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RICHARDS LAW, PC
4141 So. Highland Drive, Ste. 225
Salt Lake City, UT 84124
801-274-6800

**AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
THE TOWNS AT BENSON MILLS CROSSING
(INCLUDING BYLAWS)**

A Planned Unit Development

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE TOWNS AT BENSON MILL CROSSING (hereafter "Declaration") is made on the date evidenced below by the Benson Mill Townhomes Homeowners Association (hereafter "Association").

RECITALS

A. The property subject to this Declaration is the Benson Mill Townhouses subdivision in Tooele County, State of Utah. Exhibit "A" of this Declaration further defines the property subject to this Declaration. All Units therein are part of the Association and each Owner of a Unit is a member thereof. The Association is created as a planned unit development and contains certain Common Area, Limited Common Area and easements for the benefit of the Owners of Units therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Towns at Benson Mills Crossing supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Master Declaration of Covenants, Conditions and Restriction and Reservation of Easements for Benson Mill Crossing recorded June 29, 2007, as Entry No. 288009, records of the Tooele County Recorder, State of Utah (the "Master Declaration") and; the Neighborhood Declaration of Covenants, Conditions and Restriction and Reservation of Easements for Benson Mill Crossing Phase 2 PUD (The Towns) recorded August 21, 2007, as Entry No. 291805, records of the Tooele County Recorder, State of Utah (the "Neighborhood Declaration"); together, the Master Declaration and the Neighborhood Declaration, may be referred to as "Original Declarations").

D. Pursuant to Utah Code § 57-8a-104 and the Original Declarations, 67% of the voting interests of the Association have voted affirmatively to adopt this Declaration.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Act" shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

1.2 “Area of Common Responsibility” shall mean and refer to the area for which the Association is responsible, including the maintenance, repair, replacement, regulation and administration of Common Area and Facilities.

1.3 “Area of Personal Responsibility” shall mean and refer to the area for which each Owner is responsible, including each Lot or Unit.

1.4 “Articles of Incorporation” shall mean and refer to the Articles of Incorporation for the Association.

1.5 “Assessment” shall mean and refer to the amount imposed upon, assessed or charged by the Association on or against an Owner or Unit pursuant to the terms of the Governing Documents or applicable law.

1.6 “Association” shall mean and refer to The Towns at Benson Mill Crossing, or such successor association of the Unit Owners acting under this Declaration.

1.7 “Base Assessment” shall mean and refer to the amount of the monthly installment of the annual Assessment established by the Board of Directors for any fiscal year.

1.8 “Board” or “Board of Directors” shall mean and refer to the governing body of The Towns at Benson Mill Crossing selected in accordance with this Declaration.

1.9 “Bylaws” shall mean and refer to the Bylaws of the Benson Mill Townhomes Homeowners Association (Association) (attached hereto as **Exhibit B**), as they may be amended from time to time.

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

1.11 “City” shall mean and refer to the City of Stansbury Park in Tooele County, Utah.

1.12 “Common Area” or “Common Area and Facilities” shall mean and refer to all common elements, amenities and facilities in the Project, including, but not limited to all the parks, open space, buildings and improvements not privately owned or dedicated to the City.

1.13 “Common Expenses” shall mean and refer to: (a) all sums lawfully assessed against the Owners; (b) expenses of administration of the Association; (c) expenses of maintenance, repair or replacement of the Common Area and Facilities; (d) expenses allocated by the Association among the Owners; (e) expenses agreed upon as “Common Expenses” by the Association; and (f) expenses declared “Common Expenses” by the Declaration.

1.14 “Community” means all of the land described in the Plats, including any property annexed into the Project.

1.15 “County Recorder” shall mean and refer to the Tooele County Recorder.

1.16 “Covenant to Share Costs” shall mean and refer to any contract, agreement, grant of easements, licenses or covenant to share costs executed by the Association, which is recorded in the Office of the County Recorder for the purpose of creating a cross, reciprocal or other easement

for the benefit of the Owners. The Covenant to Share Costs may obligate the Association to share the costs of maintaining certain real, personal or mixed property.

1.17 “Dedicated Streets” shall mean and refer to those streets and cul-de sacs within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.18 “Design Guidelines” shall mean and refer to the architectural and engineering plans and specifications and guidelines provided by the Association for the construction of the Buildings, Lots, Units and other physical improvements in the Project, including by way of illustration but not limitation all structural components and Exterior Materials.

1.19 “Dwelling Unit” or “Unit” shall mean and refer to a home, residence, dwelling or living unit.

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

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

1.22 “Eligible Votes” shall mean and refer to those votes available to be cast on any issued before the Association or the Board. A vote which is for any reason suspended is not an “eligible vote”.

1.23 “Entry” shall mean and refer to the entry way into the Project.

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

1.25 “Exterior Materials” shall mean and refer to stone, rock, stucco, wood, finished lumber, brick, or other similar materials but shall not mean cinder block or concrete block or aluminum or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the Declarant or its designee. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by Declarant or its designee.

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

1.27 “Fines” shall mean and refer to fines levied by the Association against an individual or entity for violations of the Governing Documents. Fines shall be enforced and collected consistent with the Act and are deemed an assessment herein and may be collected as such.

1.28 “Governing Documents” shall mean and refer to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations, Approved Plants Lists, and architectural or design guidelines.

1.29 “Guest” shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant accompanied by an Owner, or unaccompanied, who utilizes the rights of the Owner in and to the Common Area and Facilities.

1.30 “Individual Assessments” shall mean and refer to an assessment levied by the Association against an Owner for all expenses, costs, charges and attorneys’ fees resulting from the act or omission of an Owner, Guest or Permittee, or resulting from corrective action taken by the Association against an Owner, Guest or Permittee, excepting the Owner’s failure to pay any Assessment. Individual Assessments shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner, Guest or Permittee, such as:

1.30.1 The act or negligence of any Owner, Guest or Permittee (the negligence of a Guest or Permittee shall be imputed to the Owner);

1.30.2 The cost to repair any damage to any portion of the Common Area and Facilities on account of loss or damage caused by such Owner, Guest or Permittee; or

1.30.3 The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Owner, Guest or Permittee, or resulting from the breach by such Owner, Guest or Permittee or any provisions of the Master Declaration, Bylaws, and any Association rules and regulations; and

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

1.31 “Landscaping” shall mean and refer to the open space, xeriscape, decorative rock, grass, trees, shrubs, bushes, flowers, plantings, and other like improvements located within the Project, as well as the appurtenant sprinkling and irrigation systems.

1.32 “Lender” shall mean and refer to a Mortgagee.

1.33 “Limited Common Areas” means all of the real property identified as limited common area herein or on the Plat, except as otherwise stated herein. Limited Common Areas are Common Areas limited to the use of certain Units to the exclusion of other Unit Owners.

1.34 “Lot” shall mean and refer to a portion of the Project intended for any type of independent private ownership and use as may be set out in this Declaration and as shall be shown on the Plat recorded with the County Recorder, as well as any amendments or supplements thereto. Where the context indicates or requires, the term Lot shall include a home, residence, dwelling or living unit or any other physical structure or improvement constructed upon the Lot.

1.35 “Manager” or “Managing Agent” shall mean and refer to the person or entity retained to manage the Property and the Association according to the direction of the Board.

1.36 “Member” shall mean and refer to a Voting Member of the Association.

1.37 “Mortgage” shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller’s rights under a contract for deed) by which a Lot or Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot or Unit, or any part thereof or interest therein.

1.38 “Mortgagee” shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller’s interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage.

1.39 “Owner” shall mean and refer to the person who is the owner of a record of a fee or an undivided fee interest in the property, as shown in the office of the County Recorder, including a Lot, Unit or the Common Area, excluding a mortgagee or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.40 “Permittee” shall mean and refer to a Guest, tenant, renter, lessee or other permissive user who utilizes the rights of the Owner in and to the Common Area and Facilities.

1.41 “Plat” or “Plat Map” or “Record of Survey Map” (these terms may be used interchangeably herein) means the Record of Survey Maps entitled Benson Mill Crossing recorded at the Recorder’s Office of Tooele County, as the same may be amended or substituted.

1.42 “Privacy Fencing” shall mean and refer to the privacy fencing installed or constructed by original builder around the Limited Common Area or patios in the rear yard area of each Lot.

1.43 “Private Street”, “Road”, “Cul-de-Sac”, “Way” or “Drive” shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.44 “Property” or “Project” means all of the real property described in the Plats, including all of the real property described in attached **Exhibit A** and all Units, Common Area, easements and open space.

1.45 “Regular Assessment” shall mean and refer to the monthly installment of an annual Assessment.

1.46 “Rules and Regulations” means and refers to those rules and regulations adopted by the Board from time to time that are deemed necessary by the Board for the enjoyment of, or furthering the purposes of, the Property and Association.

1.47 “Total Votes” shall mean and refer to the total number of votes appertaining to the Association.

1.48 “Townhome” shall mean and refer to both the architectural style of a Townhouse style Dwelling Unit (and the nature of the residential use permitted) as shown on the Plat Map, with or without walls or roofs in common with other single family Dwelling Units and which shall include

fee title to the real property lying directly below said single family Townhouse style Dwelling Unit and such other real property as show on the Plat Map, if any there be.

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

1.50 “Unit Number” shall mean and refer to the number, letter or combination of the name, numbers and letters that identifies only one Unit in the Project.

1.51 “Use Restrictions” shall mean and refer to the rules, regulations and use restrictions described with particularity in Article X below, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

ARTICLE II – INCIDENTS OF OWNERSHIP

2.1 Property Subject the Declaration and Bylaws. The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property and interests described in the Plats, including any property annexed into the Project, and including the Units described on **Exhibit A** attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

2.2 Description and Legal Status of Units. The Map shows the Units and building designations, their locations, dimensions from which its areas may be determined together with the Definitions above, and the Common Areas. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

2.3 Description and Ownership of Common Area and Facilities. The Common Area and Facilities shall mean and include all of the property in the Project, which is not privately owned or

dedicated to the City. The Common Area and Facilities and Limited Common Area (if any) are designated on the Plat.

2.4 Description of Limited Common Area and Facilities. Limited Common Area shall mean a portion of the Common Area and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, patios, decks, balconies, storage units, attics, and other areas as indicated by the Declaration or the Plat to be for the exclusive use of one or more but fewer than all of the Lots or Units. Mechanical systems or utility closers serving only the certain Lots or Units shall be considered Limited Common Area with respect to the Lots or Units which they serve. The Limited Common Area and Facilities shall be those areas designated as such on the Plat or in this Declaration. The use and occupancy of designated Limited Common Area shall be reserved to the Lots or Units to which such Limited Common Area is adjacent, unless otherwise shown on the Plat or as specified in this Declaration. Owners may not reallocate Limited Common Area between or among Lots or Units in which they have an interest.

2.5 Description of Improvements. The significant improvements contained in The Towns at Benson Mill Crossing will consist of certain residential Townhouse Lots and Common Areas and Facilities, including the non-exclusive right to use the other improvements. Several floor plans are available. The location and configuration of the improvements are depicted on the Plat Map for the Property.

2.6 Land Subject to Public Utilities and Drainage Easements. All Common and Limited Common Area and private drives shown on the Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Association to assess its members to repair streets, landscaping, etc., where needed to repair or replace the public utilities.

2.7 Use and Occupancy. Except as otherwise expressly provided in the Governing Documents, the Owner(s) of a Unit shall be entitled to the exclusive use and benefits of ownership of such Unit. Each Unit, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

2.8 Delegation of Use. An Owner is deemed to delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. No one who is a non-resident shall have any such delegable right of enjoyment.

ARTICLE III – VOTING

3.1 Directors. The Board of Directors for the Association shall have three (3) Directors. At the first Annual Meeting of the Association the term of office of one Board member shall be fixed at three (3) years. The term of office of one Board member shall be fixed at two (2) years, and the term of office of one Board member shall be fixed at one (1) year. At the expiration of the initial term of

office of each respective Board member, his/her successor shall be elected to serve a term of three (3) years.

3.2 Organization.

(a) The Association has been or will be organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time).

(b) In the event the Association is at any time administratively dissolved by the Division of Corporations and Commercial Code, the Board may re-incorporate the Association without a vote of the Owners.

(c) The affairs of the Association shall be governed by a Board of Directors as provided herein and in the Bylaws.

3.3 Membership. Each Owner during the entire period of Owner's ownership of one or more Units within the Community shall be a member of the Association. The membership shall commence, exist and continue by simple virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

3.4 Voting. The Owner of each Lot or Unit shall be entitled to one vote for each Lot or Unit owned, regardless of size. The voting rights appurtenant to each Lot or Unit shall vest upon execution and recording of this Declaration. All votes shall be distributed among the Owners equally regardless of the size of each Owner's Lot or Unit.

ARTICLE IV - EASEMENTS

4.1 Grant of Easement. In addition to the easements shown on the Plat or provided for under this Declaration, the Association hereby reserves to itself and grants to the Association a nonexclusive, perpetual right-of-way and easement over, across and through the Project, together with the right to use, operate, maintain, repair and replace the Common Areas and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.2 Common Use of Easement. Said easement is to be used in common for ingress and egress over the Common Area and Facilities by the Association and its Members, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.3 Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of the Association and its Owners.

4.4 Encroachments. If any part of the Common Area and Facilities and/or Limited Common Area encroaches or shall hereafter encroach upon a Lot or Unit or Lots or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, Limited

Common Area, or upon an adjoining Lot or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities, Limited Common Area, or the Lots or Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

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

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

4.7 Entry Monument. The Association reserves a non-exclusive easement for itself and its affiliates and assignees to maintain, repair and replace the Entry Monument.

4.8 Parking. While occupying a Lot or Unit or using the Common Area and Facilities, Owners and permittees are entitled to use parking spaces, but only subject to and in accordance with the rules and regulations adopted by the Board of Directors.

4.8.1 **Parking Rules.** The parking rules and regulations may, among other things, regulate times, areas, location and assignment of parking spaces on public and private streets and may be enforced by the Association on both the public and private streets.

4.8.2 **Authority of the Board of Directors.** To the extent applicable, the Board of Directors shall have the right, power and authority to unilaterally relocate, reallocate and/or reconfigure any and all the easements or licenses described in this Declaration from time to time as it sees fit, and without the consent of any Owners.

4.8.3 **Automatic Tow.** If street parking or parking in any other area, such as a Red Zone or Fire Lane within the Project is prohibited by rule, it shall be considered an automatic tow away zone (at the vehicle owner's sole risk and expense) without additional notice or warning required.

4.9 Reservation of Rights. All conveyances of Lots or Units within the Project hereafter made, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

4.10 Common Area Repairs. All Common Areas shown on the Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Association to assess its members

the costs to repair streets and landscaping, etc., and where needed to repair and replace the public utilities.

4.11 Easements Reserved. In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

ARTICLE V - NOTICES

5.1 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first-class mail, express mail or overnight courier service, providing proof of delivery, by telecopy or facsimile transmission, or as otherwise provided in the Bylaws. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board of Directors for the purpose of service of such notice or to the Lot or Unit of such Owner if no such address has been given to the Board of Directors. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the fifth business day after the notice is hand delivered to the Lot or Unit, or deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board of Directors.

ARTICLE VI - INSURANCE

6.1 Insurance. Unless this Article VI is otherwise required by Utah Law, the Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

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

6.2.1 Public Liability. Public liability coverage for the Common Area and Facilities;

6.2.2 Common Area and Facilities. Property, fire and extended hazard coverage for all Common Area, Elements and Facilities:

6.2.3 Buildings and Units. Property, fire and extended hazard coverage for all Buildings that contain more than one Lot and/or Unit, including any improvement which is a permanent part of a Building and is considered Common Area, Elements and Facilities. Those owners who reside in a Building containing more than one Lot and/or Unit for which the Association pays the property, fire and hazard insurance, shall be individually assessed for this increase in Association expenses;

6.2.4 D&O. Directors and officers coverage; and

6.2.5 Fidelity Bond. A fidelity bond.

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

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

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

6.5 Insurance Obligation of Owner. The foregoing obligation and right of the Association to purchase insurance coverage **DOES NOT** preclude the right or negate the obligation of each Owner to insure his own Lot and/or Unit for his Benefit. EXCEPT AS PROVIDED FOR IN SECTION 6.2.3 ABOVE, EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE (collectively, "Owner Policy"):

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

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

6.5.3 Consult Independent Agent. **EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO HIS LOT AND UNIT.**

6.5.4 Changes in Amounts of Required Insurance. The amounts of insurance required may be increased or decreased unilaterally by the Board of Directors.

6.5.5 Coverage C (as that term is defined by the standard homeowner's insurance policy) – Personal Property/Contents and Lost Rents. **EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C – PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS LOT AND/OR UNIT AND LOST BUSINESS, RENTS OR RENTAL**

INCOME. For use herein the term “contents” shall mean and refer to in the broadest possible sense, all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original design and specifications, and all personal property, belongings and effects in the Lot, Unit Building or Common Area and Facilities not covered by the Association Policy.

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

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

6.5.8 Name Association as “Additional Insured.” Each Owner Policy shall name the Association as an “Additional Insured.”

6.5.9 Certificate of Insurance. Each Owner shall provide the Association with a “Certificate of Insurance” upon request.

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

6.7 Payment of Deductible. It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Policy shall be paid for by the party (a) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (b) from whose Lot and/or Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Unit Owner shall be responsible for the deductible. It is the intent of the Association to obtain property, fire and extended hazard insurance with at least a \$5,000.00 deductible. This amount may be increased or decreased unilaterally by the Board of Directors upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

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

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

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

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

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

6.13 Primary Coverage. It is the intent of the Association that the Owner's Coverage A – Building provide PRIMARY coverage and that the Association Master Policy provide SECONDARY coverage.

ARTICLE VII - MAINTENANCE

7.1 Operation and Maintenance of Common Area. The Association shall have the power, authority, right and duty to operate, maintain, keep and replace all Common Area and Facilities and/or Limited Common Area not separately maintained.

7.2 Area of Common Responsibility. The maintenance, replacement and repair of the Common Area shall be the sole responsibility of the Association.

7.3 Common Roads, Parking and Utilities. The Association shall maintain, replace and repair all private roads, common parking areas, if any, and all common utilities, conduits, ducts, plumbing and wiring and other common central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. Where, however, such utilities, conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service are associated with a single Lot or Unit, the Owner of such Unit shall be responsible for the maintenance, replacement and repair.

7.4 Incidental Damages. All incidental damages caused to private property by the maintenance, replacement and repairs of the Common Area and Facilities or utility services shall be repaired promptly, and the cost thereof charged as a Common Expense.

7.5 Access Through Common Area. Because some of the Common Area and Facilities, and/or Limited Common Area are or may be located within private property or may be conveniently accessible only through such property, the Association shall have the irrevocable right to have access to each Lot or Unit and to all Common Area and Facilities, and/or Limited Common Area from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Area and Facilities, and/or Limited Common Area

or for making any emergency repairs at any time and when necessary to prevent damage to the Common Area and Facilities or to any Lot or Unit.

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

7.7 Maintenance of Attached Townhouses or Units. In order to maintain uniformity of appearance and quality of construction, and to maintain the integrity of the Project's original design scheme, it shall be the duty of the Owners to maintain, repair, replace and restore their Unit and exterior materials, including the roofs, structure, exterior surfaces, foundations, and supporting walls.

7.8 Limited Common Area. Each Owner shall keep his Limited Common, as shown on the Plat Map or described in this Declaration, Area broom clean and free of debris. Each Owner is also responsible to maintain, repair and replace all physical improvements to his Limited Common Area, including his Privacy Fence, gate and latch, concrete, planting area and other improvements of a less significant nature, at his sole expense, and in accordance with minimum standards established or to be established by the ARC for uniformity of appearance and quality of construction.

7.9 Damage to a Lot and/or Dwelling Units – Reconstruction. If all or any portion of any Lot or Unit is damaged or destroyed by fire or other casualty, the Owner of such Lot shall, at the Owner's election, either rebuild, repair or reconstruct the Lot and/or Unit in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Board of Directors or restore the Lot by removing from the Property all damaged or destroyed building materials. The Owner of any damaged Lot or Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot and/or Dwelling Unit to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond the Owner's reasonable control. A transferee of title to a Dwelling Unit which is damaged or a Lot upon which is located a damaged Dwelling Unit shall commence and complete reconstruction of the Dwelling Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the property. However, in no event shall such transferee of title be required to commence or complete such reconstruction or restoration of the Lot or Unit in less than thirty (30) days from the date such transferee acquired title to the property.

7.10 Party Walls.

7.10.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the

Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.10.2 **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall, including perimeter walls, shall be shared by the Owners who make use of the wall in proportion to such use, or the Owner of the wall even if there is no wall in common.

7.10.3 **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall shall restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.10.4 **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.10.5 **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.10.6 **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provision of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of Directors of the Association shall select an arbitrator for the refusing party.

7.10.7 **Perimeter Walls.** The Association shall not be obligated to maintain any walls in the Project, except walls dividing a Lot and Common Area shall be maintained jointly by the Owner of the Lot and the Association.

ARTICLE VIII – BOARD OF DIRECTORS

The Association shall be governed by the following provisions:

8.1 Board of Directors. To the extent consistent with the terms of this Declaration, the supervision of maintenance of the Project shall be conducted by a Board of Directors who shall be

elected as provided in this Declaration and in the Bylaws. Actual maintenance, repairs and replacement shall be done by the Owners.

8.2 Delegation of Powers. The Board of Directors may appoint committees to assist the Board of Directors. Notwithstanding anything to the contrary, to the extent of any conflict between the decisions of the Board of Directors and any committee, the decision of the former shall in all respects govern and control.

8.3 Grant of Powers. The Board of Directors shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Declaration and the Bylaws, including but not limited to the following:

8.3.1 Rules and Regulations. To make and enforce all rules and regulations governing the operation and maintenance of the Project and the Lots and Units.

8.3.2 Common Area and Facilities. To make and enforce all rules and regulations governing the conduct of all persons upon the Common Area and Facilities, Limited Common Area and Facilities, the Lots and Units.

8.3.3 Manager. To engage the services of the Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

8.3.4 Operation of Common Area. To operate, maintain, repair, improve and replace the Common Area and Facilities.

8.3.5 Payment of Common Expenses. To determine and pay the Common Expenses.

8.3.6 Assessments to Owners. To assess and collect the proportionate share of Common Expenses from the Owners.

8.3.7 Individual Assessments. To assess and collect Individual Assessments.

8.3.8 Authority to Execute Documents. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.3.9 Bank Accounts. To open bank accounts on behalf of the Association and to designate the signatories therefore.

8.3.10 Conveyance of Lot/Unit. To purchase, hold, sell, convey or mortgage any one or more Lots or Units in the name of the Association or its designee.

8.3.11 Litigation. To bring, prosecute and settle litigation for the Association and the Project.

8.3.12 Insurance. To obtain insurance for the Association, Lots, Units, Common Area and Facilities, as well as worker's compensation insurance.

8.3.13 Damage or Destruction. To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Declaration.

8.3.14 Disposal of Personal Property. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board of Directors and to the operation of the Project, including without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

8.3.15 Books and Records. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The Association or the Board of Directors shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

8.3.16 All Other Accounts. To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

8.3.17 Budgets. To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

8.3.18 Common Area Rights-of-Way. To grant conveyances, easements and rights-of-way over the Common Area and Facilities and to approve signage for the Project.

8.3.19 Enforcement of Rules. To enforce the rules, regulations, policies and procedures of the Association.

8.3.20 Delegation of Committees. Subject to the limitations of applicable law, the Board of Directors may delegate to a committee or Manager by written agreement, all or some of the foregoing powers, duties and responsibilities.

8.4 Officers, Agents and Employees. Members of the Board of Directors, the officers and any assistant officers, agents and employees of the Association shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; shall have no personal liability in contract to an Owner or any other person or entity under any agreement instrument or transaction entered into by them on behalf of the Association in their capacity as such; shall have no personal liability in

tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for and/or by them in their capacity as such; and shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.5 Limitation of Liability. When a member of the Board of Directors is sued for liability for actions undertaken in his or her role as a member of the Board of Directors, the Association shall indemnify him or her for losses or claims under such terms as are set forth in the Bylaws.

8.6 Subcontracts. The Association acting through the Board of Directors may enter into a contract or management agreement with a Manager, or other Manager for the management of the Project, in whole or in part, which complies with the covenants, conditions and restrictions set forth herein. All such contracts shall be in writing signed by the parties. The person or entity so engaged shall be responsible for managing the Project, or any portion thereof, for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required to be performed by the Association itself.

ARTICLE IX – ASSESSMENTS

9.1 Obligation of Members. Each Owner shall pay to the Association his share of the Common Expenses.

9.2 Covenant to Pay. Each Owner, by virtue of accepting a deed or other document of conveyance to a Lot or Unit, hereby covenants and agrees to pay his share of all Common Expenses and his Assessments.

9.3 Individual Assessments. The Association may levy Individual Assessments against a particular Owner of a Lot or Unit to pay the costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, plus interest, an administration fee of fifteen percent (15%) of the total cost of the corrective action, and attorney's fees. Fines and penalties levied by the Board of Directors pursuant to this Declaration and the Rules and Regulations may be assessed as an Individual Assessment. Individual Assessments may only be levied upon the vote of the Board of Directors after notice to the Member and an opportunity for a hearing. In addition to the foregoing, if a street lamp is located on a Lot or directly adjacent to a Lot and not on Common Area, then the electricity used to operate the street lamp will be the responsibility of such Lot Owner and will be an Individual Assessment which may be included in the Assessment of the Lot Owner.

9.4 Computation of Assessments. The Association shall base the Annual Assessments upon budgeted estimates of the Common Expense expected to be incurred during the coming calendar year, plus amounts required to establish an adequate reserve.

9.5 Apportionment of Common Expenses. The Common Expense shall be allocated equally among all of the Owners, regardless of the size of a Lot or Unit.

9.6 Budget. The Association shall prepare and furnish to each Owner an operating budget for the Association for the coming calendar year at least thirty (30) days prior to the beginning of each year.

9.7 Books and Records. The Association shall (a) keep books and records in accordance with generally accepted accounting practices, and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Common Expenses and any other charges.

9.8 Payment. Assessments and each Owner's share of the Common Expenses shall be payable in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the Association. Payment of the Assessments must be made to the Association by the first day of each month. A late fee of \$15.00 or 5% of the monthly installment due, whichever is greater, may be assessed on all payments not received by the fifteenth day of the month. Default interest at the rate of 1.5% per month may be charged on the outstanding balance on all delinquent accounts. The Association may elect to accelerate the entire Annual Assessment in the event of default.

9.9 Reserves. The Association shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements for those items over which the Association has maintenance, repair or replacement obligations. In the event the reserve account(s) fall below an amount considered acceptable by the Board of Directors, then, in its sole discretion and without any additional approval required, the Association may restore or replenish the account(s) by an equitable increase in the monthly Assessment, a special assessment, or any combination.

9.10 Capital Asset Table. The Board of Directors shall establish and update at least annually a Capital Asset Table which shall list each major asset and physical improvement for which the Association is responsible, its expected useful life, the present cost of replacement; the estimated cost to replace the item at the end of its useful life, the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

9.11 Analysis Report. The Board of Directors shall prepare and update at least every three years a written Reserve Account Analysis and make the report(s) available to the Owners at the annual meeting of the Association. Any reserve account study shall include, at a minimum:

9.11.1 Repair Obligations. Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

9.11.2 Identification of Useful Life. Identification of the probably remaining useful life of the components identified above, as of the date of the study.

9.11.3 Cost Estimate. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified above, during and at the end of its useful life.

9.11.4 Estimate of Contribution. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

9.11.5 Reserve Account Requirements. For the purposes of this Section, the term “reserve account requirements” means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

9.12 Miscellaneous Provisions. The making and collection of Assessments by the Association from Owners for their share of Common Expenses shall be made as follows and subject to the following provisions:

9.12.1 Distribution of Common Expenses and Voting Rights. The Common Expenses shall be charged to and the voting rights shall be available to the Lot Owners on an equal basis, regardless of the size of the Lot or Unit.

9.12.2 Creation of Funds. At least two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for reserve expenses.

9.12.3 Assessments. Assessments may include both Regular Assessments and Special Assessments. Regular Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws.

9.12.4 Commencement of Assessments. Assessments shall be levied against each separate Lot or Unit and shall commence as to all Lots in the Project, pro-rated, beginning the month of the sale of a Lot.

9.12.5 Changes in Assessments. The Board of Directors may make equitable changes in the Assessments during any calendar year; provided, however, the Association shall provide notice to all Owners, of any increase in the Assessments not less than thirty (30) nor more than sixty (60) days prior to the date any modified Assessment is due.

9.12.6 Special Assessments. In addition to the Assessments, the Association may levy in any fiscal year, Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unforeseen expenditure of the construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Master Assessments from the Owners. Any and all Special Assessment levied against a particular Lot shall also be levied on an equal basis.

9.12.7 Notice. The Board of Directors shall provide notice by first-class mail to all Owners of any Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

9.12.8 Allocation of Special Assessment. The notice provisions with respect to the impositions or allocation of Special Assessments shall not apply when the Special Assessment is to pay an increase in real property taxes.

9.12.9 Payment of Assessments. All payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due.

9.12.10 Judgments. All Assessments to pay a judgment against the Association may be made only against the Lots in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses.

9.12.11 Misconduct of Owner. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Lot.

9.12.12 Unpaid Assessments. There shall be a lien upon the applicable Lot for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration.

9.12.13 Lien for Unpaid Assessments. The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Board of Directors, the Manager, or the attorney for the Association.

9.12.14 Notice of Lien. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot.

9.12.15 Priority of Lien. Any Assessment levied against each Lot is a debt of the Owner and/or Member at the time the Assessment is made and is collectible as such. If any Owner fails or refuses to pay an Assessment when due, that amount constitutes a lien on the Owner's Lot, which lien is prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) Tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and

(ii) Encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a lien.

9.12.16 Foreclosure. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed.

9.12.17 Assessments during Foreclosure. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed.

9.12.18 Authority of Association. The Board of Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot in the name of the Association.

9.12.19 Action Against Owner. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act.

9.12.20 Appointment of Trustee. The Association and each Owner hereby conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Unit and appurtenant Limited Common Area, and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

9.12.21 Appointment of Successor Trustee. The Association reserves the right to substitute and appoint a successor trustee as provided in the Act. Each Owner hereby conveys all of its right, title and interest in his Lot to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments.

9.12.22 Bid on Lot. The Association may, through its duly authorized agents, bid on the Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

9.12.23 Superiority of Lien. The lien of the Association shall be superior to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Lot as provided for herein and Assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental Assessments or charges past due and unpaid on the Lot.

9.12.24 Recovery. The lien procedures described herein do not prohibit actions to recover sums for which this Declaration creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

9.12.25 Unpaid Assessments. The Board of Directors, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Lot. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board of Directors, the Manager and every Owner, in favor of all who rely on such statement in good faith.

9.12.26 Assessment. The amount of any Assessment against any Lot shall be the personal obligation of the Owner.

9.12.27 Recovery of Judgment. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same.

9.12.28 Owner Waiver of Amenities. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities or by abandonment of his Lot or by waiving any services or amenities provided for in this Declaration.

9.12.29 Recovery of Unpaid Assessments. In the event of any suit to recover a money judgment of unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.12.30 Conveyance. In a voluntary sale, transfer, conveyance, exchange or assignment, the personal obligation of an Owner to pay unpaid Assessments against his Lot shall also pass to his successors in title.

9.12.31 Sale or Transfer Affecting Lien. A lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Lot unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale but shall not relieve any subsequent Owner from paying further Assessments.

9.12.32 Reserve Accounts. The Association through the Board of Directors shall include in the Assessments amounts representing sums to be used for major Repairs, the replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as reserve accounts for each Lot.

9.12.33 Purpose of Reserve account. The Board of Directors shall not expend funds designated as reserves for any purpose other than unforeseen expenses or the repair, restoration, replacement or maintenance of major components of the Common Area and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters.

9.12.34 Management of Reserve Account Funds. The Board of Directors shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above.

9.12.35 Notice to Owner. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this subsection.

9.12.36 Obligations of Owner. No Owner may waive or otherwise exempt himself or herself from liability for the payment of his share of the Common Expense or his Regular or Special Assessments provided for herein, including but not limited to his non-use or abandonment of his Lot, the Common Area and Facilities.

9.12.37 Obligations of First Mortgagee. Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot or Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Lot or Unit for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the trustor or mortgagor the amounts paid by grantee.

9.12.38 Working Capital Fund. Each Owner of a Lot shall make a working capital contribution in amount equal to two monthly Assessments for the benefit of the Association. Such amounts paid shall not be deemed to be advance payments of the Assessment but shall be in addition thereto.

ARTICLE X – USE RESTRICTIONS

The Property shall be used in accordance with the following restrictions:

10.1 No Commercial Use. Except to the extent specifically permitted by this Declaration, Owners shall not make any commercial use of a Unit, or any portion thereof, with the exception of home occupations which do not increase traffic into the Property, subject to rules and regulations enacted by the Board of Directors.

10.2 Subject to Governing Documents. Use of the Lots shall be pursuant to the Governing Documents, rules and regulations of the Association, as each document may be amended from time to time.

10.3 Signs.

10.3.1 No for rent or lease signs shall be permitted in the Project.

10.3.2 One "For Sale" sign is allowed, and it may be located in the front window of a Unit, must be professionally prepared, and may not exceed a total of 378 square inches.

10.4 Owner Right of Occupation and Use. Subject to the payment of all Assessments and other charges approved by the Association and levied against the Owners, and subject to compliance with the provisions of this Declaration, and with rules and regulations promulgated from time to time by the Association, each Owner shall have the right with all other Owners to occupy and use the Lots and Units, Common Area and Facilities, and Limited Common Area.

10.5 No Construction. No Owner shall erect or construct, in the Common Area and Facilities any structure of any type whatsoever.

10.6 Placement of Outbuildings. Accessory Buildings or Outbuildings such as sheds are not permitted.

10.7 Storage of Vehicles. No Owner shall place, store, keep or permit to be placed, store or kept, upon the Common Area and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the rules and regulations of the Association without the prior written approval of the Board of Directors.

10.8 Unauthorized Activity. No noxious, offensive, illegal or unauthorized activity shall be carried on, in or upon any part of the Project nor shall anything be done on or place in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Lot or Unit, an Owner acknowledges that noises, light and odors common to recreational and commercial activities, as well as construction activities, may exist on or near the Property, at any time and from time to time.

10.9 Safety. No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

10.10 Signage. No signs, flags or advertising devices of any nature including, without limitation, for rent signs, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger.

10.11 Restriction of Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats, birds or other household pets, two or less in

total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept within the boundary of the Lot or on a leash attended to by a Person when in the Common Area. Such pets may not be kept in the Limited Common Area unless attended to at all times by a Person. All pet waste must be immediately cleaned up. The following are not considered household pets: reptiles, rodents, swine, insects and animals weighing fifty (50) pounds or more. This Section may be made more restrictive by Rule of the Association. A dog which repeatedly barks, or a cat that howls, whether or not within the Owner's yard, will be considered a nuisance. No outside dog houses or dog runs are allowed without the prior written consent of the Board of Directors.

10.12 Smoking. The Board of Directors may limit, restrict or prohibit by rule smoking in, on or about the Project, including in a Lot or Unit or the Common Area.

10.13 Littering. Owners shall not, and shall not permit their Guests, to litter.

10.14 Trash. No burning trash, garbage or other waste materials will be permitted on the Property. Garbage cans must be screened from view for the streets, except for a period not to exceed 24 hours on the day of garbage collection.

10.15 Window Coverings. The Board of Directors shall have the right to establish rules requiring interior and exterior window coverings to present a uniform appearance of common design scheme from the exterior of all Buildings and attached Units.

10.16 Reasonable Accommodation. No Lot or Unit shall be used to accommodate more persons than it was designed to accommodate comfortably and safely.

10.17 Alterations. Except as otherwise permitted by this Declaration, no Owner shall, without the prior written consent of the Board of Directors, make or permit to be made any alteration, improvement or addition in or to any Lot or Unit.

Examples of improvements that must be submitted for review include, but are not limited to, the following: swimming pool, tennis courts, basketball court, accessory buildings (storage sheds, detached garage structures, etc.) fencing, landscaping, decks and walls. In addition, any alterations of any kind or nature to the primary structure including changes in colors or materials, awnings, roofing, windows, porches, courtyards, etc. must also be submitted for review. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all exterior changes or improvements must be submitted for review and approval prior to construction.

10.18 Maintaining Structural Soundness. No Owner shall, without the prior written consent of the Board of Directors, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project.

10.19 Actions Affecting Insurance. Nothing shall be done or kept in any Lot or Unit, or in the Common Area and Facilities or Limited Common Area, or any part thereof, which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Lot or Unit which would increase the rate of insurance on the project or any part thereof over what the Association but for such activity, would pay, without prior written consent of the Board of Directors.

10.20 Violations of Statutes. Nothing shall be done or kept in any Lot or Unit, or in the Common Area and Facilities, or Limited Common Area or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

10.21 Damage or Waste. No damage to, or waste of, any part of the Project shall be committed by any Owner or Permittee, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his Permittees.

10.22 Use of Lots. No Owner shall violate the rules and regulations for the use of Lots and Unit, Common Area and Facilities, and/or Limited Common Area as adopted from time to time by the Association.

10.23 Signage. "For Rent" or "For Lease" signs are prohibited.

10.24 Partition of Property. By accepting title to a Lot or Unit, each Owner, for himself and for his heirs, successors-in-title and assigns, does absolutely and forever waive any right to seek or obtain physical partition of the property, or any portion thereof, and does further waive the right to seek or obtain partition of the property by means of the sale of thereof, in whole or in part, unless the institution of such suit or action for partition has been approved by the affirmative vote of the same number of Owners that would be required to sell all or any portion of the Project pursuant to and in compliance with this Declaration. Notwithstanding the foregoing, there shall be no limitation on judicial sale in lieu of partition in the case of co-owners of individual Lots or Units.

10.25 Validity of Declaration. It is intended that this Declaration alone, incorporating by reference the Bylaws, Articles, rules and regulation of the Association, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Property. Accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of the property which an Owner might otherwise have are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration shall remain in effect.

10.26 Satellite Dishes. Satellite dishes may be installed in accordance with FCC regulations taking into consideration the written guidelines established for or by Board of Directors. Further, the Board of Directors may identify the location of satellite ports on each Lot or Unit where an acceptable quality signal can be obtained. In the event the Board so designates the location of the satellite ports then any satellite dish must be installed at the location of the port.

10.27 Storage and Parking of Motor Vehicles, Trailers and Transportation Devices. Except as otherwise expressly and specifically stated herein, the driving, parking, standing and storing of motor vehicles throughout the Project shall be subject to the following:

10.27.1 Parking Rules. The parking rules and regulations adopted by the Board from time to time;

10.27.2 Recreational Vehicles. Recreational vehicles may not be stored overnight in any part of the Project. Recreation vehicles shall include boats, trailers, utility trailers, buses, motor homes, motorcycles, all terrain vehicles, off road vehicles, snowmobiles, campers, and any other related vehicles defined as recreational vehicles by the Board of Directors.

10.27.3 Obstacle or Dangerous Situation. No motor vehicle or trailer may be parked or stationed in such a manner so as to create a potentially dangerous situation, so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Lot, or in an unauthorized Common Area.

10.27.4 Designated Areas. Residents may only park their motor vehicles within their garages or in other areas designated by the Association.

10.27.5 Red Zones and Fire Lanes. Residents may not park their motor vehicles in red zones, fire lanes, guest or visit parking, or other unauthorized areas.

10.27.6 Unauthorized motor vehicles and trailers may be towed automatically without further notice or warning required, and at the Owner's full risk and expense.

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

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

10.27.9 Access. Not motor vehicle shall be parked in such a manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

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

10.27.11 Damaged or Disabled Vehicles. Vehicles that are not operational or licensed or which leak fluids must be stored in a garage or behind an enclosure and so as not to be visible from the street or another Lot or Unit.

10.28 Entry Monument. As applicable, if an Owner purchases a Lot which includes a common improvement, including by way of illustration but limitation, an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, shall, at his sole expense, maintain such common elements in good condition, and may not improve his property or place any plant, hedge, tree, bush, shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

10.29 Maintenance Costs for Entry and Entry Monument. As applicable, the Association may provide water and power utility services to the Entry, Entry Monument and other common elements at its expenses (the "Common Utility Service"). Such Common Utility Service shall be maintained and paid for by the ARC as a Common Expenses; provided, however, the Board or ARC may elect to provide such Common Utility Services through a meter or meters on an individual Lot or Lots and, if so, each such Owner agrees, by accepting a deed or other document of conveyance to such Lot, to provide, and not terminate, delay or interrupt, those Common Utility Services to the Entry, Entry Monument or other common elements not separately metered and billed to the ARC by the provider, although in such circumstance the Owner of each such Lot shall be entitled to reasonable water and power credits for the additional charges as determined by the Board of Directors.

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

10.31 View Impairment. The Association does not guaranty or represent that any view over and across any property, including any Lot, Unit or Building will be preserved without impairment. Neither the Association nor the ARC shall have any obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

10.32 Privacy Fences. No Owner may or allow any structural alterations, change or modifications to the Privacy Fences originally installed or constructed.

10.33 Owner-occupied. The term "owner-occupied" shall mean a Lot occupied by one of the following:

- 10.34.1 The vested Owner (as show on the records of the Tooele County Recorder);
- 10.34.2 The vested Owner and/or his spouse, children or siblings; or
- 10.34.3 The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least fifty percent (50%) and/or his spouse, children or parents.

10.34 Leases. Other than as expressly stated in this subsection there is no restriction on the right of any Owner to lease, rent or otherwise grant occupancy rights to a Townhouse Lot.

a. All leases and rental agreements are subject to the Rental Regulations adopted by the Board of Directors, which may be modified from time to time.

b. The initial minimum lease or rental term shall be at least six (6) months.

c. Daily or weekly rentals are prohibited.

d. Owner may lease individual rooms to separate persons or less than his entire Dwelling Unit or Home without the prior express written consent of the Board of Directors.

e. All lessees, tenants and renters shall abide by and be subject to the Governing Documents, and a violation of the Governing Documents shall be considered a material violation of the lease or rental agreement.

f. The Board of Directors reserves the right to review and approve all lease or rental agreements and/or to require the use of a crime free addendum or safe renting addendum and may impose a reasonable review or administration fee as a condition precedent to the lease or rental of any Townhouse Lot.

g. The Board of Directors reserves the right to impose by rule rental restrictions to such extent and with such a language as may be requested by the Utah State Department of Real Estate (or similar agency), FHA, VA, FHLMC, FNMA, or a conventional mortgage lender, and to further adopt rules to the extent requested by any federal, state or local governmental agency or a conventional lender which requests such rule as a condition precedent to finance or refinance a Townhouse Lot or for approval of the Declaration or approval of the sale of a Townhouse Lot, or by any conventional or federally chartered lending institution as a condition precedent to lending funds upon the security of any Townhouse Lot, or any portions thereof. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon the Property, in whole or in part, and all persons having an interest therein.

ARTICLE XI – TERMINATION

11.1 Termination. The Project may be terminated only by the unanimous agreement of all Owners, giving each Owner one (1) vote for each Lot or Unit owned by the Owner.

11.2 Recording of Notice of Removal. All of the Owners may remove the Project from the provisions of the Declaration by an instrument duly recorded to that effect provided that the holders of all liens affecting any of the Lots or Units consent or agreement by instruments duly recorded that their liens are transferred to the undivided ownership interest of the Owners in the Project. Upon removal of the Project from the provisions of the Declaration, the Project shall be deemed to be owned in common by the Owners.

11.3 Termination Agreement. A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

11.4 Mortgagees. Following termination, Mortgagees holding Mortgages on the Lots or Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

11.5 Common Area and Facilities. In the event of the dissolution of the Association, the Association Property shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and Facilities and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

ARTICLE XII – ARCHITECTURAL GUIDELINES

12.1 Architectural Review Management Committee. All architectural designs, plans, specifications, Exterior Materials, fencing and structures, including all subsequent structural alterations, changes or modifications, must be reviewed and approved by the Board (the in writing.

12.1.1 Landscaping. All landscaping must be completely installed, including an automatic irrigation and/or sprinkling system, within nine (9) months of the date of purchase. Any weeds or diseased or dead law, trees, ground cover, bushes or shrubs shall be removed and replaced. The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the subdivision. No concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth or other artificial or impermeable surfaces (collectively “controlled surfaces”) may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the ARC. Should any Owner fail to comply with the provisions of this paragraph, the ARC shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof or to recover damages, or both, and shall also have the authority but not the obligation to complete the landscaping or restore the property to its original condition without being guilty of a trespass, and require the Lot Owner to pay the cost of labor and materials. The costs and expenses incurred including a reasonable attorneys fee, whether or not a lawsuit is filed, shall be considered the personal obligation of the Lot Owner and shall constitute a lien on the interest of the Owner in such property, enforceable at law or equity, until payment is made.

All private landscaping located on the side yard areas between Dwellings must be limited to a drip system irrigation design which will reduce the amount of water in these areas. NO sod or spray head sprinklers are allowed between the front geometric plane and the rear geometric plane on the side yard areas of all homes. Bark, perma-bark, mulch, or rock landscaping IS

ALLOWED in the side yard areas between homes. Shrubs, flowers and plants are allowed in the area between the homes if watered by a drip irrigation system.

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

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

12.1.2.2 It shall be the responsibility of the Owner to see that his Lot strictly conforms with the grading and drainage plan established by the original builder, Salt Lake County and the City.

ARTICLE XIII – DISPUTE RESOLUTION

13.1 General. The Association, all Owners subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Section (collectively, “Bound Parties”) agree to encourage the amicable resolution of disputes involving the Project, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Project, shall be subject to the procedures set forth herein.

13.2 Exempt Claims. Any Bound Party having an Exempt Claim (as defined below) may submit it to the alternative dispute resolution procedures set forth in this Section, but there shall be no obligation to do so. The following Claims (“Exempt Claims”) shall be exempt from the provisions of hereof:

13.2.1 Enforcement of Declaration. Any suit by the Association against any Bound Party to enforce the provisions of this Declaration, including defensive or responsible actions by the party against whom this Declaration is taken;

13.2.2 Temporary Restraining Order. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration, including any defensive or responsible actions by the party against whom this Declaration is taken;

13.2.3 Claims Exceeding \$20,000.00. Any suit between Owners seeking redress on the basis of a Claim which would constitute a cause of action under the State of Utah in the absence of a claim based on the Governing Documents, if the amount in controversy exceeds \$20,000.00; and

13.2.4 **Enforcement Regarding Mortgage.** Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.

13.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

13.4 Notice. The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:

13.4.1 The nature of the Claim, including date, time, location, person involved, Respondent's role in the Claim;

13.4.2 The basis of the Claim (i.e., the provision of the Declaration, Governing Documents, or other authority out of which the Claim arises);

13.4.3 What Claimant wants Respondent to do or not to do to resolve the Claim; and

13.4.4 That Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

13.5 Good Faith Negotiation. Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Project.

13.6 Final and Binding Arbitration. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), the Claimant shall have thirty (30) days following Termination of Negotiations to submit the Claim to arbitration in accordance with the Rules of Arbitration maintained on file in the office of the Association or the Claim shall be deemed abandoned, and Respondent shall be release and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

13.7 Arbitration Award. This constitutes an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable Utah arbitration law. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under Utah law.

13.8 Allocation of Costs of Resolving Claims.

13.8.1 **Costs Incurred.** Each Party shall bear all its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative.

13.8.2 **Costs of Arbitration.** Each Party shall share equally in the costs of conducting the arbitration proceeding (collectively, "Arbitration Costs"), except as otherwise provided herein, provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Arbitration Costs, including the costs incurred by the Respondent.

13.9 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance herewith and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth herein. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE XIV – SECURITY

14.1 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. The Association shall in no way be considered insurers or guarantors of security within the Project, however, and the Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her or its tenants, Guests and invitees acknowledge the Association and its Board of Directors do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner or his, her or its tenant, guest or invitee acknowledges and understands that the Board of Directors and the Association are not insurers and that each Owner or his, her or its tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that the Board of Directors and the Association have made no representations or warranties nor has any Owner or his, her or its tenant, Guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

ARTICLE XV – AMENDMENT

15.1 General. Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment

to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy or by ballot at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Association. In such instrument an officer or delegate of the Association shall certify that the vote required by this Section for Amendment has occurred.

ARTICLE XVI – MISCELLANEOUS

16.1 Covenants to Run with Land. This Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Declaration and any other party which has, acquires, or comes to have any interest in the property or which occupies or uses the property, including a Lot and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Member and Owner, all Lots and Units. Each Owner and occupant, by virtue of accepting a deed or other document of conveyance to, or the possession of any Lot or Unit, or use of the property, hereby consents and agrees to be subject to and bound by this Declaration and all of the conditions, covenants, restrictions, easements, provisions and requirements hereof.

16.2 Partial Invalidity. The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any party to this Declaration, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any party to this Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

16.3 Effective Dates and Duration. This Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective for a term of fifty (50) years, unless sooner terminated and extinguished by a written Termination of Declaration filed with the Utah County Recorder and executed by all of the parties hereto. At the expiration of the initial term, the Declaration shall renew itself for additional ten (10) year periods unless terminated by the unanimous consent of all of the parties hereto.

16.4 Captions. The captions or headings which precede the paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

16.5 Construction. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

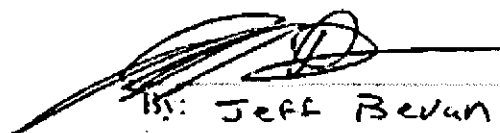
16.6 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

16.7 Enforcement and Attorney's Fees. In the event of a material violation of this document, the Manager, Board of Directors or an aggrieved Owner may bring an action for injunctive relief or damages. If this agreement is referred to an attorney for interpretation or enforcement, the prevailing party shall be entitled to recover his reasonable attorney's fees and costs, regardless of whether arbitration is commenced, or a lawsuit is filed.

16.8 Professional Manager. The Association must at all times be managed by a professional manager, who must be selected or approved by the Association, provided, however, the Board of Directors may delegate some of their management responsibilities to a professional manager or company, and they may employ general laborers, grounds-crew, maintenance personnel, bookkeeping, administrative and clerical workers as necessary to perform their management responsibilities.

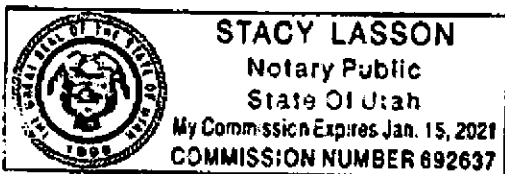
IN WITNESS WHEREOF, The Towns at Benson Mill Crossing has executed this Declaration this 18 day of January, 2019.

BENSON MILL TOWNHOMES
HOMEOWNERS ASSOCIATION


By: Jeff Bevan
Its: President

STATE OF UTAH)
))
County of Salt Lake))

The foregoing instrument was acknowledged before me on this 18 day of January, 2019 by Jeff Bevan.




Notary Public for Utah

EXHIBIT A

(LEGAL DESCRIPTION)

BENSON MILL CROSSING PH 2 PUD-AMD

Lot 201 through Lot 222, BENSON MILL CROSSING PH 2 PUD-AMD, A PLANNED UNIT DEVELOPMENT

Parcel Numbers: 16-069-0-0201 through 16-069-0-0222

LOT A, BENSON MILL CROSSING PH 2 PUD-AMD, A PLANNED UNIT DEVELOPMENT

Parcel Number: 16-069-0-000A

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BENSON MILL CROSSING PH 3 PUD

Lot 301 through 353, BENSON MILL CROSSING PH 3 PUD, A PLANNED DEVELOPMENT

Parcel Numbers: 16-070-0-0301 through 16-070-0-0353

LOT A, BENSON MILL CROSSING PH 3 PUD, A PLANNED DEVELOPMENT

Parcel Number: 16-070-0-000A

LOT B, BENSON MILL CROSSING PH 3 PUD, A PLANNED DEVELOPMENT

Parcel Number: 16-070-0-000B

LOT C, BENSON MILL CROSSING PH 3 PUD, A PLANNED DEVELOPMENT

Parcel Number: 16-070-0-000C

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BENSON MILL CROSSING PH 4 PUD

Lot 401 through Lot 409 BENSON MILL CROSSING PH 4 PUD, A PLANNED UNIT DEVELOPMENT

Parcel Numbers: 17-099-0-0401 through 17-099-0-0409

LOT A, BENSON MILL CROSSING PH 4 PUD, A PLANNED UNIT DEVELOPMENT

Parcel Number: 17-099-0-000A

LOT B, BENSON MILL CROSSING PH 4 PUD, A PLANNED UNIT DEVELOPMENT

Parcel Number: 17-099-0-000B

THAT PORTION OF VANCOT WAY LOCATED IN BENSON MILL CROSSING PH 4 PUD

Parcel Number: 17-099-0-000R

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BENSON MILL CROSSING PHASE 7 PUD

Lot 701 through 718, BENSON MILL CROSSING PHASE 7 PUD, A PLANNED UNIT DEVELOPMENT

Parcel Numbers: 18-041-0-0701 through 18-041-0-0718

LOT A, BENSON MILL CROSSING PHASE 7 PUD, A PLANNED UNIT DEVELOPMENT
Parcel Number: 18-041-0-000A

Lot B, BENSON MILL CROSSING PHASE 7 PUD, A PLANNED UNIT DEVELOPMENT
Parcel Number: 18-041-0-000B

Lot C, BENSON MILL CROSSING PHASE 7 PUD, A PLANNED UNIT DEVELOPMENT
Parcel Number: 18-041-0-000C

ALL ROADS (BOWKER DR, FROST LANE) CONTAINED IN BENSON MILL CROSSING PHASE 7 PUD
Parcel Number: 18-041-000R

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BENSON MILL CROSSING PHASE 9 PUD
Lot 901 through 938 BENSON MILL CROSSING PHASE 9 PUD, A PLANNED UNIT DEVELOPMENT
Parcel Numbers: 18-089-0-0901 through 18-089-0-0938

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BENSON MILL CROSSING PHASE 10, PUD
Lot 1001 through 1007 BENSON MILL CROSSING PHASE 10, PUD, A PLANNED UNIT DEVELOPMENT
Parcel Numbers: 19-033-0-1001 through 19-033-0-1007

Lot A
Parcel Number: 19-033-0-000A

Lot B
Parcel Number: 19-033-0-000B

ALL PUBLIC DEDICATED ROADS LOCATED WITHIN BENSON MILL CROSSING PHASE 10 PUD
Parcel Number: Parcel 19-033-0-000R

ALL PRIVATE ROADS LOCATED WITHIN BENSON MILL CROSSING PHASE 10 PUD
Parcel Number: Parcel 19-033-0-00R2

EXHIBIT B
BYLAWS
OF
THE TOWNS AT BENSON MILL CROSSING

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ARTICLE I – DEFINITIONS

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE 2 - MEETINGS OF ASSOCIATION

2.1 Place of Meeting. The Association shall hold meetings at such suitable place as may be designated by the Board from time to time.

2.2 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah selected by the Board.

2.3 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its members (1) on call of the President or a majority of the Board, or (2) if the Association receives one or more written demands for the meeting that state the

purpose or purposes for which the meeting is to be held, and are signed and dated by members in good standing holding at least 25% of the voting rights of the Association. When a special meeting is demanded by the members, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

2.4 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Board. Notice shall always be deemed fair and reasonable if given no more than thirty (30) and at least ten (10) days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

2.5 Voting. Each Member shall have one (1) vote.

2.6 Proxies and Absentee Ballots. A vote may be cast in person, by proxy or by absentee ballot. 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 and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

2.7 Quorum of Owners. At any meeting of the Owners, those Owners present, in person or by proxy, shall constitute a quorum except as otherwise expressly provided in the Association's Governing Documents.

2.9 Binding Vote. Action on a matter other than the election of directors is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by law or the Governing Documents.

2.10 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of the preceding meeting; (d) Reports of officers; (e) Reports

of committees, if any; (f) Election of Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

2.11 Meeting Procedure. Rules of order may be adopted by resolution of the Board, otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

2.12 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association causes to be delivered a written ballot to every member entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

2.13 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

ARTICLE 3 – BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE

3.1 Number, Term and Qualifications.

(a) The Board of Directors for the Association shall have three (3) Directors. At the first Annual Meeting of the Association the term of office of one Board member shall be fixed at three (3) years. The term of office of one Board member shall be fixed at two (2) years, and the term of office of one Board member shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Board member, his/her successor shall be elected to serve a term of three (3) years.

(b) All Board members must be an Owner or the spouse of an Owner of a Unit, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Unit, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Unit.

3.2 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

3.3 Removal of Board members.

(a) At any annual or special meeting, any one or more of the Board members, other than interim Board members, may be removed, with or without cause, by a majority of the voting interests of the members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Trustee whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board may declare the office of a member of the Board to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Board or from more than 25% of the regular meetings held in any 12 month period, or, within 24 hours of a request to take action without a meeting, more than twice in any 6 month period fails to respond in writing by (1) voting for the action, (2) voting against the action, or (3) abstaining from voting and waiving the right to demand that action not be taken without a meeting. The vacancy shall be filled as provided in Section 3.2 above.

3.4 Compensation. No Board member shall receive compensation for any service he or she may render to the Association as a Board member. However, any Board member may be reimbursed for actual expenses incurred in the performance of his or her duties.

3.5 Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a regular or special meeting if all the Board members agree in writing to take a vote or an action without a meeting. The action being taken shall not require unanimous consent of the Board. Any action so taken shall have the same effect as though

taken at a meeting of the Board members.

ARTICLE 4 - NOMINATION AND ELECTION OF BOARD MEMBERS

4.1 Nomination.

(a) **Method of Nomination.** Nomination for election to the Board shall be made in the manner determined by the Board, which may include a Nominating Committee and/or nominations from the floor at a meeting. If one is established, the Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies.

(b) **Nominating Committee.** The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board; and one or more members of the Association.

4.2 **Election.** At the election, the members or their proxies may cast, in 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. Cumulative voting is not permitted.

ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS

5.1 Organizational Meeting.

(a) **Location, Date and Time.** The first meeting of a newly-elected Board shall be held within fourteen (14) days of election at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

(b) **Procedure and Business.** Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 **Regular Meetings.** Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the Board, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

5.3 **Special Meetings.** Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three (3) days' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 **Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board: (a) Meetings of the Board shall be conducted by the President; (b) A decision of the Board may not be challenged because the appropriate rules of order were not used; (c) A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

5.5 **Open Meetings; Executive Sessions.**

5.5.1 **Open Meetings.** Except as provided in subsection 5.5.2, all meetings of the Board shall be open to Unit Owners. However, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

5.5.2 **Executive Sessions.** In the discretion of the Board, the following matters may be considered in executive session:

- (a) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (b) Personnel matters, including salary negotiations and employee discipline;
- (c) The negotiation of contracts with third parties;
- (d) Collection of unpaid assessments; and
- (e) Other matters of a sensitive, private, or privileged nature at the discretion of the Board.

5.5.3 **Executive Session Procedure.** Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 **Meetings by Telephonic or Electronic Communication.** In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 **Waiver of Notice.** Any Board member may, at any time, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by the Board member, except where the Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Board members are present at any meeting of the Board, no notice to Board members shall be required and any business may be transacted at the meeting.

5.8 Quorum and Acts. At all meetings of the Board a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a meeting and to vote if the Board member has granted a signed written proxy: (i) to another Board member, or other person, who is present at the meeting; and (ii) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and a Utah non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in the Articles, the Bylaws and the Declaration and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the power to: (a) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; (b) in the Board's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

6.3 Best Interest of Association and Reliance on Information. A Board member or officer shall discharge the Board member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Board member or officer reasonably believes to be in the best interests of the Association. The Board members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

ARTICLE 7 - OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

- (a) **Designation.** The principal officers of the Association shall be a president and a secretary, plus such other officers as the Board may from time to time by resolution create.
- (b) **Qualifications.** The officers must be members of the Board of Directors.
- (c) **Multiple Offices.** A person may not simultaneously hold more than one office.
- (d) **Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.2 Election and Vacancies. The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

- (a) **President.** The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other

written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS

Each officer and Board member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Board member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

ARTICLE 9 - RECORDS AND AUDITS

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act.

9.1 General Records.

(a) The Board and managing agent or manager, if any, shall keep records of the actions of the Board and managing agent or manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

(b) The Board shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board.

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state, all records of the Association for not less than the period specified in applicable law.

9.2 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.3 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all mortgagees of Units who have requested the same in writing within ninety (90) days after the end of each fiscal year.

(b) From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and mortgagees of Units.

9.4 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.5 below, all records of the Association shall be reasonably available for examination by an Owner and any mortgagee of a Unit pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.3 above; and (3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section, subject to a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

9.5 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.
- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.
- (f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

ARTICLE 10 - AMENDMENTS

Approval of a majority of the voting rights of the members is required for approval of any amendment to these Bylaws, except that the approval of members representing at least 60% of the total voting rights of the Association shall be required for any material change to the Bylaws pertaining to voting rights. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office. No action to challenge the validity of an adopted amendment may be brought more than two (2) years after the amendment is recorded.

ARTICLE 11 - MISCELLANEOUS

11.1 Notices.

11.1.1 Association. All notices to the Association or the Board shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

11.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the members, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and

reasonable. A member may require the Association, by written demand, to provide notice to the member by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board, or if no address has been designated, then to the Owner's Unit.

(c) If a Unit is jointly owned, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Unit shall be sufficient.

11.2 Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a member or by the Association.


11.3 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

11.4 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 herein, 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 used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

11.5 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

11.6 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 18 day of January, 2014.

(Sign): 
(Print Name): Jeff Bevan, President