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WASATCH COUNTY CORPORATION  
For: MILLER HARRISON

WHEN RECORDED RETURN TO:

Holmes Homes  
126 West Sege Lily Drive, Ste 250  
Sandy, Utah 84070

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS, AND RESERVATION OF EASEMENTS  
FOR WASATCH SPRINGS TOWNHOMES**

**A residential subdivision located in Wasatch County, Utah**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
WASATCH SPRINGS TOWNHOMES**

THIS IS A DECLARATION of Covenants, Conditions, and Restrictions and Reservation of Easements which establishes a planned development known as Wasatch Springs Townhomes.

RECITALS

A. Wasatch Springs Townhomes is located on certain real property in Wasatch County, Utah, which is more particularly described on Exhibit "A," attached hereto (the "**Property**").

B. Declarant is the owner of the Property. Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential community. Therefore, Declarant consents to subjecting the Property to the following covenants, conditions, restrictions, and easements, which provide for a governance structure and a system of standards and procedures for development, maintenance, and preservation of the Property as a residential community.

C. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse Assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.

D. This project is not a cooperative.

DECLARATION

Declarant hereby declares the Property described in Exhibit "A" shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Plat recorded concurrently herewith. This Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE 1  
DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

1.1 "**Additional Property**" means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Plat. When Additional Property is annexed to this Declaration, it shall become part of the Property.

1.2 **"Architectural Committee"** means the committee established pursuant to Article 6 of this Declaration.

1.3 **"Articles"** means and refers to the Articles of Incorporation of Wasatch Springs Townhomes Owners Association and any amendments thereto. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.4 **"Association"** means Wasatch Springs Townhomes Owners Association, a Utah non-profit corporation, its successors and assigns. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

1.5 **"Bylaws"** means and refers to the Bylaws of Wasatch Springs Townhomes Owners Association as amended from time to time. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings. A copy of the Bylaws is attached hereto as Exhibit "B".

1.6 **"Common Area"** means and refers to all real property, including the improvements thereto and facilities thereon, which the Association owns, leases, or otherwise holds possessory or use rights in, at any given time, for the common use and enjoyment of the Owners. Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.7 **"Common Expenses"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate in operation of the Association pursuant to the Governing Documents and the Act. Common Expenses shall not include any expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs unless a majority of the Class A Members approve.

1.8 **"Community Association Act" or "Act"** means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.9 **"Declarant"** means Holmes Wasatch Springs, LLC, a Utah limited liability company and its successors and assigns who are assigned Declarant's rights, in whole or in part, to act as Declarant for this project. There may be a division of Declarant's rights depending on which rights have been assigned as provided in any recorded assignment of Declarant's rights.

1.10 **"Declarant Control Period"** means the period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: 1) the date on which all Units have been conveyed to purchasers, including Units that may be included within the Additional Property, regardless of whether such Additional Property has been added hereto; or 2) the Declarant executes and records a written waiver of its right to control the Association. The Declarant Control Period. The Declarant Control Period as used and defined herein, is the "Period of Administrative Control" as defined in the Community Association Act. During the Declarant Control Period the Declarant shall retain the exclusive right to appoint Board Members or act as the Board, and to exercise all other Declarant rights set forth herein.

1.11 **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Wasatch County Recorder.

1.12 **"Directors", "Board of Directors", or "Board"** means the governing body of the Association. When any action is contemplated or taken by the Association, it shall be done through the Board of Directors.

1.13 **"Electronic Transmission" or "Electronically Transmitted"** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

1.14 **"Entire Membership"** means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B members; provided however, that the term Entire Membership shall exclude the Class B member when it relates to or calls for an assessment or charge to the Entire Membership.

1.15 **"Governing Documents"** means, collectively, this Declaration, the Articles, the Bylaws, the Plat, and any amendments or supplements to those documents, and includes any rules, regulations, and resolutions established pursuant to the authority of the Declaration, Articles, or Bylaws.

1.16 **"Limited Common Area"** means and refers to a portion of the Common Area which has been designated for the primary or exclusive use of a particular Owner or Owners. Generally, Limited Common Area, as a portion of Common Area, is owned by the Association but reserved for the use and enjoyment of the Owner or Owners to whose Unit the Limited Common Area is adjacent or appurtenant. Limited Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.17 **"Member"** means and is synonymous with the terms "Owner" and "Unit Owner" and is used herein and in the Bylaws and Articles as a means to identify the Unit Owners as Members of the Association.

1.18 **"Mortgage"** means a mortgage, a deed of trust, a deed to secure a debt, or any other form of security instrument affecting title to any Unit.

1.19 **"Mortgagee"** means and refers to a lender holding a first Mortgage or deed of trust.

1.20 **"Owner"** means the entity, person, or group of persons owning fee simple title to any Unit which is within the Property. Regardless of the number of parties participating in ownership of each Unit, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Unit ownership.

1.21 **"Plat"** means the subdivision Plat(s) recorded for Wasatch Springs Townhomes and any amendments or replacements thereof, or additions thereto, including subdivision plats for the Additional Property if annexed into the Property.

1.22 **"Property"** means that certain real property described in Exhibit A, and such annexations of Additional Property as may hereafter be subjected to this Declaration, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto

and shall at any point in time mean and refer to the entire Wasatch Springs Townhomes Planned Unit Development.

1.23 **"Short-term Rental"** means a Unit used by any person or entity for resort or other transient lodging uses where the term of occupancy, possession, or tenancy of the Unit is for less than six (6) months, for direct or indirect remuneration.

1.24 **"Unit"** means any one of the individual townhomes in the Property, and may be designated on the Plat as a lot or a Unit. The Unit includes all exterior walls, roofs and structural components within the lot boundaries, including any appurtenant garage. When the term "Unit" is used, it includes fee title to the real property lying directly beneath the single-family dwelling and within the lot boundary lines as depicted and described on the Plat. Where the context requires, such as provisions on lien rights and enforcement, the term Unit shall include any lot depicted on a Plat as part of a Unit.

1.25 **"Unit Owner"** means and is synonymous with the term **"Owner."**

## ARTICLE 2 PROPERTY RIGHTS

2.1. **Owner's Acknowledgment; Notice to Purchasers.** All Owners are given notice that the use of their Units and the Common Area and Limited Common Area is limited by the covenants, conditions, restrictions, easements, and other provisions in the Governing Documents, as they may be amended, expanded, or modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by said covenants, conditions, restrictions, easements, and other provisions in the Governing Documents. All purchasers of Units are on notice that the Association may have adopted changes to the Governing Documents that might differ from those that any purchaser might receive from, or that might have been disclosed by, the Owner from whom the purchaser is purchasing his or her Unit. Copies of current Governing Documents may be obtained from the Association.

### 2.2. Units.

(a) **Ownership.** Each Unit is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions, and easements in this Declaration and other provisions of the Governing Documents.

(b) **Description.** Each Unit consists generally of all structures on or within the boundary of the Owner's lot or Unit, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the platted lot is part of the Unit if it: (1) is part of and an integral part of the Unit's structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Unit structure); or (2) was constructed as part of the original construction of the Unit. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a platted lot, shall be part of the Unit. All exterior and interior doors, door jams, windows, window sills, window frames and all

components therein, skylights, garages, and garage doors, in or on the boundary of any Unit are part of the Unit.

(c) Additional Portions of the Unit. Covered decks, porches, and patios as depicted on the Plat shall be considered part of the Unit but the maintenance and repair of such facilities shall be subject to regulation by the Association.

(d) Activities within Units. No rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance, all as may be determined by the Board or any committee designated by the Board or this Declaration to make such determinations, in their sole discretion.

(e) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

### 2.3. Common Area.

(a) Ownership; Conveyance. Upon recording of the Plat the Common Area, including Limited Common Area which is a portion of the Common Area, is deemed conveyed by Declarant to the Association, free and clear of all financial encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record. The Association hereby accepts the conveyance of the Common Area. Common Area may also be conveyed by separate deed, by a supplemental declaration, or as depicted on an amended plat. Common areas shall include all areas within the Property that are not part of a Unit, or which is not owned or dedicated to a municipality including the Open Space parcels depicted on the Plat.

(b) Rights of Use and Rules and Regulations Concerning the Common Area. Every Owner has a right and easement of use and enjoyment in and to the Common Area which is appurtenant to and shall pass with the title to every Unit, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Area, including but not limited to rights of use, hours of use, delegation of use, and standards of conduct. Additional rights to establish rules and regulations governing the Common Area may be set forth and established elsewhere in the Governing Documents.

(c) Board Authority and Rights in the Common Area. The Board shall have the right, for and on behalf of the Association, to:

(i) enter into agreements or leases which provide for use of the Common Area by a similar association in consideration for use of the common areas and facilities of the other association or for cash consideration, or for use by third parties for cash consideration;

(ii) with the approval of the local government with jurisdiction over the Property and at least 67% of the Entire Membership, the Board may sell, exchange, alienate, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;

(iii) with the approval of at least 67% of the Entire Membership, the Board may mortgage, encumber, or hypothecate the Common Area.

(iv) grant easements for public utilities or other public purposes consistent with the intended use of the Common Area;

(v) take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure; and

(vi) take such other actions with respect to the Common Area which are authorized by or otherwise consistent with the Governing Documents.

Notwithstanding any right authorized in (i) through (vi) above, in the event Common Area is immediately adjacent to and for all practical purposes constitutes the front or side yard of a particular Unit, the Board shall not take the action described in (i) and (ii) above with respect to such designated Common Area.

(d) Declarant's Right of Use. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area, including any community buildings, without charge during the Declarant Control Period to aid in its marketing activities.

#### 2.4. Limited Common Area.

(a) Designation. The Declarant, during the Declarant Control Period, shall have the right to restrict portions of the Common Area, whether owned by Declarant or by the Association, in the nature of an easement for the primary or exclusive use of one or more particular Owners, by designating such portions of the Common Area as Limited Common Area. This designation may be made by: (i) indicating or designating on the Plat the Limited Common Area appertaining to one or more Units or (ii) designating, depicting, or describing such Limited Common Area in any supplemental declaration or any exhibit thereto. The Declarant reserves the right to re-designate Limited Common Area and the maintenance obligations thereof as it deems necessary from time to time.

(b) Rights of Use and Rules and Regulations Concerning the Limited Common Areas. Each Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas reserved and designated exclusively for the use of his or her Unit, subject to the rights of the Declarant and the Board as set forth in the Governing Documents. The right of exclusive use and occupancy does not include the right to repaint, remodel, erect structures upon or attach any apparatus to the Limited Common Area without the express written consent of the Board or the Architectural Committee, as the case may be.

(c) Board Authority and Rights in Limited Common Area. The Board's right of regulation in the Limited Common Area includes all rights it possesses with respect to the



Common Area which are not inconsistent with exclusive use to a particular Unit to which the Limited Common Area is assigned, and includes, but is not limited to, the right to regulate, repair, maintain, and control architectural and aesthetic appearances of the Limited Common Area.

2.5. Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association and other Governing Documents. The Board may, by rule, require Owners to forfeit their right of use in the Common Areas for so long as the Owner has delegated his right of use in the Common Areas to his or her tenant. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by a Member, shall create a debt to the Association. Such debts owed to the Association as a result of damage to the Common Area and facilities shall be a specific assessment charged to the Owner.

2.6. Declarant's Reasonable Rights to Develop. No rule or action by the Association shall unreasonably impede Declarant's right to develop the Property.

ARTICLE 3  
ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

3.1. Organization of Association. The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

3.2. Association Powers. The Association shall have, exercise and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- (d) The powers, duties, and obligations not reserved specifically to Lot Owners; and
- (e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by

any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

3.3. Board of Directors. The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Bylaws.

3.4. Membership. Every Owner of a Unit subject to the Declaration is a Member of the Association. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

3.5. Voting Rights. The Association has two classes of voting membership, Class A and Class B.

(a) Class A. Every Owner is a Class A Member with the exception of the Declarant, until Declarant's membership converts to Class A membership as provided for herein. Class A Members are entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, the group of such persons shall be a Member. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Unit concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) Class B. The Class B member is the Declarant or its assigns. Declarant's Class B membership status is not dependent or contingent upon Declarant's ownership of any Unit within the Property. The Class B member is entitled to five votes for each unit owned. Class B membership will cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier: (i) the expiration of 20 years from the date of recording of this Declaration; or (ii) by Declarant's express surrender of Class B membership status, which surrender must be in a written instrument signed by Declarant and recorded in the office of the Wasatch County Recorder. Unless the instrument specifies a different date, the date of surrender of Class B membership shall be the date of recording of the instrument.

3.6. Declarant's Voting Rights in Expansion Area. In the case of expansion (as provided under this Declaration), Declarant shall have Class B Membership and receive the equivalent of five votes per Unit constructed on any Additional Property annexed into the Property.

3.7. Change of Corporate Status. The Association has been set up and established as a nonprofit corporation under Utah law. However, as provided in the Community Association Act, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the

Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate of status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate; the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

3.8. Validity of Votes and Consents. Any consent or vote given by an Owner on any matter in the Governing Documents shall be valid for a period of 90 days, and shall be binding on any subsequent Owner who takes title of the Unit during that period of time.

3.9. Indemnification. The Board, and each member thereof, shall be indemnified by the Association against any loss, damage, claims or liability, including reasonable attorney fees, suffered or incurred by reason of such position, except to the extent such damage, claim, loss or liability is covered by any type of insurance; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of that person's own willful misconduct or gross negligence.

3.10. Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents and Utah law, adopt, amend and repeal rules and regulations governing, among other things, Short-term Rentals, use of any Limited Common Area and Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Property, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

3.11. Promulgation of Rules. The Board shall provide notice to all Owners as required by Section 57-8a-217 of the Act when considering a change to a rule or design criterion. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, shall be provided to each Owner within 15 days after the date of the Board meeting where the changes were made. Association rules and regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice of rule changes and deliver copies of rules by Electronic Transmission (e-mail) to Unit Owners. In addition to keeping the Board informed as to their current mailing address, Unit Owners are required to maintain a current e-mail address with the Board for such purpose. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant shall be exempt from the rulemaking procedures set forth in the Act pursuant to Utah Code Section 57-8a-217(6).

3.12. Management Agreement; Property Manager. The Board may engage for the Association the services of a property manager to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Act, and those services to which the Act otherwise authorizes a manager to perform. Any contract or agreement for services entered into by the Board for and on behalf of the Association and the property manager shall not exceed a term of two years. Fees, costs, and other charges of the property manager shall be Common Expenses. The property manager may also provide services to individual Owners, such as leasing individual Units as may be determined between the property manager and the Owner; *provided however*, that services performed for

individual Owners which are not performed for all the Association shall not be Common Expenses but shall be charged to such Owners as the Owners and the property manager may determine. Nothing in this Declaration prohibits the Association from contracting for any service with any person or entity affiliated with, or in common ownership with, Declarant, but any such contract must be for prices and terms that are competitive in the local market and in no case, shall the contract term exceed one year.

3.13. Bulk Service Agreements. The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

#### ARTICLE 4 FINANCES AND ASSESSMENTS

4.1. Assessments; Authority. The Association is hereby authorized to levy and collect assessments against the Owners as provided for herein. The following are the types of assessments that may be levied and collected by the Association, which are more particularly described below: (1) annual assessments or charges; (2) special assessments; (3) specific assessments; (4) emergency assessments; (5) any other amount of assessment levied or charged by the Board pursuant to this Declaration; and (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

4.2. Creation of Lien and Personal Obligation of Assessments. Excepting Declarant, each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges, however denominated, which are authorized in the Governing Documents. All such amounts shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment or amount is charged, which lien shall arise when the Owner fails or refuses to pay an assessment when due. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board, or Declarant to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

4.3. Purpose of Assessments. The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area and Limited Common Area; the payment of the cost of repairing, replacing, and maintaining any roadways; payment of fees for recreational facilities and amenities that the Board contracts for on behalf of the Owners; the payment of administrative expenses of the Association; the payment of insurance deductible amounts to the extent not otherwise recoverable from a third party; the establishment of capital and operational reserve accounts; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Board shall determine to be necessary to meet the primary purposes of the

Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including (without limitation) maintenance, management, and utility charges.

4.4. Initial Annual Assessments. The Declarant shall establish the amount of the annual assessments during the Declarant Control Period. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 4.5.

4.5. Annual Assessments; Budgeting.

(a) Adoption of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that fiscal year, for the purpose of calculating and establishing the annual assessments for that fiscal year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities from a previous assessment period; the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common Area as required by section 57-8a-211 of the Community Association Act.

(b) Notice of Budget and Assessment. The Board shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved in writing by Members representing at least 51% of all eligible votes in the Association. Any such petition must be presented to the Board within 10 days after notice of the budget and assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Board is thereafter authorized to levy the assessment as provided for herein. During the Declarant Control Period, the Owners may not disapprove any budget.

(c) Failure or Delay in Adopting Budget. The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses and in the event of such failure or delay, all Owners shall continue to pay assessments on the same basis as during the last year for which an assessment was made until notified of the amount of the new annual assessment which is due on the first day of the next payment period which begins more than thirty days after such new annual or adjusted budget is adopted and the Owners receive notice as provided herein.

(d) Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment no greater than five percent more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon a 30 day notice.

(e) Adjustment of Budget and Assessment. The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in Section 4.5(b), *provided, however*, that such an adjustment is exempt from the requirements of Section 4.5(b) if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than 3.25%.

4.6. Special Assessments. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area or Limited Common Area and any structures, fixtures and personal property related thereto, or to purchase, acquire, or otherwise add additional Common Area. Any such special assessment may be levied against the Entire Membership (excluding Declarant) if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment shall require the affirmative vote or written consent of a majority of the Entire Membership, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.7. Specific Assessments. The Association shall have the power to levy specific assessments against a particular Unit to cover costs incurred in bringing any Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests. The Board shall give an Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific assessment under this subsection.

4.8. Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility, maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds: (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

4.9. Uniform Rate of Assessment. Unless otherwise provided for in this Declaration or elsewhere in the Governing Documents, assessments must be fixed at a uniform rate for all Units, except

for specific assessments pursuant to section 4.7 above. No assessments shall accrue against Units owned by Declarant during the Declarant Control Period.

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

4.11. Declarant's Option to Fund Budget Deficits. During the Declarant Control Period, Declarant may, but is not obligated to, fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits. To the extent not prohibited by law, the Declarant may be reimbursed for funding any budget deficit.

4.12. Payment; Due Dates.

(a) The assessments and charges provided for herein shall commence to accrue against a Unit upon the earlier of: (1) conveyance of a Unit to a bona fide purchaser other than a developer or builder who takes or owns title to the Unit for the purpose of development, construction, and sale of such Unit; or (2) on the last day of the month following the issuance of a certificate of occupancy corresponding to a Unit, adjusting the amount of such assessment according to the number of months remaining in the fiscal year. But the foregoing assessments shall not begin to accrue against any Unit that is owned by the developer or builder and is actively used as a fully furnished model home for marketing purposes and continuously unoccupied and regularly open to the public for marketing purposes

(b) Due dates shall be established by resolution of the Board. Installments of assessments may be levied and collected on a monthly, quarterly, semi-annual, or annual basis, as determined by resolution of the Board.

(c) The Board may require advance payment of assessments at closing of the transfer of title to a Unit.

(d) Payment of assessments shall be applied first to any accrued interest, then to any accrued costs, charges, and fees, and then to the principal amount of the assessment. No Owner shall have the right to direct the Association or its agents or employees to apply payments in any other manner or method and any such attempt to do so will not be recognized.

4.13. Reinvestment Fee. The Board shall have the right to establish (but shall not be required to establish) a Reinvestment Fee in accordance with this Section and Utah Code § 57-1-46. If established, the following terms and conditions shall govern Reinvestment Fees: Upon the sale and transfer of record title to any Unit, the transferee, other than Declarant, shall pay a reinvestment fee to the Association in an amount set by resolution of the Association Board, which may be a flat rate from year to year. This amount shall be in addition to, not in lieu of, the annual assessment, and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association to be used for one or more authorized purposes or expenses as set forth in Utah Code § 57-1-46. As required by Utah Code § 57-1-46, the Association shall record a supplemental notice, separate from this Declaration, which gives written notice of the existence of the fee

covenant. The Reinvestment Fee shall be treated as a Specific Assessment for collection purposes. All transfers of Units from Declarant to a Declarant related entity shall be exempt from any Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such transferee is a related entity and if the Reinvestment Fee shall apply.

4.14. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within 10 days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of 18% per annum until paid. In addition, the Board may assess a late fee of \$25 for any unpaid balance after the 10-day grace period from the due date. The amount of the late fee and interest set forth above may be altered by the Board through the adoption of billing and collection procedures set forth in the Association's rules.

(a) Remedies. To enforce this Article, the Board may, in the name of the Association:

(i) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving Association's lien for the assessment;

(ii) after giving notice by certified mail as required by Section 57-8a-303 of the Community Association Act, foreclose the lien against the Unit in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, to the same extent as though the Association lien was a trust deed;

(iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;

(iv) terminate, in accordance with Section 57-8a-309 of the Community Association Act, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities;

(v) pay delinquent utilities on behalf of an Owner of Lot and, when appropriate, enter the lot and winterize the Unit, as provided in Section 57-8a-225 of the Community Association Act.

(vi) if the Owner is leasing or renting his Unit, the Board may, in accordance with Section 57-8a-310 of the Community Association Act, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vii) exercise any other rights authorized by the Community Association Act for non-payment of assessments and other charges;

(viii) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Unit remains unpaid;

(ix) accelerate all assessment installments that will become due within the subsequent 12 months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been



delinquent in paying any assessment or installment two or more times within a 12 month period; and/or

(x) Record a lien against the Unit on any installment payment more than 60 days past due with cost of such being added to the Owner's account.

(b) Attorney Fees and Costs. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) Power of Sale. A power of sale and all rights of foreclosure are hereby conferred upon the Association which it may exercise both judicially and non-judicially. Under the power of sale the Unit of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure. The Declarant hereby conveys and warrants pursuant to Utah Code Sections 57-1-20 and 57-8a-302 to Meridian Title Company or other qualified trustee which is named in any supplemental recording with power of sale, the Units and Units and all improvements to the Units and Units for the purpose of securing payments of assessments under the terms of this Declaration.

4.15. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all Common Area; (c) all Units or other real property owned by Declarant; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

4.16. Certificate Regarding Payment. Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Unit, the Association shall issue a certificate stating whether or not all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Unit a reasonable fee as permitted in the Act.

4.17. Association Responsibility After Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Unit governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Unit if the Association takes title to a Unit related to a failure to pay Assessments.

4.18. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to: (1) a lien or encumbrance recorded before the Declaration is recorded; (2) a first or second security interest secured by a Mortgage or trust deed that is recorded prior to any notice of lien filed by or on behalf of the Association; and (3) a lien for real estate taxes or other governmental assessments or charges against the Unit.

4.19. Termination of Lien. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve an Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

4.20. Homestead Waiver. Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

4.21. Account Payoff Fees. The Association may charge a fee for providing Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.

4.22. Books, Records, and Audit.

(a) The Association shall maintain current copies of the Governing Documents and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection pursuant to Section 57-8a-227 of the Community Association Act, by Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. An Owner or holder, insurer, or guarantor of a first Mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

(b) The Association shall prepare a roster of Owners in the Property and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

(c) The Association shall, upon written request, and for a reasonable charge not to exceed the amounts provided in the Act, furnish a written statement signed by an officer of the Association setting forth whether the assessment on a specified Unit has been paid. Such written statement, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

ARTICLE 5  
INSURANCE

**NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or occupants of the Units.**

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

5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available, unless this Declaration is terminated and the Association dissolved, the repair would be illegal or at least 75% of the allocated voting interests vote not to rebuild. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Owner. The Association will maintain blanket casualty and fire insurance on the Units and shall repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the Property covered by insurance written in the name of the Association, the Board is empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

5.3. Property Insurance.

(a) The Association shall maintain a blanket policy of property insurance covering the entire Property, including the Common Area and all buildings including all Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

(1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

(2) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(3) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(4) The blanket policy shall include either of the following endorsements to

assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(1) The Association's policy provides primary insurance coverage, and:

- i) the Owner is responsible for the Association's policy deductible; and
- ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

(2) An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit ("Living Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("Living Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and

(3) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

(c) Claims Under the Deductible. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

(d) Deductible Notice. The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association

fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

(e) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

5.4. Liability Insurance. The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$2,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.5. Fidelity Insurance. The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Board shall seek a policy which shall: (1) name the Association as obligee or beneficiary; (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time; and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

5.6. Annual Review of Policies. The Board shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed, and to ensure that insurance coverage complies with currently existing legal requirements. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article 5 without the necessity of amending this Declaration.

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

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

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

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

5.11. Applicable Law. This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by

law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 6  
ARCHITECTURAL CONTROLS AND BUILDING STANDARDS

6.1. Establishment of Architectural Committee. An Architectural Committee is hereby established to perform the functions set forth in this Declaration. The Architectural Committee has sole and exclusive authority with respect to all approvals and decisions required under this Article.

6.2. Representatives on Committees. The Architectural Committee shall be composed of a minimum of three persons appointed by the Board. If the Board does not establish or appoint the Architectural Committee, the Board itself shall carry out the functions and responsibilities of the Architectural Committee. Notwithstanding the above, during the Declarant Control Period, the Declarant shall be entitled to carry out the functions and responsibilities of the Architectural Committee or may otherwise appoint all members of the Architectural Committee.

6.3. Compensation and Expense Reimbursement. To the extent and in the amounts authorized and approved by the Board, the members of the Architectural Committee may receive compensation for services rendered. Members of the Architectural Committee shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Committee function or duty. Professional consultants retained by the Architectural Committee may be paid such compensation as the Architectural Committee determines.

6.4. Architectural Guidelines; Amendment and Enforcement; Adoption of Rules. The Architectural Committee shall have the right to approve, adopt and amend the Architectural Guidelines; provided, however, that such action shall be fair and reasonable, shall be consistent with the provisions of the Governing Documents. The authority granted herein to the Architectural Committee to approve, adopt, amend and administer the various Architectural Guidelines and the enforcement powers granted for the Architectural Committee, are given for the purpose of ensuring that the Property is developed and used according to the general descriptions and intent as evidenced by this Declaration and any applicable zoning ordinances. To the extent not inconsistent with this Declaration, the Architectural Committee may establish rules, regulations, and procedures to govern the submission, review, and approval of any plans submitted to it for review ("**Committee Rules**"). Copies of the Architectural Guidelines and any Committee Rules adopted or amended shall be available for inspection at the office of the Association during reasonable business hours. The Declarant may, in its discretion, grant to any developer or builder an expedited Architectural Committee review process.

6.5. Architectural Approval Required. No structure, building, fence, wall, alternative energy panels, or thing shall be placed, erected, or installed upon the Property and no improvements or other work (including staking, clearing, excavation, grading and other site work, paving, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the Architectural Committee in accordance with this Article, the applicable Architectural Guidelines, and any rules and regulations adopted by the Architectural Committee pursuant to the authority of this Declaration. Architectural Committee approval shall be required regardless of whether the structure, building, fence, wall, or thing

to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

6.6. Discretion of Architectural Committee. Actions of an Architectural Committee authorized under this Declaration, including, without limitation, the approval or disapproval of any matters required to be submitted to such Architectural Committee, shall be based upon the Architectural Committee's good faith determination as to whether the application meets the criteria set forth in the applicable Architectural Guidelines, any Architectural Committee Rules, and any applicable zoning ordinances.

6.7. Response of Architectural Committee; Deemed Approval. The Architectural Committee shall give each applicant written notice of approval or disapproval (as determined by a majority vote of such Architectural Committee) of any request filed with the committee by such applicant, within 30 days. In any case in which a request is disapproved, the notice of disapproval (the "Disapproval Notice") issued by the Architectural Committee shall be in writing and shall state with specificity, to the extent possible, the basis upon which the Architectural Committee has concluded that the standards set forth in the applicable Architectural Guidelines or any applicable zoning ordinances have not been satisfied by such application, and provide guidance on what steps may be taken, if any, in order for the same to be approved. Failure by the Architectural Committee to deliver such Disapproval Notice within the applicable time period shall be deemed to evidence approval of such request, and shall waive the approval requirement in regard thereto.

6.8. Filing of Application. Notwithstanding anything to the contrary set forth elsewhere in this Declaration, no proposal or request shall be deemed filed with the Architectural Committee until all items required to be submitted in connection therewith under the applicable Architectural Guidelines or Committee Rules have been actually received by such Architectural Committee. The applicable Architectural Committee shall notify the applicant in writing of any items required to be submitted in connection with any such proposal or request which was not so submitted. Such notification shall be given as promptly as is reasonably possible.

6.9. Rights Following Disapproval. An Owner, upon receiving a Disapproval Notice regarding an application filed by it with the Architectural Committee, may exercise any and all available rights or remedies at law or equity in regard to such disapproval. In the event of any review of such a disapproval (whether in a court of law or pursuant to arbitration), it is agreed that the standard to be applied in such review shall be whether the standards set forth in the applicable Architectural Guidelines, the Committee Rules, and/or the applicable zoning ordinances were met or satisfied in all material respects by such application and whether such standards were applied by the applicable Architectural Committee in a manner consistent with its treatment of other applications (and whether the applicable Architectural Committee or any of its members acted arbitrarily, capriciously, or in bad faith in disapproving such application).

6.10. Committee's Certificate. Any approval of a submittal by an Architectural Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of the Architectural Committee shall be irrevocable and not subject to change by such Architectural Committee. Any such certificate may be conclusively relied upon by all parties, including, without limitation, any Owner, tenant or purchaser of any Unit or portion thereof, or of any interest therein; by any lender taking any Unit as security; and by any title insurance company. Any such certificate may be recorded in the Wasatch County records by the Architectural Committee. The absence of such a certificate, however, shall not constitute evidence of disapproval by the Architectural

Committee of any submittal made to the Architectural Committee (as in any case where approval is deemed to have been given by virtue of the failure of the applicable Architectural Committee to issue a Disapproval Notice within the required time). Construction is required to commence within twelve months of any Architectural Committee approval unless a longer time is expressly authorized by the Committee. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any improvement activities. Once construction is commenced, it shall be diligently pursued to completion.

6.11. Fees for Development Proposal Submissions. The Architectural Committee is authorized to charge a fee pursuant to a written fee schedule that it may adopt from time to time to review and respond to any proposal submitted to the Architectural Committee for approval. Fees charged by the Architectural Committee may include, but are not limited to, fees to review plans as well to review any amendments made to a prior submission. However, any fees charged to review the plans cannot exceed the actual cost of that review. In addition to fees for the review, the Architectural Committee may require payment of a damage deposit along with the application.

6.12. Enforcement Authority. The Architectural Committee is vested with authority to enforce the Architectural Guidelines and the Committee Rules it establishes, including, but not limited to, the authority to establish and levy fines and penalties, initiate legal proceedings to enforce the Architectural Guidelines and Committee Rules, and abate or enjoin any violation thereof, and take any other action authorized by this Declaration.

6.13. Abandonment of Architectural Plan. During the Declarant Control Period, neither the Association nor the Architectural Committee have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of Common Area, and residential areas, including walls, fences, driveways, lawns and plantings, without the express written consent of Declarant. After the Declarant Control Period expires, no changes can be made to the architectural plan without the prior written approval of at least 67% of votes held by the Entire Membership.

6.14. Declarant Exempt. The Declarant shall not be required to comply with the provisions of this Article during the Declarant Control Period. The Declarant shall fulfill all functions of the Architectural Committee under this Declaration until the earlier of the expiration of the Declarant Control Period or the Declarant's express surrender of this right by a written and Recorded instrument.

6.15. Non-Liability; Indemnification. Rules, regulations, standards, guidelines, and procedures established by the Architectural Committee are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any person or entity. The Declarant, the Architectural Committee, and the Association shall not bear any responsibility for ensuring the structural or mechanical integrity or soundness of approved construction or modifications, nor for ensuring compliance with this Declaration, and any building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Declarant, the Architectural Committee, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or



featured the contractor as a builder within Property; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit.

6.16. Variances. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the Committee (or Board if acting as the Committee). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

## ARTICLE 7 PARTY WALLS AND SHARED ROOFS

7.1. General Rules of Law to Apply. Each wall, including any floor, ceiling, or roof that is built as a part of the original construction upon the Property which serves and/or separates any two adjoining Units shall constitute a party wall and shared roof area. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2. Repair and Maintenance. By acceptance of a deed to a Unit, each Owner hereby acknowledges, agrees, and understands that it is essential that the party wall and shared roof be maintained in good condition and repair to preserve the integrity of the Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the party wall or shared roof. With respect to the surface components of the party wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. If the need for maintenance or repair of the party wall or shared roof is caused through the willful or negligent act of any Owner or his/her occupant, the cost of such maintenance or repair shall be the sole and exclusive expense of such Owner. With respect to structural components of the party wall and shared roof, except as otherwise provided in the immediately preceding sentences, the Owners benefitted by the party wall and shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary.

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

7.4. Exposure to Elements. Notwithstanding any other provision of this Article, an Owner who by negligent or willful actions causes a party wall or shared roof to be exposed to the elements shall bear

the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

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

7.6. Association Maintenance Power. If there is a dispute over the responsibility for maintenance or repair of a party wall or shared roof, the Association may, but shall not be required to, intervene and determine each Owner's responsibility. The Association shall also have the powers set forth in Section 8.3 below to remedy any neglect in performing party wall or shared roof maintenance responsibilities.

7.7. Arbitration. In the event of any dispute arising concerning a party wall or shared roof under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within 10 days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request to do so, the Board shall select an arbitrator for the refusing party.

#### ARTICLE 8 MAINTENANCE

8.1. Association's Responsibility. The Association is responsible for maintenance of the Common Area, and any Limited Common Area that is not designated to be maintained by any particular Unit Owner. The cost of such maintenance shall be a Common Expense. This maintenance includes but is not limited to upkeep of all landscaping, upkeep and maintenance of all roadways, street lights, sidewalks, and parking areas, and upkeep and maintenance of all buildings and facilities which constitute part of the Common Area and Limited Common Area which is not designated to any particular Unit. The Association shall have no other responsibility for upkeep and maintenance of the Units, unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration. The Association shall maintain all landscaping on the Property, including any landscaping that may be located between the boundaries of an Owner's lot and the exterior walls of an Owner's Unit. The Board in its sole discretion shall determine the maintenance standard of the Common Areas.

8.2. Owner's Responsibility. An Owner shall be responsible for maintenance and repair of his or her Unit and any Limited Common Area designated for the exclusive use and occupancy of his or her Unit, in a manner consistent with all applicable provisions of the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association by the Governing Documents or written consent. Owners shall maintain, replace and repair the exteriors of their Units, which shall include all siding, roofing, gutters, soffit, fascia, garage doors, exterior doors, windows and all components necessary for the operation of these facilities. Owner's shall also be responsible for the maintenance, repair, and replacement of driveways, porches, decks, and all utility lines that solely service the Unit. If it becomes necessary to replace an exterior door or window, or to attach new materials on the exterior of the Unit, Owners shall be required to obtain approval from the Board and to replace such facility per the standards and specifications set forth in the rules or Design Guidelines. Unless such responsibility is expressly assumed by the Association, each Owner shall be responsible for the removal of snow on their lots, Units, and on the limited common area driveway and sidewalks appurtenant to their Units.

8.3 Owner Maintenance Neglect. If an Owner fails to perform maintenance which is the Owner's responsibility, the Board may, after 10 days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Unit and the Limited Common Area adjacent and appurtenant thereto without liability for trespass or damage. The Association shall charge the Owner the costs of such maintenance as a specific assessment. The Board shall have the sole authority and discretion to set maintenance standards for Units and to decide whether an Owner has failed to meet its maintenance obligations including, but not limited to, Owners' obligation to maintain party walls, roofs, exterior walls, driveways, and sidewalks.

8.4 Maintenance Caused by Owner Negligence. If the need for maintenance or repair of Common Areas, fences, exterior walls, roofs, or other area within the Project is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall become a specific assessment to which such Unit is subject.

8.5. Access at Reasonable Hours. For the sole purpose of performing the maintenance required or otherwise authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Unit or Limited Common Area at reasonable hours. This provision does not authorize entry into the interior of any Unit.

8.6. Other Services Provided by Association. To the extent determined to be necessary or desirable by the Board, the Association may provide additional services to the Owners as a Common Expense or specific assessment, as appropriate.

8.7. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Unit outside the walls of the Unit, and the Limited Common Areas adjacent and appurtenant thereto may be altered by rule of the Association.

#### ARTICLE 9 CONDEMNATION; PARTITION

9.1. Condemnation. Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board and, if it is within the Declarant Control Period, by the Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within 60 days after such taking the Declarant, during the Declarant Control Period, and Members representing at least 75% of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Section 5.2 regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such

restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

9.2. No Partition. Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not be construed to prohibit the Board from acquiring and disposing of title to real property which may or may not be subject to this Declaration. Owners may not partition any Unit.

ARTICLE 10  
USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS

The following use and other restrictions shall apply to the Property.

10.1. General Use Restrictions. All of the Property which is subject to this Declaration is hereby restricted to residential dwellings and buildings in connection therewith, including but not limited to community buildings on the Common Area, if any. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be removed from other locations to the Property. After the initial construction of a Unit, no subsequent building or structure dissimilar to that initial construction shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any portion of a lot at any time.

10.2. Use of Units as Short-term Rentals. Owners may rent their Units as Short-term Rentals provided they do so in compliance with the Governing Documents. Owners opting to rent their Units as Short-term rentals are required to use the services of a property management company that is (1) licensed in accordance with state law and local ordinances and (2) approved by the Association to manage Short-term Rentals within the Property. The Board of Directors shall establish the procedures, rules, and regulations for any Short-term Rentals, including check-in, access to Units and common amenities and facilities. The Owner shall at all times ensure the Unit is rented in compliance with the Governing Documents and any rules and regulations for the Property.

10.3. Timeshares Prohibited. No Owner shall offer or sell any interest in his Unit under a "timesharing" or "interval ownership" plan. This prohibition on timeshares does not include Short-term Rentals as provided for in this Declaration.

10.4. Motor Vehicles/Parking.

(a) No motor vehicle which is inoperable, unlicensed, or in a state of disrepair shall be allowed within the Property. Any motor vehicle in violation of this restriction is subject to removal by the Association, at the vehicle owner's expense. Any vehicle that at any time inhibits the flow of traffic on the streets in the Property is subject to removal by the Association, at the vehicle owner's expense. Upon demand, the owner of the vehicle shall pay any expense incurred by the Association in connection with the removal of that owner's vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Unit and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

(b) Garages must be used for the parking of motor vehicles, and may not be altered in such a way to prohibit parking for the number of vehicles for which it was built

(c) Recreational vehicles, boats, travel trailers and similar personal property shall not be parked within the Property unless there is a designated RV parking area, within an enclosed garage, or as permitted by rule of the Association. The Board may charge a fee for use of any RV parking area, which fee shall take into account the reasonable costs of maintenance and repair associated with the parking area. The fee charged for any such parking shall constitute a lien upon the Unit of the Owner using said parking and may be collected by the Association in the manner provided for collection of any assessment herein.

(d) No off road vehicles, including but not limited to, snowmobiles, 3 or 4 wheelers, and the like may be driven on the roads, streets, paths, Common Areas or Limited Commons Areas of the Property.

(e) The Association may establish additional rules and regulations regarding parking of motor vehicles.

10.5. Commercial Activity. No commercial activities of any kind whatever shall be conducted on any portion of the Property, including any in-home business as defined by local ordinances unless only normal residential activities would be observable outside of the Unit; the business activity does not involve persons coming on to the Property who do not reside in the project; the business activity does not involve the solicitation of occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time or to any on-site property manager under contract to perform services for the Association. The foregoing restriction shall not apply to resale activity of Units, subject to any sign restrictions or other applicable restrictions or standards.

10.6. Smoking. The Board is authorized to, by rule or resolution, prohibit tobacco smoking within or around the Common Areas and any other portion of the Property, including outside Units or on around Limited Common Areas (including Unit patios), when it is determined that the smoke or the smell from the smoking might filter or drift into other Units or interfere with the use and enjoyment of the Property by other Owners. In addition, the Board is authorized to enforce and otherwise bring an action for nuisance under the provisions of Title 78B, Chapter 6 of the Utah Code for and on behalf of any Owner against any other Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

10.7. Clothes Drying Facilities. No outside clotheslines or other drying apparatus shall be erected, placed, or maintained on any portion of the Property.

10.8. Nuisances. No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance.

10.9. Energy Conservation Equipment. Solar energy collector panels and attendant hardware or other energy conservation equipment shall be prohibited from being constructed or installed in the Property. Notwithstanding the foregoing, if the Board or the Architectural Committee elects to allow energy conservation equipment in the Property, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Unit or townhome buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Property without prior approval from the Architectural Committee as a variance. If an approved energy conservation equipment installation causes costs to the Association, then the Board may allocate these costs to the Owners who requested or benefit from the installation as the Board in its sole discretion determines. The Architectural Committee or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

10.10. Pets and Animals.

(a) Restrictions. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property, except that an Owner may keep in a Unit no more than two total of any of the following pets: dogs, cats, or other domesticated household pets. Permitted animals shall be strictly controlled, kept pursuant to all applicable laws and ordinances, shall be on a leash or inside a fence when outside the Owner's Unit and shall not be kept, bred, or maintained for any commercial purpose. The Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the any Unit. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. The Board may also establish procedural rules and regulations to implement its rules which should include provisions for notice and hearing, and the right to charge an impact fee which shall be in accordance with a schedule of fees adopted and published by the Board from time to time. Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

(b) Owner Responsibility. In the event the Board authorizes the keeping of pets and animals, Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Owner or person within the Property, or the safety of any guests, tenants, or invitees, particularly among children. Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make a claim against the Owner. Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, costs, and expenses incurred by the Association.

ARTICLE 11  
LEASES AND LEASING

11.1. Purpose and Intent of Lease Restrictions. The purpose of this Article is to further Declarant's intent to protect the value and desirability of the Property as a harmonious and attractive

community by regulating the leasing of Units within the Property. Any lease with a term of less than six months is deemed a Short-term Rental and is subject to the provisions set forth in Section 10.2.

11.2. Notification of Board. An Owner who enters into a lease or rental agreement must first notify the Board in writing. A copy of any such lease or rental agreement must be submitted to the Board within 15 days after execution. An Owner must comply with the foregoing notice provision for each tenant with which it enters into a lease or rental agreement and for each renewal of any existing lease or rental agreement.

11.3. Leasing Restrictions. Subject to the provisions of Utah Community Association Act, Utah Code § 57-8a-209, any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the other Governing Documents and that any failure by tenant to comply with the terms of such documents shall be a default under the lease. Units may be leased only in their entirety. There shall be no subleasing of Units or assignment of leases without prior written approval of the Board. Any lease or rental agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than six months; *provided however* that the Board shall have the power to allow leases for a term of less than six months upon a showing by the Owner that such a lease is required to avoid undue hardship, and may issue exemptions for certain Unit Owners as required by law.

11.4. Enforcement Against Owner. Notwithstanding any other rights of enforcement under this Declaration and other Governing Documents, or by applicable law, the Association may impose a fine, which shall constitute a lien upon such Owner's Unit, for each violation by Owner's tenant of this Declaration or other Governing Documents. Such fine shall be imposed after a 48 hour written notice is given to the Owner of such violation. After the 48 hour notice period provided herein, the Association may impose additional fines as permitted by the Act if such violation continues, which additional fines shall constitute a lien upon such Owner's Unit. The Association need not provide any additional notice prior to fining an Owner for a continuing violation, or if the Owner commits the same violation within one year of the initial 48 hour notice. There shall be added to any such fine reasonable attorney fees and costs incurred by the Association in enforcing this Article. Any fine levied pursuant to this Article shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

11.5. Cumulative Nature of Remedies. The remedies provided in this Article are cumulative and in addition to any remedies provided in this Declaration or at law or in equity.

## ARTICLE 12 EASEMENTS

These easements are in addition to those which may be set forth elsewhere in the Governing Documents.

12.1. Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common Area and Limited Common Area in the performance of their duties.

12.2. Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over

the Common Area and Limited Common Area, if any, and any Unit to perform the duties of maintenance and repair.

12.3. Owners' Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area, if any, which is designated by the Declarant for the exclusive use of an Owner's Unit. This easement is appurtenant to and passes with the title to every Unit, subject to the provisions of the Governing Documents and such rules and regulations adopted by the Board.

12.4. Easement for Declarant. The Declarant shall have a transferable easement over and on the Common Areas and facilities and utilities for the purpose of making improvements on the Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same.

12.5. Reservation of Easements by Declarant. The Declarant hereby reserves to itself during the Declarant Control Period the right to reserve easements over, beneath, and through the Property, including over the Common Area and Limited Common Area and related facilities, for the purpose of making improvements to and developing the Property or on any additional land submitted under the Declaration, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself during the Declarant Control Period the right to make any dedications and to reserve, grant, vacate, or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefor.

12.6. Party Wall Easement. Each Owner hereby acknowledges and agrees that a party wall may presently encroach upon or overlap the Owner's Unit. Each Owner hereby grants to the adjoining Owner of the other Unit that shares the Party Wall an easement over and upon its Unit for the purpose of maintaining the party wall. By accepting a deed to a Unit, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the party wall and the performance of each Owner's obligation to maintain and repair the townhome structure.

12.7. Easements of Record. The easements provided for in this Article shall in no way affect any other recorded easement.

12.8. Limitations on Easements. In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any Unit.

### ARTICLE 13

#### SPECIAL DEVELOPMENT RIGHTS

13.1. Intent and Purpose of Special Development Rights. In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands



of the marketplace before, during, and after development of the Property. This Declaration shall be liberally construed to advance Declarant's rights and interest in developing the Property.

13.2. Expansion of the Property. The Declarant shall have the right to expand the Property by unilaterally subjecting any Additional Property, in whole, in part, or in phases, to this Declaration during the Declarant Control Period.

(a) Expansion Procedure. The Declarant shall indicate its intent to have such Additional Property bound by this Declaration on the plat of such Additional Property and shall record a declaration of annexation or supplemental declaration including and subjecting such Additional Property to this Declaration. Thereafter, such Additional Property shall be considered as part of the Property in all respects, and lots therein shall constitute Units under this Declaration.

(b) Use of Expansion Property. Any Additional Property annexed hereto by the Declarant shall be exclusively for residential dwellings, architecturally compatible to the existing Units, similar to the Units already constructed, constructed out of similar materials, with similar Unit size. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association.

13.3. Withdrawal of Property. So long as it has the right to expand the Property, Declarant has the right to remove any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. The procedure for such withdrawal shall follow the procedure for expansion as provided in this Article.

13.4. No Obligation to Expand or Develop. Declarant has no obligation to annex any additional land to the Property or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

13.5. Municipal Zoning and Subdivision Approvals. The Declarant shall have the right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from Wasatch County, or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Property. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals, or approvals to amend the Plat or any plats. Further, except for any such approval that would (a) affect title to the Owner's Unit or (b) alter the boundaries of an Owner's Unit, each Owner hereby waives his or her right to object to any such approval sought by Declarant, and, to the extent the approval and consent of any Owner is required under state or local law each Owner agrees to sign the application or other documents required for such action.

13.6. Dedication of Common Area. Notwithstanding anything to the contrary in this Declaration, during the Declarant Control Period the Declarant shall have the unilateral right to convey, transfer, sell, assign, or otherwise dedicate all or part of any Common Area to Wasatch County or such other governmental entity or any third party as it deems necessary and appropriate. In the event the Common Area has already been conveyed to the Association, the Association shall approve and join in the dedication.

13.7. Declarant Business, Marketing, and Sales. Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Units during the Declarant Control Period, and upon such portion of the Property including lots or Common Area, if any, as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any Units which have not been conveyed to purchasers or any Common Area thereon, including any Common Area, community buildings, without charge during the Declarant Control Period to aid in its marketing activities.

13.8. Additional Declarant Rights. The Declarant shall have the following rights, which shall remain in effect for the entire Declarant Control Period or the maximum period allowed by law:

- (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land;
- (b) the right to convert any part or portion of the Property to a different regime of residential ownership;
- (c) the right to create or designate additional Common Area or Limited Common Area within the Property.
- (d) the exclusive right to act as the Board, or appoint or remove Board Members during the Declarant Control Period;
- (e) unless expressly and specifically bound by a provision of this Declaration or other governing documents, Declarant shall be exempt from the provisions of the Association's governing documents;
- (f) the right to set all assessments for the Association including annual, special, specific, and emergency assessments;
- (g) the right to set all fines, and fees for the Association including, but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association rules.
- (h) the exclusive right to amend the Declaration Bylaws, and rules of the Association without approval from any Members;
- (i) the right to make and adopt Association rules without being subject to the requirements of Utah Code § 57-8a-217.
- (j) the exclusive right to create, amend, change, or modify any Plat, subject only to the necessary approvals from the applicable government agency with jurisdiction over the Property;
- (k) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Declarant Control Period and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Declarant Control Period.

(l) the right to determine whether to hire professional management for the Association;

(m) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

13.9. Assignment of Declarant's Rights. Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned by the Declarant, in whole or in part. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the Wasatch County Recorder. The assignment may limit Declarant's rights to particular matters and reserve rights to the assigning Declarant, as set forth in the instrument of assignment.

13.10. Declarant Control Period. The Declarant Control Period shall begin on the date this Declaration is recorded with Wasatch County and shall continue in effect for as long as: 1) the Declarant is the record owner of any Unit, lot, parcel, or piece of land within the Property or within the Additional Property that may be annexed into the Property; or 2) until the Declarant elects, in writing to terminate the Declarant Control Period.

13.11. No Modification of Declarant Rights. Any Declarant Rights in this Declaration or other governing documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until 5 years have passed after the Declarant Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

#### ARTICLE 14 AMENDMENT

14.1. By Class A Members. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least 67% of the Entire Membership in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

14.2. By Declarant. Declarant has the right to unilaterally amend, modify, extend, or revoke this Declaration for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Unit; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Unit; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. However, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Unit unless the Owner shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

14.3. By the Board. The Board has the right, after the Declarant Control Period, to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

14.4. Validity. No amendment made during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Any procedural challenge to an amendment made by the Board must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

14.5. Effective Date. Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Wasatch County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the office of the Wasatch County Recorder a copy of such amendment signed and verified by the Declarant.

#### ARTICLE 15 ENFORCEMENT

15.1. Violations Deemed a Nuisance. Every violation of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration, any rule, regulation, or resolution, or by law or equity.

15.2. Legal Action Authorized. The Association, through the Board, the Declarant, and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Board shall have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

15.3. Fines and Penalties. The Board may levy a fine or penalty against any Owner when said Owner, or the Owner's guests, tenants or invitees fail to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Such fine or penalty shall be in an amount that is specifically provided for in a fine schedule adopted, and amended from time to time, by the Board. The Board may establish time frames and requirements for written notice, hearings, and cure periods (in accordance with Utah Code Ann § 57-8a-208 for Owners in violation prior to levying such fine or penalty, which notice shall be at least 48 hours). Any fine or penalty levied by the Board that is not paid within 30 days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) shall be recoverable by the Association in the same manner as an assessment

under Article 4, and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

15.4. Attorney Fees and Costs. Any fine or penalty levied against an Owner for any violation of this Declaration or other governing documents or rules of the Association shall include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

15.5. Nonexclusive Remedies. All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided elsewhere in the Governing Documents, the Community Association Act, or by other applicable laws and ordinances.

15.6. Non-Liability. The Board, officers, or Members of the Association shall not be liable to any Owner, tenant, member or other individual for a mistake in judgment, or for any negligence or non-feasance arising in connection with the performance or non-performance of duties under the Governing Documents or the Community Association Act.

15.7. Arbitration; Mediation. The Board may, by rule or resolution, establish procedures for mandatory mediation or arbitration to settle disputes between and among the Association and Owners. Any such rule or resolution shall operate prospectively only.

#### ARTICLE 16

#### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

##### 16.1. Alternative Dispute Resolution Without Litigation.

(a) Bound Parties. The Declarant; the Association; the Owners; the officers, directors, committee members, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this ARTICLE 16, (collectively, "**Bound Parties**"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Property and/or the Units that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.

(b) Claims. As used in this ARTICLE 16, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements on the Property, other than matters of aesthetic judgment to be determined by the Association or Architectural Committee under the Architectural Guidelines and other provisions of Article 6 hereof, which shall not be subject to review and shall not be subject to this chapter (or any similar provisions in any Sub-Declaration).

(c) Exclusion from Definition of Claims. The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article 6 of this Declaration (relating to the Architectural Guidelines);

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

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 16.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this ARTICLE 16;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Property; and

(vii) any suit or dispute involving a governmental entity as a party.

16.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy;

(iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have one year to cure or resolve the Claim; and

(v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Right to Cure. For any Claim arising from a dispute over the om the construction of improvements within the Property, the Claimant shall provide Respondent one year to rectify alter, or fix the claimed defect(s) in the improvements. The expiration of this one year cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 16.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

(c) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(d) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

(e) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the

terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

16.3. Initiation of Litigation by Association. The requirements of this Section are intended to be in addition to those requirements set forth in Section 57-8a-228 of the Act. After expiration of the Declarant Control Period the Association may not bring a legal action against a Declarant, a board of directors, or an employee, an independent contractor, or an agent of the Declarant, or the previous Board of Directors related to the Declarant Control Period unless:

- (a) the Right to Cure period set forth in Section 16.2(b) above has expired; and
- (b) the legal action is approved in advance at a meeting where owners of at least 51% of the allocated voting interests of the Owners in the Association are:
  - (i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 16.4(a) and (b) below.
- (c) the Association provides each Owner with the items described in Section 16.4(a) and (b), below;
- (d) the association establishes a trust account, described in Section 16.4(c) below; and
- (e) the Association first goes through the procedure described in Section 16.1 above, giving notice and an opportunity to resolve the dispute that is the basis of the proposed legal action.

No approval is required for action or proceedings:

- (a) initiated by the Declarant during the Declarant Control Period on behalf of the Association;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.



This Section 16.3 and Section 16.4 hereof shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Declarant Control Period. Any such amendment shall also be approved by a vote of 67% of the total votes of the Association.

16.4. Informed Vote. Before the Owners, as Members of the Association may vote to approve any claim of legal action, the Association shall first provide each Owner with:

- (a) A written notice stating:
  - (i) that the Association is contemplating legal action;
  - (ii) the percentage vote required for approval of the litigation;
  - (iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
  - (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and
- (b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:
  - (i) The likelihood that the legal action will succeed;
  - (ii) The likely amount in controversy in the legal action;
  - (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
  - (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective lot buyer's ability to obtain financing for a lot due to a pending legal action.

In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

(c) Before the Association commences any legal action as authorized above, the Association shall:

- (i) allocate an amount equal to 10% of the cost estimated to resolve the legal action not including attorney fees; and
- (ii) place the 10% allocated funds in a trust account that the Association may only use to pay the costs to resolve the legal action.

Sections 16.3 and 16.4 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$25,000.00. If any claims or actions falling within the scope of this Article 16 are

filed without satisfying all of the requirements set forth above, such claims or actions 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 Article 16, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs.

16.5 Owner Warranties. The Declarant may have provided certain warranties to the Owners related to a Unit purchased. The first Owner of a Unit to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties from the Declarant to any Owner, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

16.6 ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

16.7 Limitation on Amendment. The dispute resolution restrictions contained in this Article 16 shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Declarant Control Period.

#### ARTICLE 17 GENERAL PROVISIONS

17.1. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

17.2. Disclaimer of Liability. The Association shall not be liable for any failure of services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements, any Owner, or any other person resulting from electricity, water, snow, or ice which may leak or flow from or over any of the Property or from any pipe, drain, conduit, appliance, or equipment, or any secondary or consequential damages of any type. No diminution, offset, or abatement of any assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any governmental authority.

17.3. Dates and Times. In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a state or federal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

17.4. Interpretive Conflicts. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Plat; (2) Declaration; (3) the Articles; (4) the Bylaws; and (5) any rule, regulation, or resolution passed pursuant to

the authority of the foregoing documents. A conflict exists when two provisions covering the same subject matter have different conditions or requirements that cannot be reconciled.

17.5. Severability. All of the terms and provisions of this Declaration shall be construed together, but if any one of said terms and provisions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other terms and provisions, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each term and provision of this Declaration, irrespective of the invalidity or enforceability of any other term or provision.

17.6. Duration. The covenants, conditions, restrictions, and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns from the date this Declaration is recorded until this Declaration is amended or terminated according to the provision herein. By acquiring an interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by each and every provision of this Declaration.

17.7. Dissolution. Following the Declarant Control Period, the Association may be dissolved by the affirmative assent in writing from 90% of the Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article 4.

17.8. Notices; Electronic Notice. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when delivered by Electronic Transmission, or when deposited in U.S. Mail, to the last known address of the person who is entitled to receive it. In addition to keeping the Board informed as to their current mailing address, Unit Owners are required to maintain a current e-mail address with the Board for such purpose. In the absence of a specific instruction from the Member, the Member's email address currently on file with the Association will be used to provide notice to the Member. Notwithstanding these provisions, a Unit Owner may, by written demand, require the Association to provide notice to the Unit Owner by mail.

17.9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

17.10. Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

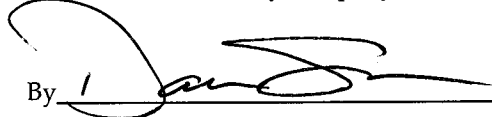
17.11. Topical Headings. The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.

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5<sup>th</sup> IN WITNESS WHEREOF, the undersigned, as the Declarant herein, has hereunto set its hand this day of May, 2017.

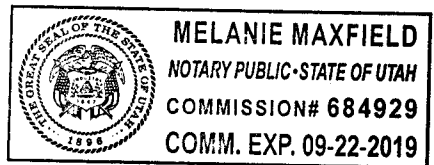
**DECLARANT**  
Holmes Wasatch Springs, LLC  
a Utah limited liability company

By   
Daron Smith, Manager

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

The foregoing instrument was acknowledged before me this 5 day of May, 2017, by Daron Smith as Manager of Holmes Wasatch Springs, LLC, a Utah limited liability company.

  
NOTARY PUBLIC



## EXHIBIT "A"

[Legal Description]

**All of the Wasatch Springs Phase 1 Plat (Amending Iroquois Phase 5 Lot 8 and Parcel "B"), according to the official plat thereof, on file in the office of the Wasatch County Recorder.**

More particularly described as:

All of Parcel B and Lot 8 of Iroquois Phase 5 Amended as recorded in the Wasatch County Recorder's Office as Entry No. 308976.

Beginning at a Northwesterly Corner of Parcel B, Iroquois Phase 5 Amended as recorded in the Wasatch County Recorder's Office as Entry No. 308976, said point given as North 89°50'20" West 389.02 feet along the Section Line (Basis of Bearing is S00°44'47"E 2643.70 feet between the Northwest Corner and the West Quarter Corner of Section 6) and South 00°09'40" West 792.00 feet from the West Quarter Corner of Section 6, Township 2 South, Range 5 East, Salt Lake Base and Meridian, said point also being on a 500.00 foot radius curve to the left, (radius bears North 43°45'06" West) and running thence along said Parcel B and Lot 8 of said Iroquois Phase 5 Amended the following (25) courses: 1) along the arc of said curve 233.55 feet through a central angle of 26°45'46"; 2) North 19°29'09" East 467.14 feet to a point on a 265.00 foot radius tangent curve to the right, (radius bears South 70°30'53" East); 3) along the arc of said curve 223.30 feet through a central angle of 48°16'47" to a point of reverse curvature with a 497.96 foot radius non tangent curve to the left, (radius bears South 56°06'29" East); 4) along the arc of said curve 144.67 feet through a central angle of 16°38'45"; 5) North 69°41'25" East 197.62 feet to a point on a 511.00 foot radius non tangent curve to the left, (radius bears North 64°55'11" East); 6) along the arc of said curve 328.20 feet through a central angle of 36°47'58"; 7) South 61°52'47" East 451.22 feet to a point on a 539.00 foot radius tangent curve to the right, (radius bears South 28°07'13" West); 8) along the arc of said curve 52.51 feet through a central angle of 05°34'55" to a point of compound curvature with a 16.00 foot radius non tangent curve to the right, (radius bears South 33°41'55" West); 9) along the arc of said curve 26.39 feet through a central angle of 94°30'08"; 10) South 38°11'53" West 30.00 feet to a point on a 225.00 foot radius tangent curve to the right, (radius bears North 51°48'06" West); 11) along the arc of said curve 81.32 feet through a central angle of 20°42'29"; 12) South 58°54'23" West 246.66 feet to a point on a 275.00 foot radius tangent curve to the left, (radius bears South 31°05'35" East); 13) along the arc of said curve 179.92 feet through a central angle of 37°29'10"; 14) South 21°25'17" West 70.04 feet to a point on a 225.00 foot radius tangent curve to the right, (radius bears North 68°34'45" West); 15) along the arc of said curve 137.83 feet through a central angle of 35°05'53"; 16) South 56°31'08" West 22.50 feet to a point on a 15.50 foot radius non tangent curve to the right, (radius bears North 33°29'10" West); 17) along the arc of said curve 24.35 feet through a central angle of 90°00'35"; 18) North 33°28'52" West 91.16 feet to a point on a 525.00 foot radius tangent curve to the left, (radius bears South 56°31'08" West); 19) along the arc of said curve 71.35 feet through a central angle of 07°47'12"; 20) North 41°16'03" West 268.08 feet to a point on a 275.00 foot radius tangent curve to the left, (radius bears South 48°43'56" West); 21) along the arc of said curve 102.84 feet through a central angle of 21°25'36" to a point of compound curvature with a 50.00 foot radius non tangent curve to the left, (radius bears South 27°20'56" West); 22) along the arc of said curve 79.95 feet through a central angle of 91°36'57"; 23) North 64°16'05" West 1.08 feet to a point on a 791.78 foot radius non tangent curve to the right, (radius bears North 64°16'05" West); 24) along the arc of said curve 287.05 feet through a central angle of 20°46'21"; 25) North 29°19'09" West 161.34 feet to the point of beginning.

Property contains 13.709 acres and 31 units.

**EXHIBIT "B"**

**Bylaws**  
**of**  
**WASATCH SPRINGS TOWNHOMES OWNERS ASSOCIATION**

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**Bylaws**  
**of**  
**Wasatch Springs Townhomes Owners Association**

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ARTICLE 1  
OFFICES AND REGISTERED AGENT

1.1. Principal Office. The principal office of Wasatch Springs Townhomes Owners Association, hereinafter referred to as the "*Association*", shall be located in Wasatch County, Utah, at such place as the Board shall designate. The location of the principal office may be changed by resolution of the Board of Directors.

1.2. Registered Office and Agent. The registered office and agent of the Association, as required by Section 501 of the Utah Revised Nonprofit Corporation Act, Utah Code Ann. §§ 16-6a-101 et seq. (1953, as amended) (hereinafter the "*Act*"), may be changed from time to time as provided in the Act.

ARTICLE 2  
DEFINITIONS

2.1 Except as otherwise provided herein, the definitions set forth in the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of Wasatch Springs Townhomes ("*Declaration*") as recorded in the records of Wasatch County, Utah, and any applicable amendments and supplements thereto or restatements thereof shall control in these Bylaws.

ARTICLE 3  
MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. The Association has two classes of membership, Class A and Class B, as more fully set forth in the Declaration.

3.2. Voting Rights. Voting rights shall be as set forth in the Declaration.

3.3. Evidence of Membership. No person, persons, entity or entities shall exercise the rights of membership until satisfactory proof has been furnished to the Secretary of the Association of qualification as a Member, or nominee of a Member, pursuant to the terms of the Articles of Incorporation and the Bylaws. Such proof may consist of a copy of a duly executed and acknowledged warranty deed or title insurance policy showing said person, persons, entity or entities, or the person nominating him or her qualified in accordance therewith, in which event said deed or title insurance policy shall be deemed conclusive evidence in the absence of a conflicting claim based upon a later deed or title insurance policy.

3.4. Suspension of Membership. The rights of membership are subject to the payment of assessments and other charges levied by the Association. If a Member fails to make payment of any assessment or other charge levied by the Association within thirty (30) days after the same shall become due and payable the voting rights of such Member may be suspended by the Board of Directors until such assessment or charge has been paid. Rights of a Member may also be suspended for violation of any of the use restrictions and for infraction of any rules and regulations established by the Board of Directors. Except for suspension of voting rights for failure to pay assessments or other charges, any suspension of the rights of membership shall be pursuant to notice and hearing. The Board shall establish a procedure for notice and hearing that is fair and reasonable taking into consideration all of the relevant facts and circumstances.

ARTICLE 4  
MEETINGS OF MEMBERS

4.1. Annual Meetings. The first annual meeting of the Association shall be held within one year after the expiration of the Declarant Control Period. Subsequent annual meetings shall be set by the Board of Directors. If the day of the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour of the first day following which is not a legal holiday. Annual meetings shall not be required during the Declarant Control Period, but the Declarant may hold Annual Meetings at its discretion.

4.2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to 33% of all of the votes of the Association. During the Declarant Control Period, special meetings may only be called by the Declarant.

4.3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by Electronic Transmission of a copy of such notice, at least 10 days, but no more than 60 days, before such meeting to each Member entitled to vote on the matter for which the meeting has called, addressed to the Member's email address (or mailing address if owner opts out of notice via email) last appearing on the books of the Association. Such notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4.4. Record Date. The Board may designate a record date, which shall not be more than 60 nor less than 10 days prior to the meeting, for the purpose of determining Owners entitled to notice and entitled to vote at the meeting.

4.5. Waiver of Notice. The notice provided for hereinabove is not indispensable and any meeting of the Members shall be deemed validly called for all purposes if all Members are represented thereat in person or by proxy, or if a quorum is present and waivers of notice of time, place and purpose of such meeting shall be duly executed in writing either before or after said meeting by those Members not so represented or not given such notice. The attendance of any Member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by that Member.

4.6. Quorum. Except as hereafter provided, and as otherwise provided in the Articles or Declaration, the presence at the meeting of Members entitled to cast, or of proxies entitled to cast, 20% of all the votes of each class of membership shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, at such adjourned meeting a quorum will be present with the participation of any number of owners present in person or by proxy. Where the Declaration requires a percentage vote of all Members, the quorum required for such vote be the same as the minimum percentage vote required to approve the action which is the subject of the vote; provide however, that in calculating any such percentage, Members whose voting rights have been suspended shall not be included.

4.7. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the vote being taken at meeting for which the proxy is valid. Every proxy shall be revocable and shall automatically cease when the membership of the Member voting by proxy has ceased. Electronically Transmitted proxies shall be valid.

4.8. Voting. If a quorum is present, the affirmative vote of the majority of the Members present at the meeting shall be the act of all the Members, unless the act of a greater number is expressly required by law, by the Declaration, by the Articles, or elsewhere in these Bylaws. Upon direction of the presiding officer, the vote upon any business at a meeting shall be by ballot, but otherwise any such vote need not be by ballot.

4.9. Action by Written Ballot in Lieu of Meeting. Any action authorized to be taken at any annual, regular, or special meeting may be taken by written ballot in lieu of such meeting if the ballot is delivered by or at the direction of the Secretary to each Member entitled to vote on the matter, which ballot shall (a) set forth in detail the proposed action; (b) provide an opportunity to vote for or against the proposed action; (c) state the date when such ballot must be returned in order to be counted, which date shall not be less than 30 days after delivery of the ballot; (d) state by what means it shall be returned and where; and (e) shall be accompanied by any written information, which has been approved by a majority of the Board of Directors, sufficient to permit each Member casting the ballot to reach an informed decision on the matter. Each ballot shall contain a means of identification for each Member entitled to vote, which shall identify such Member by Unit number. The number of votes cast by written ballot pursuant to this section shall constitute a quorum for action on the matter. Where any matter in the Governing Documents calls for the consent of Members but does not specify that such consent must be obtained at a meeting, then no meeting of the Members shall be required or is necessary to obtain such consents. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or person authorized to call the meeting, by Electronic Transmission of a copy of such notice, at least 10 days before such meeting to each Member entitled to vote on the matter for which the meeting was called, addressed to the Member's email address last appearing in the books of the Association. Such notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4.10. Acceptance of Votes. If the name signed on any consent, written ballot, vote, waiver, proxy appointment, or proxy appointment revocation, corresponds to the name of a Member, the Association, acting in good faith, may accept and give effect to the same as the act of the Member, notwithstanding that the signature may not be technically correct. For example, if a Unit is owned by a trust, thereby making the trust the Member, and the individual fails to sign as "trustee," it shall not invalidate the signature or vote of the Member.

4.11. Procedure; Parliamentary Rules. The order of business and all other matters of procedure at every meeting of Members shall be determined by the presiding officer. Except as may be modified by resolution of the Board of Directors, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

4.12. Place of Meetings. The Board of Directors may designate the place of any annual or special meeting of the Members by stating or fixing such place pursuant to resolution, provided, however, that such place must be within Wasatch County, State of Utah. If the Board of Directors makes no designation, annual and regular meetings shall be held at the Association's principal office.

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

ARTICLE 5  
BOARD OF DIRECTORS

5.1. Qualifications. A Director must be a natural person of at least 18 years of age or older and, except with respect to directors appointed by the Declarant, a Member of the Association. In the event that a Member is not a natural person, a natural person who holds an ownership interest in the entity which is the Member may serve as a member of the Board of Directors if duly appointed or elected as provided for herein.

5.2. Number. The affairs of this Association shall be managed by a Board of Directors consisting of at least three qualified persons. The number of Directors shall either be three or five Directors. The number of persons constituting the Board of Directors may be fixed from time to time within this range by resolution of the Board of Directors.

5.3. Term of Office; Staggered Terms. At the first annual meeting at which Members elect the Directors, the two persons obtaining the highest number of votes shall serve for two years and all others shall serve for one year. Thereafter, upon the expiration of the initial term of each Director, his or her successor shall be elected for two-year terms. Nothing shall prevent any person from serving as a Director for successive terms or more than one term if duly elected by the Members.

5.4. Removal. Any Director may be removed from the Board with or without cause, by a majority vote of the Members of the Association. Any vacancy in the Board occurring by reason of removal of a Director by the Owners may be filled by election of the Owners at the meeting at which such Director is removed. Any Director who shall be absent from three consecutive Board meetings shall be automatically removed from the Board unless otherwise determined by the Board. In the event of death, resignation or removal of a Director, a temporary successor shall be selected by the remaining Directors and shall serve for the unexpired term of his or her predecessor or until special election of a successor.

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

5.6. Declarant Control Period. Notwithstanding anything herein to the contrary, Directors serving during the Declarant Control Period shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant. There shall be no requirement for the election of Directors as forth in Article 6 until the termination of the Declarant Control Period unless the Declarant expressly provides otherwise in writing.

## ARTICLE 6

### NOMINATION AND ELECTION OF DIRECTORS

6.1. Nomination. Nominations for election to the Board may be made from the floor at the annual meeting of Members. In addition, the Board of Directors may establish a nominating committee to nominate qualified Members for election to the Board. If established, the Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors at least 60 days prior to each annual meeting of the Members, to serve through such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

6.2. Election; Voting. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation and these Bylaws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

6.3. Voting by Mail. Election of Directors may be handled by mail voting in the following manner, which may be, at the determination of the Board, the sole method of voting or used in conjunction with in-person voting. Ballots shall be sent to each Member by the Secretary not more than 60 days and not fewer than 30 days before the date set for election. Ballots shall instruct Members to seal their ballot in a ballot envelope and then place the sealed envelope into a larger envelope along with a signed paper, provided by the Secretary, identifying the Member whose vote is contained in the inner envelope. Ballots may be delivered to the Secretary in person or by mail; provided, however, that ballots must be received by the Secretary prior the election. Upon receiving the ballots, the corporate Secretary shall open the outer envelope, remove the identification paper, and record which Members have voted. The identification paper and outer envelope shall then be separated from the

ballot envelope. The ballot envelope shall be retained by the Secretary until opened on the election date.

ARTICLE 7  
MEETINGS OF DIRECTORS

7.1. Regular Meetings. The first meeting of the Board of Directors will follow the annual meeting of the Members at which a Board is first elected by the Members. Thereafter, regular meetings of the Board of Directors shall be held at such date, time and place as may be determined from time to time by resolution of the Board of Directors. Written notification of each regular Board meeting shall be provided to all Directors and all Owners who have requested notice via Electronic Transmission at least 48 hours prior to any regular meeting. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment in compliance with the provisions of Section 57-8a-226 of the Community Association Act.

7.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two Directors, after not less than two days' notice to each Director and Owners who have requested notice.

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

7.4. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the Articles or these Bylaws.

7.5. Open Meetings. Except as provided below, following the Declarant Control Period, Board meetings shall be open to Owners. However, the Board may hold a closed executive session during a Board meeting if the purpose of the closed executive session is to:

- (a) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal'



- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Declarant Control Period, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners. Notwithstanding the foregoing, the Board meetings required under Utah Code § 57-8a-226(6)(b) shall be open to all Owners.

7.6. Action Without a Meeting. Whenever the Directors are required or permitted to take any action by vote, such action may be taken without a meeting subject to the requirements of Utah Code § 16-6a-813 and any other applicable sections of the Act. Written consent for such action may be given by Electronic Transmission. Any action so approved shall have the same effect as though taken at a meeting of the Board.

7.7. Place of Meetings. Regular or special meetings of the Board of Directors during the Declarant Control Period may be held in or out of the State of Utah. Regular or special meetings of the Board of Directors who are elected by the Members shall be held in Wasatch County, Utah.

7.8. Presence at Meetings. The Board may allow any Director or Owner to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors and Owners participating in the meeting may hear each other during the meeting. A Director participating in a meeting through means permitted under this section shall be considered present in person at the meeting.

ARTICLE 8  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

8.1. Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association managed under the direction of, the Board of Directors, subject to any powers or limitations set forth in the Declaration, the Act, or the Articles. This includes the authority to prepare, execute, certify and record amendments to the Declaration on behalf of the Association, for any amendments made pursuant to the amendment procedures provided in the Declaration.

8.2. Duties. It shall be the duty of the Board of Directors to manage the affairs of the Association in accordance with the terms of the Act, the Articles, the Declaration, and these Bylaws, and other Governing Documents.

ARTICLE 9  
OFFICERS AND THEIR DUTIES

9.1. Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be Members of the Board of Directors, a Secretary and a Treasurer, who need not be Members of the Board of Directors nor of the Association, and such other officers as the Board may from time to time create by resolution.

9.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

9.3. Term. The Board shall elect the officers of the Association annually and each shall hold office for one year unless the officer shall sooner resign, or be removed, or otherwise be disqualified to serve.

9.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

9.5. Resignation and Removal. The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving notice to the Board, or any officer of the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise necessary to make it effective.

9.6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.

9.7. Multiple Offices. The same person may hold the offices of secretary and treasurer. No person shall simultaneously hold more than one of any of the other offices except in the case of special office created pursuant to Section 9.4.

9.8. Duties. The officers and their duties are as follows:

(a) *President.* The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) *Vice President.* The Vice President shall act in the place and stead of the President in the event of absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) *Secretary.* The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) *Treasurer.* The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association that have been duly authorized and approved by the Board; shall maintain a roster of all Members, assessments and payments; keep proper books of account; issue certificates of payment of assessments; shall notify the Board of Members who are delinquent in paying assessments; and shall prepare an annual budget and statement of income and expenditures to be delivered

and presented to the membership at its regular annual meeting; and shall deliver a copy of the budget and statement to the Members at said meeting.

9.9. Compensation. No salary or other compensation for services shall be paid to any officer of the Association for services rendered by such officer, but this shall not preclude an officer of the Association from performing any other service for the Association as an employee or on a contract basis and receiving compensation therefor.

ARTICLE 10  
COMMITTEES

10.1. Creation and Appointment. The Board may create such committees as it deems necessary and appropriate to perform such tasks as the Board may designate by resolution. The Board shall have the authority to appoint members of each committee it creates. Each committee shall operate in accordance with the terms of such resolution. A committee created by the Board may not (a) authorize distributions; (b) approve or propose to Members any action required to be approved by Members; (c) elect, appoint, or remove a director; (d) amend articles of incorporation; (e) adopt amend, or repeal bylaws; (f) approve a plan of conversion or a plan or merger not requiring Member approval; or (g) approve a sale, lease, exchange, of Association property.

10.2. Architectural Control Committee. There is established an Architectural Control Committee composed of three or more representatives who may be appointed by the Directors or by the Declarant as further set forth in the Declaration.

ARTICLE 11  
FINANCIAL MATTERS

11.1. Depositories. The Board of Directors shall select such depositories as it considers proper for the funds of the Association. All checks and drafts against such deposited funds shall be signed and countersigned by persons authorized by these Bylaws or by Board resolution to sign such checks and drafts.

11.2. Contracts; Management Contract. The Board of Directors may authorize any officer or officers, agent or agents, in addition to those specified in these Bylaws, to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or render it liable for any purpose or for any amount.

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

11.4. Annual Report. The Board of Directors shall present at the annual meeting of the Members the report of the Treasurer, giving the annual budget and a statement of income and expenses, and a report of other affairs of the Association during the preceding year. The Board of

Directors shall provide all Members, at the expense of the Association, copies of said annual budget and statement of income and expense.

ARTICLE 12  
BOOKS AND RECORDS

12.1. Association Records. The Association shall keep and maintain those records required by the Declaration, the Act, and these Bylaws. Such records shall be maintained in written form or in another form capable of conversion into written form within a reasonable time.

12.2. Inspection of Books and Records. The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member pursuant to the provisions of Section 57-8a-227 of the Community Association Act. The Articles and these Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE 13  
RULES AND REGULATIONS

13.1 The Board of Directors shall have the power to adopt and establish by resolution such rules and regulations as it may deem necessary for the maintenance, operation, management and control of the property, equipment, facilities and utility systems of the Association. The Board of Directors may alter from time to time such rules and regulations. The Members shall at all times obey such regulations and use their best efforts to see that they are faithfully observed by the persons with whom they reside, their family, guests, tenants, invitees and others over whom they may exercise control or supervision.

ARTICLE 14  
AMENDMENT

14.1. By the Board. These Bylaws may be altered, amended or repealed, in whole or in part, by a majority vote of the Board of Directors at any regular Board meeting or at a special Board meeting called for that purpose, unless 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, or unless otherwise prohibited by Utah Code Title 16, Chapter 6a or the Utah Community Association Act.

14.2. By the Class A Members. These Bylaws and any amendments thereto may be altered, amended or repealed, in whole or in part, by a majority vote of the Members at any annual meeting of the Members or at any special meeting of the Members called for that purpose.

14.3. By Declarant. Declarant has the right to unilaterally alter, amend or repeal these Bylaws, in whole or in part, for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant may unilaterally amend these Bylaws if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental

statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Unit; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Unit; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error.

14.4. Validity. No amendment made by the Board or the Class A Members during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant. Any procedural challenge to an amendment must be made within six months of the effective date of the amendment or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

14.5. Effective Date. Any amendment to these Bylaws shall be effective upon the date such amendment is duly adopted as provided for herein, and recorded in the office of the Wasatch County Recorder as required by Utah Code § 57-8a-216(3), which date the Secretary shall certify on the amendment and file with the Association's records. The Board shall provide notice to Members of any amendment to these Bylaws, however, the receipt of such notice shall not be a prerequisite to the validity of the amendment.

## ARTICLE 15 GENERAL PROVISIONS

15.1. Notices; Electronic Notice. Any notice required to be sent under the provisions of these Bylaws shall be deemed to have been properly sent when delivered by Electronic Transmission, or when deposited in the U.S. Mail to the last known address of the person who is entitled to receive it. In addition to keeping the Board informed as to their current mailing address, Unit Owners must maintain a current e-mail address with the Board for such purpose. In the absence of a specific instruction from the Member, the Member's current email address will be used to provide notice to the Member.

15.2. Dates and Times. In computing any period of time prescribed or allowed by these Bylaws, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday (either federal or Utah state), in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

15.3. Waivers. No provision contained in these Bylaws shall be deemed to have been waived by reason of any failure to enforce or follow it, irrespective of the number of violations which may occur.

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

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

15.6. Construction and Interpretation. These Bylaws shall be construed wherever possible as consistent with the Declaration and the Act. Conflicts between documents shall be resolved as set forth in the Declaration.

15.7. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

15.8. Titles and Headings. The titles and headings contained in these Bylaws are for convenience only and do not define, limit, or construe the contents of these Bylaws.

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

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*[signature page follows]*

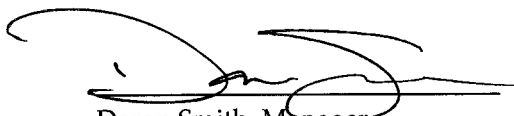
CERTIFICATION

IN WITNESS WHEREOF, the undersigned has executed and adopted these Bylaws on behalf of the Wasatch Springs Townhomes Owners Association, a Utah non-profit corporation, and the foregoing Bylaws constitute the Bylaws of said Association.

DATED this 5<sup>TH</sup> day of JUNE, 2017.

**DECLARANT**

Holmes Wasatch Springs, LLC  
A Utah limited liability company

  
Daron Smith, Manager

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 5 day of June, 2017, by Daron Smith, as Manager of Holmes Wasatch Springs, LLC, on behalf of the company.



  
\_\_\_\_\_  
Notary Public