beginning at a point located S0°23'19"W along the Section Line 872.14 feet from the East 1/4 Corner of Section 21, Township 5 South, Range 1 West, Salt Lake Base & Meridian; thence S0°23'19"W along the Section Line 451.38 feet; thence N89°30'51"W 126.94 feet; thence S38°52'48"W 335.80 feet; thence S57°12'50"W 153.95 feet to the easterly line of the Utah Power & Light Company property as defined by survey; thence N5°03'00"E along said easterly line 801.20 feet to the south line of that real property described in Deed Entry No. 25092:2013 in the Official Records of the Utah County Recorder; thence S89°34'01"E along said real property 399.68 feet to the point of beginning.

Contains: ±5.75 Acres

**EXHIBIT B**

**BYLAWS OF  
MT. SARATOGA MASTER ASSOCIATION, INC.**

These BYLAWS OF MT. SARATOGA MASTER ASSOCIATION, INC. are effective upon recording in the Utah County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

**RECITALS**

A. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.

B. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the master planned development Project known as Mt. Saratoga and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I  
DEFINITIONS**

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Mt. Saratoga.

**ARTICLE II  
APPLICATION**

2.1 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Dwellings or the mere act of occupancy or use of any said Dwellings or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

**ARTICLE III  
OWNERS**

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board

shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of not less than twenty percent (20%) of the Owners in the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of a valid Owner request. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 **Place of Meetings.** The Board may designate any place in Utah that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and location (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Dwelling shall be deemed to be the Owner's registered address and notice to the Dwelling address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her Assessment account (together with interest or other fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s)

of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 **Quorum.** Those Owners present in person or by proxy at any duly called meeting that is called and held in compliance with the requirements of this Article, shall constitute a quorum for the adoption of decisions. The vote of the Owners representing a majority of the Owners in attendance in person or by proxy, shall decide any question or action brought before the meeting. Notwithstanding the foregoing, if the Act, the Articles of Incorporation, the Declaration (as amended), or these Bylaws require a fixed percentage of Owners to approve any specific action (*e.g.*, amending Governing Documents), that percentage shall be required to approve such action.

3.8 **Proxies.** At each Owner meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Unit owned. The Declarant shall be entitled to a vote equal to twenty-five (25) times the vote assigned to each Unit the Declarant owns in the Project. The affirmative vote of a majority of the votes entitled to be cast by the Declarant and Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, or the Acts. When more than one (1) Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two (2) conflicting votes by co-Owners of one (1) Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised with respect to any Unit. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

3.13 **Establishment of Election Districts.** Unless or until Election Districts are established, the Owners within the Project shall vote for Board member elections according to Section 4.3 of these Bylaws and the provisions of Sections 3.13 through 3.15 of these Bylaws shall not apply.

The Declarant may establish Election Districts no later than the expiration of the Period of Declarant Control by recording a Supplement to the Declaration identifying the Units and/or Neighborhood Associations comprising each Election District. The Declarant, acting alone, may amend and change such designations and boundaries at any time prior to the expiration of the Period of Declarant Control.

After the expiration of the Period of Declarant Control, the Board shall have the right to record or amend any such Supplement designating the Election Districts upon the vote of a majority of the Board members and upon approval of a majority of the Allocated Interest of all Owners within the Association. Any such Supplement or amendment thereto shall become effective upon recording. Any and all portions of the Project that are not assigned to a specific Election District shall constitute a single Election District.

3.14 **Election Districts.** In order to promote representation from all areas within the Project, the Declarant and/or the Association may establish Election Districts for the purpose of electing Board Members. Each Election District may consist of one or more Neighborhood Associations and one or more Units that are not part of a Neighborhood Association. Each Election District may elect the number of Board member positions as assigned to the Election District in the Declaration or Supplement thereto. Each Election District shall have the right to elect at least one Board member and the total number of Election Districts within the Project shall not exceed the total number of Board members to be elected pursuant to these Bylaws.

3.15 **Election District Voting.** The Association shall conduct Election District voting for each open Board Member position at the Annual Meeting. If the Association is unable to hold Board Member elections at the Annual Meeting, then a Special Meeting shall be held in accordance with these Bylaws whereby the Members within each Election District shall vote on Board Member candidates for election to the Association Board. Each Unit Owner shall be entitled to one vote in the Election District voting. Board Members will be elected by a

simple majority vote of the Owners from the Election District present at the meeting. If two (2) candidates have equal votes, then the issue shall be resolved by a coin toss. All Board Member elections shall be subject to any and all appointment powers granted to the Declarant in the Declaration.

#### **ARTICLE IV BOARD OF DIRECTORS**

4.1 **Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of an odd number of no less than three (3), but no more than nine (9) persons, as determined by the Declarant or the currently elected Board. If Election Districts are established, then the number of Board Members shall be equal to the total number of Board Members allocated to all Election Districts. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Unit in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate. During the Period of Declarant Control, the Board Member qualification requirements of these Bylaws shall not apply and the Declarant may appoint all Board Members, or may act as the Board and exercise all powers of the Board as permitted by law.

4.3 **Election.** During the Period of Declarant Control, Board Members shall be appointed by Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. The election of Board Members shall be by secret ballot. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the terms of the Board Members shall be three (3) years. The terms of Board Members shall be staggered and overlap so that elections for Board Member positions are held each year. Board Members may serve consecutive terms if elected. At the first election following the Period of Declarant Control, the Person(s) receiving the highest number of votes shall serve a three (3) year term, the Person(s) receiving the next highest vote total shall serve a two (2) year term, and the Person receiving the lowest vote total shall serve a one (1) year term. If the Board is composed of five (5) members, then two Persons shall serve initial three (3) year terms, two (2) Persons shall serve initial two (2) year terms, and one (1) Person shall serve an initial one (1) year term.

4.5 **Regular Meetings.** The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.7 **Meeting Notice.** Meeting Notice shall be delivered personally, by email, by text, or by telephone to all Board members and any Unit Owners who have requested notice at least two days in advance of the meeting. Any Director may waive notice of a meeting. By unanimous consent of the Board, special meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific time period during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

4.9 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any Board meeting. The act of a majority of the Board Members present at any meeting at which a quorum is present, and for which proper notice was provided, shall be the act of the Board. Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.10 **Open Meetings.** Except as provided in (a) through (f) below, following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a

portion thereof) to the Owners. Notwithstanding the foregoing, the Board meetings required under Utah Code § 57-8a-226(6)(b) shall be open to all Owners.

4.11 **Board Meetings Generally.** The Board may designate any place in Utah County as the meeting place for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.12 **Board Action.** Notwithstanding noncompliance with any provision within these Bylaws, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with these Bylaws may not bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

4.13 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 **Resignation and Removal.** Board Members may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Board Members appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the total Owners of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 **Vacancies.** If vacancies occur in the Board for any reason during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. A vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.



4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Adjournment.** The Board may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

## ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall have the rights and powers set forth in this Article, or as otherwise designated by the Board. Officers shall not be required during the Period of Declarant Control.

5.2 **Election, Tenure, and Qualifications.** Officers shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until a successor has been elected and qualified, or until such officer's death, resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may determine.

5.4 **Resignation and Removal.** Officers may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 **Vacancies.** If a vacancy occurs in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting,

(2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board.

5.8 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

5.10 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

## ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board may designate committees as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee at any time.

6.2 **Proceeding of Committees.** A committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each committee shall keep a record of its proceedings and shall regularly report such records to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted to it by the Board.

6.4 **Resignation and Removal.** A committee member may resign at any time by

delivering a written resignation to a Board Member, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove a committee member.

6.5 **Vacancies**. If a vacancy occurs in a committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## ARTICLE VII INDEMNIFICATION

7.1 **Indemnification**. In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification**. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be entitled to under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance**. The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or

was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.

7.4 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

#### **ARTICLE VIII RULES AND REGULATIONS**

8.1 **Rules.** The Board shall have the authority to adopt Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and Occupants. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

#### **ARTICLE IX AMENDMENTS**

9.1 **Amendments by Declarant.** So long as the Declarant owns one or more Units in the Project or any Additional Land, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarants unilateral amendment right as designated herein may continue past the expiration of the Period of Declarant Control. No other amendment shall be valid or enforceable during the period Declarant owns at least one Unit or any Additional Land unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns at least one Unit or any Additional Land shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Utah County Recorder.

9.2 **Amendments by Association.** After the Declarant has annexed all Additional Land and has sold all of the Units to third parties, the Bylaws may be amended by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the total Owners of the Association. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any Declarant rights without the express written consent of the

Declarant.

ARTICLE X  
MISCELLANEOUS PROVISIONS

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of a failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association.

DATED this 21 day of June, 2018.

DCP SARATOGA, LLC  
a Utah Limited Liability Company

By: Joe B. Pierce

Its: Authorized Signer

State of Utah )  
County of Utah ) ss.

On the 21 day of June, 2018, personally appeared before me Joe Pierce who by me being duly sworn, did say that she/he is an authorized representative of DCP Saratoga, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public Shelley King

