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**When Recorded, Mail to:**

D.R. Horton, Inc.  
12351 South Gateway Park, Suite D-100  
Draper, UT 84020  
Attention: Krisel Travis

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08/23/2017 09:49 AM \$192.00  
Book - 10591 Pg - 28-68  
ADAM GARDINER  
RECORDER, SALT LAKE COUNTY, UTAH  
D R HORTON INC  
12351 SOUTH GATEWAY PARK #D100  
DRAPER UT 84020  
BY: CRA, DEPUTY - WI 41 P.

**DECLARATION OF**

**COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**ENCORE AT MILLER CROSSING**

**DECLARATION OF COVENANTS,  
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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ENCORE AT MILLER CROSSING (this "**Declaration**") is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2017, by D.R. Horton, Inc., a Delaware corporation (hereinafter referred to as the "**Declarant**"). As of the date of the execution of this Declaration, Declarant is the sole owner of all of the Land described in Exhibit "A" attached hereto, and Declarant is the sole owner of all of the Lots within the Project described in this Declaration. Consequently, Declarant has full right, title and authority to execute, acknowledge and record in the Office of the Recorder of Salt Lake County, Utah this Declaration of Covenants, Conditions and Restrictions for Encore at Miller Crossing.

**RECITALS:**

A. This Declaration affects that certain real property located in Salt Lake County, Utah described with particularity in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "**Land**"). Declarant desires to develop the Project, in phases, for residential uses.

B. Declarant is the owner of the Land.

C. Declarant has constructed, is in the process of constructing or will construct upon the Land a residential unit development, which shall include certain Lots, Common Areas, and other improvements.

D. Declarant intends to sell to various purchasers the fee title to the Individual Lots contained in the Land, and a corresponding membership interest in the Association of Owners (which shall own the Common Areas), subject to the Plat, and the covenants, conditions and restrictions set forth herein.

E. As part of the various phases of development of the Property, Declarant desires, by recording in the Office of the Recorder of Salt Lake County, Utah this Declaration and the Plat, to submit the Land and all Improvements now or hereafter construct thereon to the terms, covenants and conditions of this Declaration, and the Project is to be known as Encore at Miller Crossing (the "**Project**").

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

**ARTICLE 1  
DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "**Recitals**"), each of the following terms shall have the meaning indicated.

1.1 Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

1.2 Additional Land shall mean, refer to and consist of that certain real property located in Salt Lake County, Utah, described in Exhibit "B" attached hereto and by this reference made a part hereof, which Additional Land is owned by Declarant or is the subject of a contract of sale, pursuant to which Declarant has the right to acquire such Additional Land. This Declaration is not intended to create and shall not be deemed to constitute any lien, encumbrance, restriction or limitation upon any portion of the Additional Land, unless and until the Additional Land or any portion thereof is added to the existing Project in accordance with the provisions of Article 4 of this Declaration.

1.3 Area of Common Responsibility shall have the meaning set forth in Section 3.19(a).

1.4 Area of Personal Responsibility shall have the meaning set forth in Section 3.19(e).

1.5 Articles of Incorporation shall mean and refer to the Articles of Incorporation of Encore at Miller Crossing Owners Association, Inc., on file or to be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

1.6 Assessments shall mean and refer to (collectively) the Common Areas Assessments, the Individual Assessments, the Special Assessments, the Specific Assessments, and the Reinvestment Fees that may be assessed by the Board and payable by an Owner of a Lot pursuant to the terms of this Declaration.

1.7 Association shall mean and refer to the association of Owners at Encore at Miller Crossing, known as Encore at Miller Crossing Owners Association, Inc., a Utah nonprofit corporation.

1.8 Board or Board of Directors shall mean the board of directors of the Association who have been duly appointed or elected to perform their duties, as provided in the Bylaws and in accordance with the provisions of the Utah Revised Nonprofit Corporation Act.

1.9 Budget shall have the meaning set forth in Section 3.20.

1.10 Building shall mean and refer to any of the structures constructed in the Project.

1.11 Business and/or Trade shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time; such activity is intended to or does generate a profit; or a license is required therefor.

1.12 Bylaws shall mean and refer to the Bylaws of the Association attached to this Declaration as Exhibit "C."

1.13 Capital Improvement shall mean and refer to all nonrecurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the Project intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas.

1.14 City shall mean the City of Herriman, a Utah municipal corporation.

1.15 Class B Control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Board of Directors.

1.16 Common Areas shall mean and refer to all real property in the Project in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including, but not limited to, the following items:

(a) The real property and interests in real property subjected to the terms of this Declaration, including the entirety of the Land and all Improvements constructed thereon, except for and specifically excluding therefrom the individual Lots or Units;

(b) All Common Areas designated as such on the Plat;

(c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners, including without limitation utility services such as telephone, electricity, natural gas, water and sewer;

(d) The Project's outdoor grounds, detention basins, landscaping, street lighting, perimeter and preservation fences, sidewalks, trails, walking paths, parking spaces and private streets and alleys;

(e) All portions of the Project not specifically included within the individual Lots; and

(f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

1.17 Common Areas Assessment shall have the meaning set forth in Section 3.20.

1.18 Common Areas Expense shall have the meaning set forth in Section 3.20.

1.19 Community shall mean and refer to the Project.

1.20 Community Standards shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Board of Directors from time to time.

1.21 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Encore at Miller Crossing.

1.22 Declarant shall mean and refer to D.R. Horton, Inc., a Delaware corporation, its successors and assigns.

1.23 Delinquent Assessments shall have the meaning set forth in Section 3.25(b).

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

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

1.26 Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association.

1.27 Event or Events shall have the meaning set forth in Section 3.16(b).

1.28 Family shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.

1.29 Guest shall mean and refer to a temporary visitor, invitee or person whose presence within the Project is approved by or is at the request of a particular Owner.

1.30 Improvement shall mean and refer to all physical structures and appurtenances to the Land of every kind and type, including but not limited to all buildings, dwellings units, fixtures, plumbing, electrical, heating, air conditioning and utility systems, roads, alleys, walkways, driveways, parking areas, patios, fences, walls, stairs, landscaping, trees, shrubs, bushes and green space.

1.31 Individual Assessment shall have the meaning set forth in Section 3.23.

1.32 Land shall mean and refer to all of the real property subject to this Declaration, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference and any Additional Land added to the Project by Declaration pursuant to Article 4.

1.33 Limited Common Areas shall mean and refer to those portions of the Common Areas which are specifically designated on the Plat as "**Limited Common Areas**" and which are thereby allocated for the exclusive use of one or more Units but fewer than all of the Units, including, but not limited to, driveways and backyards.

1.34 Lot shall mean and refer to a portion of the Property, other than the Common Areas, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat or amendments thereto.

Where the context indicates or requires, the term Lot includes any dwelling unit, physical structure or improvement constructed on the Lot.

1.35 Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot as identified on the Plat.

1.36 Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

1.37 Manager shall mean and refer to the person or entity appointed or hired by the Board of Directors to manage and operate the Project.

1.38 Member shall mean and refer to an Owner obligated, by virtue of such Owner's respective ownership, to be a member in the Association.

1.39 Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

1.40 Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

1.41 Notice and Hearing shall mean and refer to the procedure which gives an owner or resident due process.

1.42 Owner shall mean and refer to the person who is the owner of record (in the Office of the Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in a Lot, including but not limited to both the seller and buyer under an executory sales contract. The term Owner does not mean or include a mortgagee or a 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.

1.43 Permanent Resident shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

1.44 Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

1.45 Plat shall mean and refer to the Final Plat of "ENCORE AT MILLER CROSSING" on file and of record in the Office of the Recorder of Salt Lake County, Utah, as it may be amended from time to time. The term Plat shall also include and shall mean and refer to final plats of subsequent phases of the Project that are recorded in the Office of the Recorder of Salt Lake County, Utah that are added to the Project pursuant to Section 4 of this Declaration. The Plat will show the location of the Lots and the Common Areas.

1.46 Project shall mean and refer to Encore at Miller Crossing residential unit development.

1.47 Project Documents shall mean the Plat, the Declaration, the Bylaws, the Articles of Incorporation and any rules or regulations of the Association adopted from time to time by the Board of Directors.

1.48 Property shall mean and refer to all of the Land and all Improvements and appurtenances subjected to the terms of this Declaration.

1.49 Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation vehicle, machine, or device of any kind.

1.50 Reinvestment Fee shall mean the charge which may be levied and assessed by the Association in the event of a Transfer of a Lot, pursuant to Section 3.24 hereof. The Reinvestment Fee assessed, if any, shall be in compliance with Section 57-1-46 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time.

1.51 Reserve Fund shall mean the fund created or to be created by the Association pursuant to Section 3.20(q) for the purposes provided in Section 3.20(q).

1.52 Shared Components of a Building shall mean all portions of a Building that are shared by or are reasonably necessary for the use and enjoyment of one or more Units within a Building including, without limitation, party walls, footings and foundations, structural components, roofs and common sanitary sewer laterals and other shared utilities.

1.53 Special Assessment Limit shall have the meaning set forth in Section 3.21(a).

1.54 Specific Assessment shall have the meaning set forth in Section 3.22.

1.55 State shall mean the State of Utah.

1.56 Transfer shall have the meaning set forth in Section 3.24(a).

1.57 Transferee shall have the meaning set forth in Section 3.24(a).

1.58 Transition Date shall have the meaning set forth in Section 3.16.

1.59 Unit or Units shall mean and refer to the single family townhome or residential structure constructed upon a Lot.

## ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

2.1 Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing the value, desirability and attractiveness of the Property. This Declaration shall run with all the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Members and their respective successors-in-interest. Each Owner of any Lot, by acceptance of a deed therefor (whether or not it is or shall be so expressed on such deed) is deemed to covenant and agree that such Owner and such Owner's Lot shall be subject to all the terms, covenants, conditions, restrictions and easements set forth in this Declaration. The Project is not a cooperative.

2.2 Reservation to Declarant. There is hereby reserved unto Declarant, its employees, agents, successors and assigns such easements and rights of ingress and egress over, across, through and under the Property and any Improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to:

(a) engage in construction upon or to improve the Common Areas with such structures and facilities (including but not limited to roads, utility improvements, parking areas, sidewalks, parking area and sidewalk lighting and various landscaped areas) designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate; and

(b) do all things reasonably necessary and proper for the construction, completion, development and sale of the Project. If pursuant to this reservation, the Property or any portion thereof (including any Building or any Lot or Unit) or any improvement thereon, is traversed or partially occupied by a permanent Improvement or utility line, a perpetual easement for such Improvement or utility line shall exist.

2.3 Subject to Taxes, Instruments of Record. The Property that is subject to this Declaration is subject to all liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities, all patent reservations and exclusions, all instruments of records which affect the Property or any portion thereof, including without limitation any mortgage or deed of trust, all visible easements and rights-of-way, and all easements and rights-of-way record, including without limitation, the easements, restrictions and rights-of-way identified on the Plat and all notes and disclosures of any nature included on the Plat.

### ARTICLE 3 COVENANTS, CONDITIONS AND RESTRICTIONS

The Project shall be subject to and governed by the following covenants, conditions, and restrictions:

3.1 Description of Improvements. The significant Improvements in the Project include, or shall include, One Hundred Three (103) Units and the Common Areas as identified on the Plat, landscaping, roadways, a common utility system, an entrance to and exit from the Project, as well as Limited Common Areas.

3.2 Description and Legal Status of the Property. The Lots shall be owned by the Owners, and the Common Areas shall be owned by the Association.

3.3 Membership in the Association. Membership in the Association is appurtenant to the ownership of a Lot, and may not be partitioned therefrom.

3.4 Conveyancing. Any deed, lease, Mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows: "All of LOT No. \_\_\_\_\_ contained within Encore at Miller Crossing, as the same is identified on the Plat recorded in the Office of the Recorder of Salt Lake County, Utah (as said Plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for Encore at Miller Crossing, recorded in the Office of the Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been amended or supplemented), together with and subject to the appurtenant rights and obligations as a Member of Encore at Miller Crossing Owners Association, Inc."

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot and shall run with the Land. Neither the membership in the Association, nor the right of non-exclusive use of the Common Areas shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use of the Common Areas shall automatically accompany the transfer of the Lot to which they relate.

3.5 Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of such Owner's Lot and to membership in the Association as set forth herein, subject, however, to the following:

(a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of such Owner's respective Lot. There are no requirements concerning who may own a Lot, it being intended that the Lots may and shall be owned as any other real property by Persons. The Project is a residential community, and as such the Lots shall be used only and exclusively for residential purposes, except as set forth below. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

(b) Mandatory Association. Each Owner shall automatically become a Member of the Association.

(c) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Areas in a manner consistent with the terms of this Declaration. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for the purpose of providing utilities to the Project and similar or related purposes. During the Class B Control Period, any such dedication or transfer shall be effective only if approved in writing by Declarant.

(d) Rules and Regulations. The Board of Directors shall have the power and authority to adopt, amend or repeal administrative rules and regulations pertaining to the Project from time to time, provided that the Board of Directors complies with the requirements of Section 57-8a-217 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time. Pursuant to Section 57-8a-217(6) of the Utah Code, Declarant shall be exempt from the rules of the Association and from the rulemaking procedures of Section 57-8a-217 of the Utah Code during the Class B Control Period.

(e) City Requirements and Permits. In addition to the covenants, conditions and restrictions set forth in this Declaration, the City may have additional requirements and/or permits pertaining to any alterations by the Association or by an Owner to any Building, fencing, landscaped areas, utilities or other Improvements within the Project.

(f) Restrictions and Limitations of Use. The use of the Lots is subject to the following guidelines, limitations and restrictions:

(1) Parties Bound. The Project Documents shall be binding upon all Owners and residents, their Family members and Guests.

(2) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or in the Common Areas;

b. The storage of any item, property or thing that will cause any Lot or the Common Areas to appear to be in an unclean or untidy condition or that will be noxious to the senses. This shall be interpreted to include, but not be limited to, the prevention of hanging of bikes and the hanging of clothes or linens from balconies;

c. The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their Guests or invitees, particularly if the police or sheriff must be contacted to restore order;

f. Maintaining any plants, animals, devices, items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents or their Guests; and

g. Excessive noise or traffic in, on or about any Lot or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.

(3) Unsightly Work, Hobbies or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.



(4) Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

(5) Subdivision of a Lot. No Lot shall be subdivided or partitioned.

(6) Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices or the painting of graffiti, within the Project is prohibited. The term firearms includes, but is not limited to, all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures, including but not limited to, tents, trailers, or sheds, without the prior written consent of the Board of Directors. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Declarant may install and use temporary structures in the development of the Project and the marketing of the Lots or Units.

(8) Trees, Shrubs, Bushes and Fences: Maintenance of Proper Sight Distance at Intersections and Prior Written Consent Required. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or resident in, on or about the Common Areas, or Limited Common Areas, without the prior written consent of the Board of Directors. Approval, if any, of fencing in the front of a Unit shall be limited to a maximum of three (3) feet in height with the type and material to be approved by the Board of Directors. The Board of Directors may alter or remove any objects planted or placed in violation of this subsection.

(9) Swamp Coolers or Evaporative Coolers. No Owner shall place upon any part of the Project, Lot or Common Areas any swamp cooler or evaporative cooler.

(10) Plants. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon the Project.

(11) Outdoor Clothes Washing and Drying. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes or linens.

(12) Exterior Alteration. No Owner shall make any alterations or modifications to the exterior of any Unit, or other building, fences, railings, or walls situated within the Project without the prior written consent of the Board of Directors, which consent shall be in the Board of Directors' sole discretion.

(13) Signs. No signs shall be erected or displayed on the Common Areas, except signs placed by authority of the Board of Directors. Notwithstanding any provision in this Declaration to the contrary, so long as Declarant retains ownership of any Units, Declarant may erect such signs as it reasonably determines is necessary for the sales promotion of such Units. No signs shall be erected or displayed to be visible from the exterior from any Unit, with the limited exception that the Owner of a Unit may display one "For Sale" or "For Rent" sign in one window of such Owner's Unit, provided that the dimensions of such sign shall not exceed 18 inches by 24 inches in size.

(14) Solar Equipment. No Owner may install any solar energy device within the Project.

(15) Energy Conservation Equipment. No solar energy device, solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed within the Project without the prior written consent of the Board of Directors.

(16) Business Use. No commercial Business or Trade may be conducted on, in, or from any Lot unless: a) the existence or operation of the business activity is not apparent or detectable by sight or sound from outside the Unit; b) the business activity conforms to all zoning requirements for the Project; c) the

business activity does not involve door-to-door solicitation of residents of the Project; and d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board of Directors. Notwithstanding the above, the leasing of a residence shall not be considered a Trade or Business within the meaning of this sub-Section.

(17) Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

- a. The parking rules and regulations adopted by the Board of Directors from time to time;
- b. Owners and residents shall be prohibited from parking in the guest parking spaces in the Common Areas;
- c. Except for purposes of loading or unloading passengers or supplies (for a period of time up to twelve (12) hours), no Recreational, Commercial or Oversize vehicle parking is allowed in the Project;
- d. No parking on any private road or any public road or alleys, except in designated parking spaces, is allowed at any time in the Project;
- e. No parking within alleys, except for the sole purpose of loading or unloading passengers or items, is allowed at any time in the Project;
- f. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation vehicle or device of any kind may be parked or stationed in such a manner so as to block access to any Lot, Building or parking space, or so as to create an obstacle or potentially dangerous condition;
- g. Residents may only park their motor vehicles within their garages and on their respective driveways;
- h. All vehicles parked within the Project must have a current license plate and must be drivable and in good working order, with no fluid leaking from the vehicle.
- i. No resident shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Areas, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility;
- j. 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. This restriction and prohibition is intended to prevent an Owner from utilizing the Owner's garage for storage to the degree that precludes the parking within the Owner's garage of the number of motor vehicles that could be reasonably parked in such garage as originally designed and constructed. The Association shall have the right to establish and assess fines against Owners of Units found to be in violation of this provision.
- k. All Guest parking areas shall be used solely for Guest parking. No vehicle may be parked in Guest parking areas for a period of time exceeding 48 consecutive hours;
- l. Garage doors shall remain closed except when the garage is in use;

m. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning on November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas;

n. Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the vehicle owner's sole expense.

(18) Antennas. One (1) small and inconspicuous satellite dish antenna having a diameter of 30" or less, which is installed adjacent to any Unit and is integrated with the Unit structure and surrounding landscape shall be permitted upon a Lot. A satellite dish larger than 30" in diameter, or any dish which is not installed adjacent to a Unit and/or integrated with the surrounding landscaping shall be reviewed by the Board of Directors on a case-by-case basis. The location and screening of the satellite dish shall be specified by the Board of Directors to ensure that the satellite dish is not visible from the street. Notwithstanding anything to the contrary, any satellite dish antenna having a diameter of more than 30", and all other microwave dish antenna, satellite dish antennae, exterior radio antenna, exterior television antenna, or other exterior electronic signal receiving or transmitting equipment are prohibited within the Project.

(19) Windows and Window Coverings. No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any Unit or garage. Sun shades and tinted windows are allowed. All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality, so as not to detract from uniformity in appearance and construction. Window coverings shall be installed within thirty (30) days of occupancy.

(20) Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept at the Project, except that no more than 2 dogs, and/or no more than 2 cats may be kept in or on a Lot, subject to any additional rules and regulations adopted by the Association through its Board of Directors. Notwithstanding any of the foregoing, no dog of any breed that is commonly known as an aggressive breed shall be allowed. Under no circumstances shall any pets be kept, bred, or maintained for any commercial purpose. Furthermore, within the Limited Common Area of any 3-story Unit: (a) any pet kept outside must be on a leash at all times, and (b) no pets may be kept outside overnight. Within the Limited Common Area of any 2-story Unit, if the Owner desires: (a) to keep a pet outside overnight or (b) to keep a pet unleashed outside at any time, then in order to do so the Owner of such Unit must first erect a fence enclosing the Limited Common Area for such Unit, and the Owner of such Unit must receive prior written consent from the Board of Directors for the type, material and color of such fence before installing such fence.

Notwithstanding this provision, no pet enclosures shall be erected, placed or permitted to remain on any portion of the Common Areas, nor shall pets be kept tied to any structure outside the Unit. The keeping of pets and their ingress and egress to the Common Areas shall be subject to such rules and regulations as may be issued by the Board of Directors. Pets must be on a leash at all times when outside a Unit.

If a pet defecates on any portion of the Common Areas, the Owner of such pet shall immediately remove all feces left upon the Common Areas by such Owner's pet. If the Owner or resident of the Project fails to abide by the rules and regulations and/or covenants applicable to pets, the Board of Directors may bar such pet from use of or travel upon the Common Areas. The Board of Directors may subject ingress, egress, use or travel by a pet upon the Common Areas to a user and maintenance fee, which may be a general fee for all similarly situated persons or a specific fee imposed for failure of an Owner, or resident of the Project to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health or welfare of any Owner, resident, invitee or Guest of the Project or which creates a nuisance (e.g., unreasonable barking, howling, whining or scratching) or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board of Directors, must be permanently removed from the Project upon seven (7) days written notice by the Board of Directors.

(21) Insurance. Nothing shall be done or kept in, on or about any Lot, the Common Areas, or Limited Common Areas, which may result in the cancellation of the insurance on the Project or an increase in the rate of the insurance on the Project over what the Board of Directors, but for such activity, would pay.

(22) Laws. Nothing shall be done or kept in, on or about any Lot or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(23) Damage or Waste. No damage to, or waste of, the Common Areas shall be committed by any Owner or resident of the Project or any Guest of any Owner or resident of the Project, and each Owner shall indemnify, defend and hold harmless the Board of Directors and the other Owners from and against all loss resulting from any such damage or waste caused by that Owner or resident of the Project, or an invitee.

(24) Structural Alterations. No structural alterations to the Common Areas or Buildings is allowed without the prior written consent of the Board of Directors.

(25) Mailboxes. The initial mailbox must be the one approved and provided by the Declarant at the mail station as designated by the Board of Directors.

(26) Shared Components of a Building. Owners of Units in the same Building shall each have the right to the use and enjoyment of the Shared Components of a Building, provided that such use does not interfere with the use and enjoyment thereof by any other Owner. In the event that any portion of the Shared Components of a Building are damaged or destroyed through the act of an Owner, his agents, Guests or family members, it shall be the obligation of such Owner to rebuild and repair the Shared Components of a Building without cost to the Association or the adjoining Owner or Owners.

3.6 Leases. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Association at least ten (10) days before the term of the lease commences. Furthermore, the Owner of a Unit that executes a lease shall, within ten (10) days after the commencement of the term of the lease, provide to the Association the vehicle license number of any vehicle used by Persons who have executed such a lease. Every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project Documents. Said lease shall further provide that any failure by the resident thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provision shall nevertheless be deemed to be a part of the lease and shall be binding on the Owner and resident by virtue of the inclusion of such provisions in this Declaration. No Owner shall be permitted to lease such Owner's Unit for transient, hotel, seasonal, rental pool or corporate executive use purposes, which shall be deemed to be any rental with an initial term of less than six (6) months, provided that following an initial lease term for a period of at least six (6) months pertaining to a Unit, such lease may be extended on a month-to-month basis. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate Persons or less than such Owner's entire Unit, unless allowed by city ordinance, provided, however, that no guest parking spaces may be used by renters. Any Owner who shall lease such Owner's Unit shall be responsible for assuring compliance by the resident with the Project Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against such Owner's resident who is in violation of the Project Documents within ten (10) days after receipt of written demand to do so from the Board of Directors, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against such Owner's resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or resident for any eviction under this section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Individual Assessment against such Owner and such Owner's Unit for all such expenses incurred by the Association. In the event such Assessment is not paid within thirty (30) days of its due date, the Board of Directors may resort to all remedies of the Association for the collection thereof. Other than as specified in this section, there is no restriction on the right of any owner to lease or otherwise grant occupancy rights to a Unit.

3.7 Easements; Drainage; Support, Maintenance and Repair. There are hereby RESERVED and the Association is hereby GRANTED the following easements and rights of way:

(a) A non-exclusive easement over, across, through, above and under the Lots and the Common Areas for the operation, maintenance and regulation of the Common Areas, amenities, facilities, and any utilities servicing any part of the Project; and

(b) A reciprocal easement on, over, under, through and across all Lots and Common Areas for the drainage of surface waters on, over, under, through and across the Project. The Declarant shall establish a sub drain and storm drainage system designed to serve the entire Project (the "**Master Sub Drain and Storm Drain System**"). No Owner shall interfere with the Master Sub Drain and Storm Drain System established by the Declarant or its successors or assigns. Each Owner shall be responsible to use such Owner's Lot in a manner consistent with the Master Sub Drain and Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Lot in the Project. No changes to the Established Drainage Pattern on any Lot shall be permitted without the prior written consent of the Board of Directors. For purposes of this Section, the term "**Established Drainage Pattern**" is defined as the approved drainage pattern, facilities and improvements in existence at the time such Lot is conveyed to a home purchaser by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the Master Sub Drain or Storm Drain System located within the boundaries of any Lot shall be the responsibility of the Owner. The cost of all improvements, maintenance, repairs and replacements of the Master Sub Drain and Storm Drain System located in the Common Areas shall be the responsibility of the Association.

3.8 Liability of Owners and Residents for Damages. Any Owner or resident shall be liable to the Association or other Owners or residents for damages to person or property in the Community caused by his/her negligence.

3.9 Encroachments. In the event that any portion of the Common Areas or a Lot encroaches or comes to encroach upon other Common Areas or a Lot as a result of construction, reconstruction, repair, shifting, setting or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

3.10 Board of Directors. The Association shall be managed by a Board of Directors which shall be comprised of a minimum of three (3) members but no more than nine (9) members (as determined by the Board of Directors). Until the happening of the Events (described below), the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Board of Directors and their successors or replacements. At the first annual homeowners meeting after the occurrence of the Events, three members of the Board of Directors shall be elected by the Owners. Two (2) of the members shall be elected for two (2) year terms and one (1) member shall be selected for a one (1) year term. Thereafter, all members of the Board of Directors shall be elected for two (2) year terms. This staggering feature will provide continuity to the management of the Association.

(a) Qualify. To qualify, a member of the Board of Directors must be an individual Owner, or the legal representative of an organizational Owner.

(b) Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a member by a vote of the Members shall be filled by vote of the Majority of the remaining members of the Board of Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Directors; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

(c) Removal of Board of Directors Member/Declarant's Rights. Except for Board of Directors members appointed by the Declarant before the occurrence of the Events, Board of Directors members may be removed at any time by the affirmative vote of a Majority of the members of the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

(d) Term. Unless he or she forfeits or otherwise loses his or her seat as herein provided, a member shall serve on the Board of Directors until his successor qualifies and is properly elected by the Association.

(e) No Compensation. Board of Directors members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board of Directors business and approved by the Board of Directors.

3.11 Officers and Agents. The Board of Directors shall perform its functions through officers elected in accordance with the Bylaws.

3.12 Board of Directors Meetings. Regular and special meetings of the Board of Directors shall be held in accordance with the Bylaws.

3.13 Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Director's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Board of Directors shall have, and is hereby granted, the following authority and powers:

(a) To Enter. The power and authority to enter into or upon any Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

(b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other Person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment.

(d) Standing. The power to sue and be sued.

(e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

(g) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Board of Directors, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board of Directors meetings.

(h) Assignment or Leasing of Common Areas Parking Spaces. The authority to assign or lease open Common Areas parking spaces to residents.

(i) All Other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

3.14 Delegation of Management Responsibilities. The Board of Directors may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract shall not require a termination penalty or any advance notice of more than thirty (30) days, no such contract shall be for a term greater than one (1) year.

3.15 Owners Meetings. The Association Members shall meet as follows:

(a) Annual Meeting. The annual meeting of the Owners shall be held in accordance with the Bylaws.

(b) Special Meetings. Special meetings of the Owners shall be held in accordance with the Bylaws.

(c) Waiver of Notice. No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all of the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.

(d) Quorum. The presence in person or by proxy of three (3) of the Owners entitled to cast a vote shall constitute a quorum for the transaction of business at any Owner's meeting.

(1) Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

(2) Quorum at Rescheduled Meeting. Those Members present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting.

(3) Percentage Approval Requirement. Notwithstanding the foregoing provisions of this section, however, in any case in which this Declaration requires the affirmative vote of a certain percentage of Owners for authorization or approval of a matter, their consent, in person, by proxy or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

3.16 Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership—Class A and Class B, described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(1) One Vote. Each Lot shall have one (1) vote.

(2) Subject to Assessment. No vote shall be cast or counted for any Lot not subject to Assessment;

(3) Multiple Owners. When more than one (1) Person or entity holds an ownership interest in a Lot, the vote for such Lot shall be exercised by those Persons or entities as they themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) Person or entity seeks to exercise it.

(4) Leased Lot. An Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. The Class B Member shall be Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership shall terminate, and Class B membership shall convert to Class A Membership upon the happening of the earlier of the following (herein referred to as the "Event" or "Events"):

(1) Lots Sold. Four (4) months after one hundred percent (100%) of the Units (constructed upon the Lots) have been sold within the Project and on any Additional Land added to the Project pursuant to Article 4; or

(2) Ten Years. Ten (10) years from the recording of this Declaration in the Office of the Recorder of Salt Lake County, Utah; or

(3) Election. When, in its sole discretion, Declarant so determines. If and when Declarant elects to relinquish control of the Association, Declarant shall send written notification to each Owner of the effective date of the relinquishment or transition (the “**Transition Date**”) at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of the Board of Directors to take office as of the Transition Date.

From and after the happening of the first to occur of the Events, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status.

3.17 List of Owners Eligible Mortgagees, and Eligible Insurers of Guarantors. The Board of Directors shall maintain up-to-date records showing: a) the name of each Person who is an Owner, the address of such Person, and the Lot which is owned by such Owner; b) the name of each Person or entity who is an Eligible Mortgagee, the address of such Person or entity, and the Lot which is encumbered by the Mortgage held by such Person or entity; and c) the name of each Person or entity who is an Eligible Mortgagee or Eligible Insurer or guarantor, the address of such Person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such Person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board of Directors with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the Office of the Recorder of Salt Lake County, Utah. The Board of Directors may for all purposes act and rely on the information concerning Lot ownership in its records or, at the option of the Board of Directors, the records of the Recorder of Salt Lake County, Utah. The address of any Owner shall be deemed to be the address of the Lot owned by such Person, unless the Board of Directors is otherwise advised in writing.

3.18 Capital Improvements and Table. The Board of Directors shall prepare a table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Area of Common Responsibility (as hereinafter defined). The table shall be included in every annual Budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board of Directors for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

(a) Board of Directors Discretion/Expenditure Limit. So long as the line item in the annual Budget for such improvements will not be exceeded by more than ten percent (10%), Capital Improvements may be authorized by the Board of Directors alone.

(b) Owner Approval/Expenditure Limit. Any Capital Improvements, the cost of which will exceed the amount described in Section 3.18(a) must prior to the commencement of construction, be authorized by at least a Majority of the Owners.

3.19 Operation, Maintenance and Alterations. The Lots and Common Areas shall be maintained by the Owners and the Association as follows:

(a) Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, all roofs, foundations, footings, columns, girders, beams and exterior walls and surfaces of all Buildings, the Common Areas, and certain Improvements constructed or installed thereon and in, on or about the Lots, including but not limited to all entrances to and exits from the Project, private streets within the Project, all park strips within the Project, open parking spaces, including without limitation the guest/pocket parking areas within the Project, street lighting, common sidewalks, the private storm drainage system for the Project, including without limitation the storm drain inlets, storm water lines, underground storm water detention areas, detention basins for storm water drainage, and the drainage swales, the landscaped portions of the Common Areas identified on the Plat, curbs and gutters, pavement and central utility systems for power and light. The foregoing items are referred to as the “**Area of Common Responsibility**.”

(b) Landscaping Restrictions. Owners shall not modify the landscaping, green space, sod, plant and flower beds, sprinkling system, or drainage in, on or about the Common Areas without the prior written consent of the Board of Directors, except that Owners shall have the right to plant flowers in approved and planned flower beds.



(c) Snow and Ice Accumulations. The Association shall cause to be taken reasonable efforts to clear ice and snow accumulations from roads and streets within the Project and also from common walkways and the Common Areas. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning on November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas. Each Owner shall be responsible to clear ice and snow accumulations from all other locations surrounding such Owner's Unit, including but not limited to all driveways and walkways (and steps) to the Unit's main entrance and on the sides and to the rear of the Unit, decks, patios and landings.

(d) Garbage Removal. Each Owner shall be responsible to remove all garbage, debris and refuse from his Lot and deposit it in an approved trash container. Trash containers shall be kept out of sight and inside the garage, except on days when the trash is collected within the Community.

(e) Area of Personal Responsibility. Each Owner shall maintain, repair and replace all interior spaces and improvements constituting a part of such Owner's Unit. The following items are expressly included in the Area of Personal Responsibility: all interior walls and spaces of any Unit and its appurtenant garage, all individual utility services such as power, light, gas, hot and cold water, individual water metering, heating, refrigeration and air conditioning systems, fixtures, windows, doors, patios, balconies and decks, garage doors, and garage door systems. If an item is not included in the foregoing description of Area of Common Responsibility and it is located within a Unit, then it shall be the responsibility of the Owner, unless otherwise determined in writing by the Board of Directors ("Area of Personal Responsibility").

(f) Utilities. The Association shall arrange for the provision by appropriate utility providers of any utility services not separately metered and billed to the individual Owners by the provider. The costs for all such utility services arranged by the Association shall be a Common Areas Expense.

(g) Standard of Care/General. The Property shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards. Aesthetic considerations alone, and matters of taste, are sufficient to enjoin a violation of this Declaration.

(h) Standard of Care/Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Board of Directors from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced within six (6) months. All lawn areas shall be neatly mowed, and trees, shrubs and bushes shall be properly pruned and trimmed.

(i) Neglect. If the Board of Directors determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Areas is caused through the willful or negligent act of any Owner, his Family, Guests or lessees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(1) Assessment. Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the Assessment to which such Owner and Lot is subject, and shall be secured by a lien against his Lot regardless of whether a notice of lien is filed.

(2) Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at such Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days and thereafter complete such replacement or repair in a prompt manner.

(3) Emergency Situation. If the Board of Directors determines that an emergency situation exists, then notice to the Owner and an opportunity to cure the default is not necessary.

(4) Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(5) Right of Entry. The Association or its agents or employees shall have a right to enter upon or into any Lot or Common Areas as necessary to perform such work and shall not be liable for trespass for such entry or work.

(j) Changes to Areas of Personal or Common Responsibility. The Board of Directors may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Owners.

(k) Alterations to the Common Areas. Anything to the contrary notwithstanding and until the occurrence of the Events, the Declarant may make changes to the Common Areas without the consent of either the Association or the Board of Directors; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Areas, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior consent of the Board of Directors. No fencing is allowed without the prior written consent of the Board of Directors.

3.20 Common Areas Expenses. Each Owner, upon receipt of a deed to a Lot, shall pay his Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments until such time as any residential structure, Building or Unit is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Declarant elects in writing to commence payment, whichever first occurs.

(a) Purpose of Common Areas Assessments. The “Common Areas Assessments” provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

(b) Creation of Common Areas Assessments. The Common Areas Assessments shall pay for the Common Areas Expenses of the Association as may be from time to time specifically authorized by the Board of Directors. Each Owner, by acceptance of a deed for a Lot within the Project, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

(c) Budget. Not less than ten (10) days or more than thirty (30) days prior to the annual Owners’ meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget (the “Budget”) which:

(1) Itemization. Shall set forth an itemization of the anticipated Common Areas Expenses and Common Areas Assessments for the twelve (12) month calendar year, commencing with the following January 1.

(2) Basis. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting assessments, any deficit remaining from a previous period, the creation of

a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration (collectively referred to herein as “**Common Areas Expenses**”).

(d) Uniform Rate of Common Areas Assessments. The annual Common Areas Assessments shall be allocated to the Owners equally and may be collected on an annual, semi-annual, quarterly or monthly basis, as determined by the Board of Directors.

(e) Approval of Budget and Common Areas Assessments. The proposed Budget and the Common Areas Assessments shall become effective unless disapproved at the annual Owners’ meeting by a vote of at least a Majority of the Owners or unless disapproved by a vote of at least a Majority of the Owners at a special meeting called for that purpose within 45 days after the date of the meeting at which the Board of Directors presented the proposed Budget to the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed Budget and Common Areas Assessments or the Board of Directors fails for any reason to establish the Budget and Common Areas Assessments for the succeeding year, then and until such time as a new Budget and new Common Areas Assessment schedule shall have been established, the Budget and the Common Areas Assessments that the Board of Directors last adopted that was not disapproved by at least a Majority of the Owners shall continue as the Budget until and unless the Board of Directors presents another Budget to the Owners and that Budget is not disapproved.

(f) Payment of Common Areas Assessments. The Board of Directors has the sole authority and discretion to determine how and when the annual Common Areas Assessments are paid. The dates and manner of payment of the Common Areas Assessment shall be determined by the Board of Directors.

(g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed, accruing interest, late Assessment and collection costs, including attorneys’ fees. Provided, however, no Mortgagee or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the Mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term “**Owner**” shall mean and refer jointly and severally to: (i) the Owner of both the legal and equitable interest in any Lot, (ii) the owner of record in the Office of the Recorder of Salt Lake County, Utah, and (iii) both the Buyer and Seller under any executory sales contract or other similar instrument.

(h) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large as a result of unanticipated expenses, the Board of Directors may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days written notice of any changes.

(i) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Board of Directors.

(j) Reserve Accounts. The Board of Directors shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for Capital Improvements (known as the Reserve Fund discussed more fully below). The reserve accounts shall be funded out of Assessments (as reasonably determined by the Board of Directors).

(k) Acceleration. Common Areas Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Areas Assessment for delinquent Owners. If, however, the Common Areas Assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

(l) Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of any Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$10.00 for the issuance of such certificate.

(m) Superiority of Assessments. All Common Areas Assessments and all other Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

(n) Termination of Delinquent Owner's Rights. Provided that the Board of Directors complies with the requirements of Section 57-8a-309 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time, the Board of Directors may terminate an Owner's right to receive a utility service for which the Owner pays as a Common Areas Expense through such Owner's Common Areas Assessments and also an Owner's right of access to and use of any recreational facilities within the Project, if an Owner is delinquent in the payment of any Assessments payable by such Owner.

(o) Suspension of Right to Vote for Non-Payment. At the discretion of the Board of Directors, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of any Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

(p) Failure to Assess. The omission or failure of the Board of Directors to fix the Common Areas Assessment amounts or rates or to deliver or mail to each Owner a Common Areas Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Common Areas Assessments or any other Assessments. In such event, each Owner shall continue to pay annual Common Areas Assessments on the same basis as for the last year for which a Common Areas Assessment was made until a new Common Areas Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

(q) Re-assessments. The Board may exercise its business judgment and if, because of bankruptcies and/or foreclosures, the charge-offs and delinquencies in any given year create too great a shortfall in the operating account and budget, then the Board, rather than deplete the contingency reserve account, may elect to reassess among all of the Owners based upon their percentages of ownership interest an amount equal to the total of unpaid or uncollected assessments. Owners shall be given at least thirty (30) days written notice of any such reassessment.

(r) Reserve Fund. The Board shall cause the Association to establish and maintain an adequate and reasonable Reserve Fund for maintenance, repairs and replacement of the Common Areas that are to be maintained by the Association that must be replaced on a periodic basis, and such reserves shall be funded from the Common Areas Assessments (in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law). The Reserve Fund shall be maintained by the Association in a bank account separate from the bank account maintained by the Association for the other funds of the Association. Within the Reserve Fund, the Association shall maintain a separate account designated and intended solely for the repair, maintenance and replacement from time to time of the private roads located within the Project, which shall be funded from the Assessments (in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law). Pursuant to Section 57-8a-211 of the Utah Code, as may be amended from time to time, the Board shall cause a Reserve Fund analysis to be conducted on a periodic basis. After the initial Reserve Fund analysis is conducted, the Board shall review and, if necessary, update a previously conducted Reserve Fund analysis on a periodic basis. The Board may conduct a Reserve Fund analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the Reserve Fund analysis. The Board may not use money in the Reserve Fund: (a) for daily maintenance expenses, unless a majority of the Members vote to approve the use of the Reserve Fund money for that purpose; or (b) for any purpose other than the purpose for which the Reserve Fund was established. The Board shall maintain the Reserve Fund separately from other funds of the Association. The foregoing may not be construed to limit the Board from prudently investing money in the Reserve Fund, subject to any investment constraints imposed by the Articles of Incorporation or the Bylaws of the Association. The Association shall: (a) annually, at the annual meeting of Owners or at a special meeting of Owners: (i) present any Reserve Fund analysis conducted; and (ii) provide an opportunity for Owners to discuss reserves and to vote on whether to fund a Reserve Fund and, if so, how to fund it and in what amount; and (b) prepare and keep minutes of each such meeting held and indicate in the minutes any decision relating to funding a Reserve Fund.

3.21 Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments ("**Special Assessments**") in any year, subject to the following:

(a) Board of Directors Based Assessment. So long as the Special Assessment does not exceed the sum of One Hundred Dollars (\$100.00) (the “**Special Assessment Limit**”) per Lot in any one fiscal year, the Board of Directors may impose the Special Assessment without any additional approval.

(b) Association Approval. Any Special Assessment which would exceed the Special Assessment Limit shall be effective only if approved by a Majority of the Members of the Association. The Board of Directors in its discretion may allow any Special Assessment to be paid in installments.

3.22 Specific Assessments. The Board of Directors shall also have the power specifically to assess the Owners in a particular area pursuant to this Section (“**Specific Assessment**”) as, in its discretion, it shall deem necessary or appropriate, subject to the following:

(a) No Obligation or Waiver. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director’s right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

(b) Enabling Power. The Board of Directors may specifically assess an Owner in a particular area in the manner set forth below; provided, however, the Specific Assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration, and the Owner has the choice to accept or reject the benefit:

(1) If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the Specific Assessment shall be equitably apportioned among those Lots according to the benefit received.

(2) If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the Specific Assessment shall be equitably apportioned among all Lots according to the benefit received.

3.23 Individual Assessments. Individual assessments (“**Individual Assessments**”) shall be levied by the Board of Directors against a Lot and its Owner to reimburse the Association for:

- (a) fines levied and costs incurred in enforcing Project Documents;
- (b) costs associated with the maintenance, repair or replacement of that for which the Owner is responsible;
- (c) any other charge, fee, dues, expense, or cost designated as an Individual Assessment in the Project Documents; and
- (d) attorneys’ fees, interest, and other charges relating thereto as provided in this Declaration.

3.24 Reinvestment Fees. Subject to the terms and conditions of Section 3.24(b) below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section 3.24. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

(a) Upon the occurrence of any sale, transfer or conveyance (as applicable, a “**Transfer**”) of any Lot, the party receiving title to the Lot (the “**Transferee**”) shall pay to the Association a “**Reinvestment Fee**” in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (a) 0.5% of the value of the applicable Lot, or (b) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section 3.24, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

(1) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

(2) Any Transfer to the Association or its successors.

(3) Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Lot transferred.

(4) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a site by the estate of an Owner.

(5) Any Transfer made by a Person owning a Lot or portion thereof to a legal entity or trust owned or controlled by the Transferor.

(6) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing title defects or encumbrances affecting the title to such Lot, or granting easements, rights of way or licenses, and any exchange of Lots between Declarant and any original purchaser from Declarant of the one or more Lots being Transferred to Declarant in such exchange.

(7) Any lease of any Lot or portion thereof for a period of less than thirty years.

(8) Any Transfer to secure a debt or other obligation or to release any Lot that is encumbered as security for a debt or other obligation.

(9) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

3.25 Collection of Assessments. All Assessments must be paid in a timely manner and shall be collected as follows:

(a) Time is of the Essence. Time is of the essence, and all Assessments shall be paid promptly when due.

(b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent ("**Delinquent Assessments**") and shall constitute a lien against the Lot affected, which lien shall attach automatically, regardless of whether a notice of lien is recorded.

(c) Late Assessment and Accruing Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and 1/2 percent (1.5%) per month shall accrue on all delinquent accounts. The Board of Directors may, in its sole discretion, change the amount of the late charge or waive the late charge and accruing interest but is not required to do so.

(d) Notice of Delinquency. The Association shall give a notice of delinquency to any Owner who has not paid his Assessments in a timely manner.

(e) Notice of Lien. If any Assessment in a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorneys' fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law should be filed with the County Recorder, then the lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, Board of Directors member or other designated agent.

(f) Foreclosure of Lien and/or Collection Action. If any Assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien.

(g) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her or such entity personally for the collection of the Assessment as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, deeds of trust or encumbrances may be foreclosed.

(h) No Waiver. No Owner may waive or otherwise exempt himself or herself or itself from liability for the Assessments provided for herein by the non-use of Common Areas or by the abandonment of his Lot.

(i) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or to perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with an order or directive of any municipal or other governmental authority. The obligation to pay Assessments shall be a separate and independent covenant on the part of each Owner.

(j) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and current Assessments.

(k) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Directors. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report and reasonable attorneys' fees. The Board of Directors may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(l) Appointment of Trustee. Declarant hereby conveys and warrants, pursuant to Sections 57-1-20 and 57-8a-302 of the Utah Code, to Cottonwood Title Insurance Agency, Inc., a Utah corporation, as trustee, with power of sale, all of the Lots within the Project and all of the Improvements to the Lots within the Project for the purpose of securing payment of all of the Assessments under the terms of this Declaration. Each Owner, by accepting a deed to the Lot, also hereby conveys and warrants to Cottonwood Title Agency, Inc., a Utah corporation, as trustee, with power of sale, each Lot acquired by such Owner and all of the Improvements thereon for the purpose of securing payment of all of the Assessments under the terms of this Declaration and such Owner's performance of such Owner's obligations set forth herein.

(m) Attorney in Fact. To the extent not prohibited by the Utah Community Association Act set forth in Section 57-8a-101 et seq. of the Utah Code, as amended, supplemented or replaced from time to time, each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any Person renting his Lot, if the Lot is rented and if the Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the renter, against rent due, for the amount of money paid to the Association.

3.26 Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify, defend and hold harmless each such officer and member of the Board of Directors from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the

Board of Directors, may be entitled. The Association shall, as a Common Areas Expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

3.27 Use of Limited Common Areas. Subject to the limitations contained in this Declaration, each Owner shall have the exclusive right to use and enjoy the Limited Common Areas allocated on the Plat to the Unit owned by such Owner. If a Limited Common Area is allocated to the exclusive use of more than one Unit, the Owner of each of the Units so designated shall have the equal right to use and enjoy such Limited Common Areas. An Owner shall not make modifications to any of the Limited Common Areas allocated to his Unit without the prior written approval of the Association's Board of Directors. The Board of Directors may designate additional Limited Common Areas as such are added or constructed after the recording of this Declaration.

3.28 Insurance. The Board of Directors shall at all times purchase, maintain in force, and pay the premium for insurance on all Buildings and all Common Areas within the Project satisfying the insurance requirements set forth in Sections 57-8a-401 through 57-8a-407 of the Utah Code, as such Sections may be amended, supplemented or replaced from time to time (the "Statutory Insurance Requirements") and to the extent not contrary to nor inconsistent with the Statutory Insurance Requirements, satisfying at least the following requirements:

(a) Fire and Extended Coverage. The Board of Directors shall have the authority to and shall obtain insurance for all Buildings, and also for all structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas, including the Limited Common Areas, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times (i) that are sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and (ii) that are not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

- (1) provide coverage for built-in or installed improvements, fixtures, and equipment that are part of a Unit, and shall provide for coverage of interior walls, windows and doors, and the frames, sashes, jambs and hardware therefor, even though these Improvements may be parts of Units;
- (2) provide that no assessment may be made under the policy against a first mortgage lender, or its insurer or guarantor, and, that any assessment under such policy made against others may not become a lien on a Lot and its appurtenant interests superior to an interest of the first mortgage lender;
- (3) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;
- (4) have a deductible amount in a reasonable amount approved by the Board of Directors;
- (5) be paid for by the Association through annual assessments of the Owners;
- (6) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners; and
- (7) be primary, even if an Owner has other insurance that covers the same loss.

(b) Liability Insurance. The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Common Areas, Lots, Units, public ways, and any other areas under the Association's supervision, and Dwellings, if any, owned by the Association, even if leased to others, insuring the Association, the directors of the Board, and the Owners and Occupants, with such limits as the Board may determine,



but not less than the greater of (i) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (ii) one million dollars, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, Lots and Buildings, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party.

(c) Fidelity Coverage. The Board shall obtain and maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (i) an amount equal to the Association's reserve funds plus three months' assessments on all Lots, and (ii) the maximum amount that will be in the custody of the Association or the Manager at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any Manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage not less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.

(d) Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

(e) Other Association Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine.

(f) Insurance Representative: Power of Attorney. There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Owners, as their interests may appear. This power is for the benefit of each and every Owner, the Association, and the Project, and runs with the land, and is coupled with an interest.

(g) Owners' Insurance. Any Owner may carry such insurance in addition to that provided by the Association pursuant hereto as that Owner may determine, subject to the provisions hereof, and provided that no Owner may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association which diminishes the Association's hazard insurance. In the event any Owner violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, an Owner may

obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Owner, provided that, if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants" improvements and betterments. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Owners and occupants.

(h) Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Section may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

(i) Worker's Compensation and Employer's Liability Insurance. The Board shall acquire workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(j) Directors and Officers Liability. The Association shall obtain and continue in effect insurance for the protection of the directors and officers of the Association from personal liability in the management of the Association's affairs.

3.29 Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

(a) Definitions. Each of the following terms shall have the meaning indicated.

(1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.

(4) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is twenty five percent (25%) or more of the estimated restored value of the Project.

(6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "Restored Value" shall mean the fair market value of the Project after restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

(9) “Available Funds” shall mean any proceeds of insurance, condemnation awards, payment in lieu of condemnation, and any uncommitted funds of the Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

(b) Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.

(c) Restoration of the Project. Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make restoration is consented to by a vote of at least 67% of the Owners collectively and is further consented to by Eligible Mortgagees holding Mortgages on 51% of the Lots which are then subject to Mortgages held by Eligible Mortgagees.

(d) Notice of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding restoration.

(e) Excess Insurance. If the insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the capital improvement reserve account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(f) Inadequate Insurance. In the event the cost of restoration exceeds Available Funds, all of the Lots shall be assessed equally for the deficiency.

(g) Sale of Project. Unless restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat shall terminate, and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners of all of the Lots equally. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(h) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their interests may appear.

(i) Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted, full power and authority to restore or to sell the Project and each Lot therein whenever restoration or sale, as the case may be, is undertaken as hereinabove provided.

(j) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for restoration or sale, as the case may be.

3.30 Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

(a) Ninety-Day Limit. All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained.

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

3.31 Mortgagee Protection. The lien or claim against a Lot for unpaid Assessments levied by the Board of Directors or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot from the lien of any Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any mortgage, current copies of the Declaration, Bylaws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board of Directors and the Association. The term "available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least thirty (30) days prior written notice to the other party thereto.

(e) Eligible Mortgagee Designation. Upon written request to the Board of Directors or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer or guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed for such Eligible Mortgagee or Eligible Insurer or guarantor, which delinquency remains uncured for a period of sixty (60) days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Directors or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

(f) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

3.32 Amendment.

(a) By Owners. Except as provided elsewhere in this Declaration, the affirmative vote of at least a Majority of the Owners shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

(b) By Declarant. Until the expiration of the Class B Control Period Declarant may unilaterally amend this Declaration or the Plat for any purpose that Declarant deems to be in the best interest of the Project.

3.33 Notice and Hearing. If an Owner or resident is charged with a material violation of the Project Documents, then:

(a) Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board of Directors shall be given to the Member at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board of Directors for the purpose of service of notice or to the address of the Member's Lot if no other address has been provided. Any address may be changed from time to time by a Member giving written notice to the Board of Directors.

(b) Costs and Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Board of Directors may vote to assess the adverse party, levy a fine, or impose other sanctions if the Board of Directors finds that a violation has occurred.

(c) Final Determination. After the hearing has taken place, the Board of Directors shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Board of Directors shall be final. However, nothing herein shall be construed to prevent the Board of Directors from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and an opportunity for a hearing.

3.34 Declarant's Sales Program. Notwithstanding anything to the contrary set forth in this Declaration, until the happening of the earlier to occur of the Events set forth in Section 3.16(b), neither the Owners, the Association, the Board of Directors nor any Member thereof shall interfere with the completion of improvements and sale of all remaining Lots and Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots and Units owned by Declarant:

(a) Sales Office and Model Lots. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots or Units at any one time. Such office and/or models may be one or more of the Lots or Units owned by Declarant, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

(b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners, flags or similar devices at any place or places on the Property.

(c) Common Areas Use. Declarant shall have the right to use the Common Areas of the Project to facilitate sales.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the earlier to occur of the Events, Declarant shall have the right to remove from the Project any signs, banners, flags or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

3.35 Limitation on Improvements by Association. Until the happening of the earlier to occur of the Events set forth in Section 3.16(b), neither the Association nor the Board of Directors shall, without the written consent of Declarant, make any Improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

3.36 Declarant's Rights Assignable. All of the rights of Declarant under this Document may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any mortgage covering all Lots, Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

3.37 Certain Provisions Applicable to Declarant. Notwithstanding any other provision herein contained, for so long as Declarant continues to own any of the Lots the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Declarant in accordance with the Declaration.

(a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made therein.

(b) No amendment may be made to the Declaration without the written consent of Declarant so long as Declarant retains the ownership of one (1) or more Lots; provided, however, that the obligation to acquire said written consent of Declarant shall cease on the happening of the earlier to occur of the Events.

3.38 Interpretation. To the extent Utah law is consistent with the Project Documents, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of the Project Documents are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context 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. The unenforceability or invalidity of any portion of the Project Documents shall not affect the validity or enforceability of the remainder hereof.

3.39 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants that run with the Land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of the Project Documents and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of the Project Documents.

3.40 Enforcement and Right to Recover Attorney's Assessments. The Association, or the Board of Directors may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, or the Board of Directors be required to take action to enforce the Project Documents, or to pursue any remedy provided

hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including reasonable attorneys' fees, which may arise or accrue.

3.41 Pre-Litigation Requirements. Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units unless and until all of the following requirements have been satisfied:

(a) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "**Litigation Budget**");

(b) A copy of the opinion letter described in subsection 3.42(a) above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action has been approved by Owners (excluding Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

(c) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection 3.42(a) above.

The purposes of these requirements include the following: (i) to minimize the risks to the Association of pursuing litigation involving claims that lack merit; (ii) to minimize the risks of becoming involved in litigation that is unlikely to be successful or, even if successful, will not result in meaningful recovery sufficient to justify the costs and expenses of litigation; and (iii) to avoid becoming involved in litigation without sufficient support from the members of the Association financially and otherwise.

If any claims or actions falling within the scope of this Section 3.42 are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section 3.42, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section 3.42 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any annual assessments, special assessments, or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section 3.42 apply to claims or actions that individual Owners may file relating solely to their own Units. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

3.42 Security. The Association may, but shall not be obligated to, maintain or support any systems, programs or activities within the Project designed to make the Project safer than it otherwise might be. Neither Declarant, the Association nor the Board of Directors shall in any way be considered insurers or guarantors of security within the Project, nor shall they 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 residents, as well as their Guests, where applicable, acknowledge by taking occupancy of a Unit or entering the Project that neither Declarant, the Association nor the Board of Directors represent or warrant that any security measures undertaken will insure their safety, and further acknowledge that neither Declarant, the Association nor the Board of Directors are insurers or guarantors of their safety, and they hereby expressly assume all risks for loss or damage to their person or property, and they further acknowledge that neither Declarant, the Association nor the Board of Directors have made any representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty of merchantability.

3.43 Agent for Service. The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the Office of the Utah Department of Commerce.

3.44 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the Office of the Recorder of Salt Lake County, Utah

#### **ARTICLE 4 ADDITIONAL LAND**

4.1 Right to Expand and State of Title to New Lots or Units. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project the Additional Land or a portion or portions thereof. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner or Mortgagee) and shall be limited only as specifically provided in this Declaration. Any specifically described portion of the Additional Land shall be deemed added to the Project at such time as an amendment to this Declaration containing the information required by Section 4.3 below have been recorded with respect to the portion of the Additional Land concerned. After the date such amendment to the Declaration is recorded, title to each Lot and Unit thereby created within the portion of the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to the Common Areas shall be vested in and held by Declarant, and none of the other Owners or the Association shall have any claim or title to or interest in such Lot and Unit or its appurtenant right and easement of use and enjoyment to the Common Areas.

4.2 Rights and Statements Respecting Additional Land. Declarant hereby furnishes the following information and statement respecting the Additional Land and Declarant's right and option concerning expansion of the Project by the addition thereto of the Additional Land or a portion or portions thereof.

(a) All of the Additional Land need not be added to the Project, if any of such Additional Land is added. Rather, a portion or portions of the Additional Land may be added to the Project at any time (within the limits herein prescribed) and from time to time.

(b) There are no limitations or requirements relative to the size, location or configuration of any given portion of the Additional Land which may be added to the Project or relative to the order in which particular portions of the Additional Land may be added to the Project. Future Improvements on the Additional Land added to the Project shall be subject to compliance with this Declaration.

4.3 Procedure for Expansion. Each amendment to this Declaration by which an addition to the Project of any portion of the Additional Land is accomplished shall be executed by Declarant, shall be in recordable form, must be Recorded in the Office of the County Recorder of Salt Lake County, Utah, on or before December 31, 2040, and shall contain the following information for that portion of the Additional Land which is being added:

(a) Data sufficient to identify this Declaration with respect to that portion of the Additional Land being added.

(b) The legal description of the portion of the Additional Land being added.

(c) A statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed, occupied, improved and developed subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.

(d) Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the date any amendment to this Declaration contemplated above is recorded, it shall automatically supplement this Declaration and any amendment to the Declarations previously recorded. At any point in time, this Declaration for the Project shall consist of this Declaration, as amended and expanded by all amendments to this Declaration theretofore recorded pursuant to the terms hereof.



4.4 Allocation of Assessments and Voting Rights Following Expansion. Each Lot or Unit created that is or shall become subject to this Declaration shall be apportioned a share of the Common Areas Expenses attributable to the Project, as provided in Section 3.20. Each Owner of a Lot or Unit that is or shall become subject to this Declaration shall be entitled to Membership in the Association and votes in the Association to the extent provided for in Section 3.16. Assessments and voting rights shall commence as of the date the Declarant records an amendment to this Declaration.

4.5 No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to the Project of any or all of the Additional Land; (ii) the creation or construction of any Unit or other Improvements; (iii) the carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Additional Land.

EXECUTED the day and year first above written.

**DECLARANT:**

D.R. HORTON, INC.  
a Delaware corporation

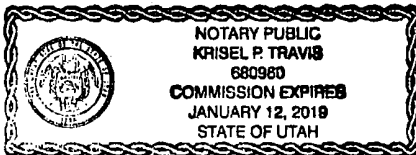
By: *BA Mann*  
Title: V.P. & PRESIDENT OF DIVISION

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 18 day of August, 2017, by Boyd A. Martini in his capacity as the Vice President of D.R. Horton, Inc., a Delaware corporation.

*Krisel P. Travis*  
NOTARY PUBLIC  
Residing at: Utah County

My Commission Expires:  
Jan. 12. 2019



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**

That certain real property located in Salt Lake County, Utah more particularly described as follows:

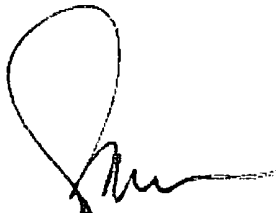
Beginning at a point being South 89°52'44" East 2,625.58 feet along the section line and North 1,319.98 feet from the Southwest Corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence North 00°10'06" West 156.81 feet;  
thence North 89°49'54" East 0.78 feet;  
thence North 02°20'09" West 265.13 feet;  
thence North 09°45'14" West 71.40 feet;  
thence North 25°20'41" West 79.69 feet;  
thence North 36°54'31" West 40.98 feet;  
thence Northeasterly 78.76 feet along the arc of a 1,533.00 foot radius curve to the left (center bears North 36°54'31" West and the chord bears North 51°37'11" East 78.75 feet with a central angle of 02°56'37");  
thence North 50°08'52" East 193.71 feet;  
thence South 39°50'55" East 891.37 feet;  
thence Southeasterly 47.39 feet along the arc of a 1,447.00 foot radius curve to the right (center bears South 50°08'52" West and the chord bears South 38°54'50" East 47.39 feet with a central angle of 01°52'35");  
thence South 53°04'25" West 205.33 feet; \*  
~~thence North 89°38'48" West 199.92 feet~~  
thence Southwesterly 78.72 feet along the arc of a 182.20 foot radius curve to the right (center bears North 38°29'28" West and the chord bears South 63°53'11" West 78.11 feet with a central angle of 24°45'17");  
thence North 37°35'30" West 121.58 feet;  
thence South 75°23'27" West 151.81 feet;  
thence South 85°00'27" West 122.34 feet;  
thence South 64°46'33" West 42.19 feet;  
thence North 89°53'03" West 48.71 feet to the point of beginning.

Contains 342,976 Square Feet or 7.874 Acres and 103 Units

July 26, 2017

DATE



PATRICK M. HARRIS

P.L.S. 286882



\* thence Northwesterly 22.95 feet along the arc of a 773.50 foot radius curve to the left (center bears South 51°50'52" West and the chord bears North 39°00'08" West 22.95 feet with a central angle of 01°42'00");  
thence North 39°51'08" West 80.38 feet;

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF ADDITIONAL LAND**

That certain real property located in Salt Lake County, Utah more particularly described as follows:

Beginning at a point being South 89°52'44" East 2,723.82 feet along the section line and North 740.43 feet from the Southwest Corner of Section 25, Township 3 South, Range 2 West, Salt Lake Base and Meridian; and running

thence North 04°53'04" West 581.77 feet;  
thence North 64°46'33" East 42.19 feet;  
thence North 85°00'27" East 122.34 feet;  
thence North 75°23'27" East 151.81 feet;  
thence South 37°35'30" East 121.58 feet;  
thence Northeasterly 78.72 feet along the arc of a 182.20 foot radius curve to the left (center bears North 13°44'10" West and the chord bears North 63°53'11" East 78.11 feet with a central angle of 24°45'17");  
thence South 39°51'08" East 80.38 feet;  
thence Southeasterly 22.95 feet along the arc of a 773.50 foot radius curve to the right (center bears South 50°08'52" West and the chord bears South 39°00'08" East 22.95 feet with a central angle of 01°42'00");  
thence North 53°04'25" East 205.33 feet to the point of beginning.

Contains 457,789 Square Feet or 10.509 Acres

**EXHIBIT C**

**BYLAWS OF ENCORE AT MILLER CROSSING OWNERS ASSOCIATION, INC.**

**A UTAH NONPROFIT CORPORATION**

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (the "Act"), the following are the Bylaws of the Association, which is obligated to operate, manage and regulate the Project. Unless otherwise defined below, the capitalized terms set forth in these Bylaws shall have the same meanings ascribed to them in the Declaration of Covenants, Conditions and Restrictions for Encore at Miller Crossing (the "Declaration").

**ARTICLE 1**

**PLAN OF LOT OWNERSHIP AND INCORPORATION**

1.1 **Submission.** These Bylaws are referred to and incorporated by reference in the Declaration. The Project is located in the City of Herriman, Salt Lake County, State of Utah. These Bylaws shall govern the administration of the Project and the Association.

1.2 **Organizational Form.** If the Association is incorporated, then these Bylaws shall also function as the bylaws of the corporation.

1.3 **Bylaws Applicability.** All present and future Owners, residents, occupants, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance to the Project shall be subject to and shall abide by these Bylaws.

**ARTICLE 2**

**ASSOCIATION**

2.1 **Composition.** The Association is a mandatory association consisting of all Owners of Lots or Units within Encore at Miller Crossing.

2.2 **Voting.** Each Lot shall have one (1) vote. Multiple Owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Organizational Owners may vote by means of an authorized agent.

2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors from time to time and stated in the notice of meeting.

2.4 **Annual Meeting.** Unless otherwise designated by the Board of Directors, the annual meeting of the Association shall be held at 7:00 p.m. on the first Tuesday of October of each year, or at such other suitable date as may be designated by the Board of Directors from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.

2.5 **Special Meetings.** The President of the Association, or a Majority of the members of the Board of Directors, may call a special meeting of the Association, or if the President of the Association is so directed by resolution of the Board of Directors or upon receipt of a petition signed and presented to the Secretary of the Board of Directors by at least twenty five percent (25%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.6 **Quorum.** The presence in person or by proxy of three (3) of the Owners entitled to cast a vote shall constitute a quorum for the transaction of business at any Owners meeting.

(a) Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than 48 hours and no later than 30 days, after the time set for the original meeting.

(b) Quorum at Rescheduled Meeting. Those Owners present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting, regardless of the number of Owners present at the rescheduled meeting.

(c) Percentage Approval Requirement. Notwithstanding the foregoing provisions of this section, however, in any case in which the Declaration requires the affirmative vote of a certain percentage of Owners for authorization or approval of a matter, their consent, in person, by proxy or in writing is required for authorization or approval of the item, regardless of the quorum requirements.

2.7 Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of: (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners. The notice shall be delivered at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

2.8 Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association, if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments and/or Additional Charges due.

2.9 Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies fully executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or Owners that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by the Owner or Owners as the case may be.

(a) Executive Session. The Board of Directors may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an executive session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

(b) Action Without a Formal Meeting. Any action to be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board of Directors.

### **ARTICLE 3** **BOARD OF DIRECTORS**

3.1 Powers and Duties. The affairs and business of the Association shall be managed by the Board of Directors in accordance with the Declaration. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things appropriate and necessary to operate, manage, maintain, control and regulate the Project. The Board of Directors shall have the power from time to time to adopt any rules and regulations deemed proper for the exercise of its management powers. The Board of Directors may delegate its authority to a manager or managers.

3.2 Composition of Board of Directors. The Board of Directors shall be composed of at least three (3) but no more than nine (9) members. Only individual Owners or officers or agents of organizational Owners shall be eligible for Board of Directors membership.

3.3 Election and Terms of Office of the Board of Directors. The election and terms of the Board of Directors shall be carried out in accordance with the provisions of the Declaration. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until the expiration of the Class B Control Period. At the first meeting after the expiration of the Class B Control Period, three members of the Board of Directors shall be elected by the Owners. Two members of the Board of Directors shall be elected for two year terms and one member of the Board of Directors shall be elected for a one year term. Thereafter, all members of the Board of Directors shall be elected for two year terms. At the expiration of the member's term, a successor shall be elected.

3.4 Initial Meeting. The first meeting of the members of the Board of Directors shall be immediately following the annual meeting of the Association, or at such other time and place designated by the Board of Directors.

3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held from time to time and at such time and place as shall be determined by a Majority of the members of the Board of Directors.

3.6 Special Meetings. Special meetings of the Board of Directors may be called by the President, Vice-President or a Majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board of Directors shall be valid for any and all purposes.

3.7 Waiver of Notice. Before or at any meeting of the Board of Directors, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Directors shall constitute a waiver of notice. If all the members are present at any meeting of the Board of Directors, no notice shall be required, and any business may be transacted at such meeting.

3.8 Board of Director's Quorum. At all meetings of the Board of Directors, a Majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the Majority of all the Board of Directors members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the Majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

3.9 Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the Majority of the remaining members of the Board of Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Directors; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

3.10 Removal of Board of Directors Member. A member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a Majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board of Directors member who fails on three successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board of Directors meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Board of Directors members shall elect a replacement to sit on the Board of Directors until the next meeting of the Association.

3.11 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a Minute Book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

3.12 Report of Board of Directors. The Board of Directors shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### **ARTICLE 4** **OFFICERS**

4.1 Designation. The principal officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board of Directors. Two (2) or more offices may be held by the same person, except that the President shall not hold any other office.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors and shall hold office at the pleasure of the Board of Directors. Any vacancy in an office shall be filled by the Board of Directors at a regular meeting or special meeting called for such purpose.

4.3 Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed, with or without cause, at any time by the affirmative vote of a majority of the Board of Directors, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purposes. Provided, however, if a member of the Board of Directors is removed as an officer, he shall continue to be a member of the Board of Directors.

4.4 President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board of Directors and shall be an ex-official member of all committees; he shall have general and active management of the business of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

4.5 Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors or the President shall prescribe. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint a member of the Board of Directors to do so on an interim basis.

4.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board of Directors including resolutions.

4.7 Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Manager, and with the assistance of the Manager shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such federally insured depositories as may be designated by the Board of Directors. He shall disburse funds as ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

**ARTICLE 5**  
**FISCAL YEAR**

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board of Directors should it be deemed advisable or in the best interests of the Association.

**ARTICLE 6**  
**AMENDMENT TO BYLAWS**

6.1 **Amendment.**

unless:

(a) **By the Board.** The Board may amend the Bylaws at any time to add, change, or delete a provision,

(i) this Section or the Articles of Incorporation or Bylaws:

(A) reserve the power exclusively to the Members in whole or part; or

(B) otherwise prohibit the Board from amending the Bylaws to add, change, or delete a provision; or

(ii) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(b) **By the Members.**

(i) Unless otherwise provided by the Bylaws, the Members may amend the Bylaws even though the Bylaws may also be amended by the Board.

(ii) Amendments to the Bylaws by Members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 of the Utah Code Annotated as if each reference in Sections 16-6a-1003 and 16-6a-1004, as amended or supplemented, to the Article of Incorporation was a reference to the Bylaws.

6.2 **Recording.** An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the Recorder of Salt Lake County, Utah.

**ARTICLE 7**  
**NOTICE**

7.1 **Fair and Reasonable Notice.** Notice given in accordance with the provisions of the Act shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association requiring written notice. If such written demand is made, then all notices, demands, bills, statements, or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage prepaid, a) if to an owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board of Directors or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

7.2 **Waiver of Notice.** Whenever any notice is required to be given by the Project Documents, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.



**ARTICLE 8**  
**COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

8.1 Compliance. These Bylaws are set forth in compliance with the requirements of the Declaration.

8.2 Conflict. These Bylaws are subordinate to and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control.

8.3 Severability. If any provision of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and, to this end, the provisions hereof are declared to be severable.

8.4 Waiver. No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

8.5 Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

8.6 Gender and Grammar. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

8.7 Liability of Board of Directors Members. Neither the members of the Board of Directors nor the officers of the Association shall be liable to any Owner, resident or person for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Board of Directors, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the Owners and residents, by virtue of their taking title to or possession of a Lot, agree to indemnify, defend and hold harmless the members of the Board of Directors and officers of the Association from and against any and all claims arising out of or caused by their voluntary participation as a member of the Board of Directors or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or willful neglect.

8.8 Attorneys' Fees, Assessments and Costs. If an Owner or resident, or their families, guests or invitees shall, at any time, violate the terms, covenants or conditions of these Bylaws, and the Board of Directors shall be required to take action to enforce the same, regardless of whether a lawsuit is commenced, the Owner or resident shall reimburse the Board of Directors for all costs and expenses, including but not limited to reasonable attorneys' fees. To secure payment of any unpaid costs or Assessments, the Board of Directors shall have the right and power to file a lien against the Lot owned or occupied, and may proceed to collect the same by judgment or foreclosure. In the event of a breach or anticipated breach by an Owner or resident, or by their family, guests or invitees, of any of the terms, covenants, or conditions of these Bylaws, the Board of Directors shall have, in addition to any other remedies provided by law equity, the right to injunctive relief and damages.

8.9 Persons Bound. All references herein to an Owner, resident, tenant, renter, lessee, guest, or invitee shall be deemed to include their respective executors, administrators, employees, representatives, successors and assigns, and the terms, covenants, and conditions herein contained shall apply to and be binding upon them.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

ENCORE AT MILLER CROSSING OWNERS ASSOCIATION,  
INC.,  
a Utah nonprofit corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_