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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SOUTH JORDAN HIGH POINTE P.U.D.**

(Bylaws attached as Exhibit "C")

**RECITALS**

A. This Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made on the date evidenced below by J and K Investments, LLC, a Utah corporation (the "Declarant").

B. This Declaration supersedes and replaces in its entirety the previously recorded Declaration ("Original Declaration") recorded as Entry No. 9719762, Book 9292, page 4521 et seq., Records Office Salt Lake City, Utah and any amendments thereto, namely that Amendment recorded as Entry No. 9936982, Book 9393, Page 2029-2051, Records Office, Salt Lake City, Utah.

C. Declarant is the owner of the real property described in Exhibit "A," which is attached hereto and is incorporated by reference.

D. By this Amended and Restated Declaration, Declarant imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the value of the Properties.

E. In furtherance of such plan, Declarant has caused or intends to cause the South Jordan High Pointe Homeowners Association, Inc., to be formed as a Utah nonprofit corporation to own, operate and maintain Common Areas, as defined below, and to administer and enforce the provisions of this Declaration, the Bylaws, Design Guidelines, and Use Restrictions and Rules promulgated pursuant to this Declaration.

F. Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to any pre-existing and following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration.

G. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

H. This document does not and is not intended to create a condominium within the meaning of the Utah Condominium Property Code, Title 57-8-1 et seq., however, the Property described herein, and the resulting Association, shall be subject to Utah's

Community Association Act, Title 57-8a-101 et seq., and shall be entitled to avail itself of all of the statutory provisions therein.

**ARTICLE I**  
**DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

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

1.2 "Articles of Incorporation" or "Articles": The Articles of Incorporation of The South Jordan High Pointe Homeowners Association, Inc., as filed with the Secretary of State of the State of Utah.

1.3 "Association": The South Jordan High Point Homeowners Association, Inc., a Utah nonprofit corporation, its successors or assigns.

1.4 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the Board of Directors under Utah corporate law.

1.5 "Builder": Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such entity's/person's business.

1.6 "Bylaws": The Bylaws of the South Jordan High Pointe Homeowners Association, Inc., attached as Exhibit "C" hereto, as they may be amended from time to time.

1.7 "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors.

1.8 "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners.

1.9 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for the initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" votes of the Association.

1.10 "Community Wide Standard": The standard of conduct, maintenance, design or other activity generally prevailing throughout the Properties. The Board of Directors and the Design Review Committee may more specifically determine such standard.

1.11 "Declarant": J and K Investments, LLC, a Utah corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant;

provided there shall be only one Declarant at any time.

1.12 "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX of this Declaration.

1.13 "General Assessment": Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.3.

1.14 "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common areas or property dedicated to the public.

In the case of a portion of the Properties intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such property shall be deemed to be a single Lot until such time as a subdivision plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Lot.

1.15 "Master Plan": Is the land use plan for the development of South Jordan High Pointe, prepared by Ward Engineering, as it may be amended from time to time, which plan includes the property described on Exhibit "A." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to the Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article VII.

1.16 "Member": A Person subject to membership in the Association pursuant to Section 3.2.

1.17 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.18 "Mortgagee": A beneficiary or holder of a Mortgage.

1.19 "Mortgagor": Any Person who gives a Mortgage.

1.20 "Owner": One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.21 "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.22 "Properties": The real property described on Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.23 **"Public Records"**: The public records of Salt Lake County, Utah.

1.24 **"Special Assessment"**: Assessments levied in accordance with Section 8.5.

1.25 **"Specific Assessment"**: Assessments levied in accordance with Section 8.6.

1.26 **"Supplemental Declaration"**: An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

## **ARTICLE II PROPERTY RIGHTS/SUSPENSION OF PRIVILEGES**

2.1 **Common Area**. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This terms and limitations of this Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board and the membership to adopt rules and regulations pursuant to Article X regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, and applicable Supplemental Declaration, the Bylaws, or rules of the Association after notice and a hearing pursuant to Section 4.3 of this Declaration and Article X of the Bylaws;

(e) The right of the Board to suspend voting privileges for any period of non-compliance with any provision of this Declaration, including the payment of assessments and/or fines. In the event that an Owner's voting rights are suspended, said Owner(s) shall not be entitled to run for the Board of Directors until such time as the voting privileges are reinstated.

(f) The right of the Association, acting through the Board, to mortgage, pledge; or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(g) Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

2.2 **No Partition**. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area, which is the subject of such partition action, has been removed from the

provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property, which may or may not be subject to this Declaration.

**2.3 Condemnation.** If any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B" by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice prior to disbursement of any award or proceeds. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, The Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(e) regarding funds for the repair of damage or destruction shall apply.

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

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**3.1 Function of Association.** The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines, The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and the laws of the State of Utah.

**3.2 Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Lot owned. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership subject to reasonable Board regulations and the restrictions on voting set forth in this Declaration and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

**3.3 Voting.** The Association shall have two classes of membership, Class "A" and Class "B".

(a) **Class "A":** Class "A" Members shall be all Owners except the Class "B" Member, if any Class "A" Members shall have one equal vote for each Lot in which they

hold the interest required for membership under Section 3.2 provided, there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such information, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B": The sole Class "B" Member shall be the Declarant. The Class "B" Member shall be entitled to three (3) votes for each Lot owned. The Class "B" membership shall cease and be converted to Class "A" membership upon the earlier of the following:

(i) When 75% of the maximum number of Lots to be developed are owned by parties other than the Declarant and any Builder, including Lots to be added pursuant to Article VII.

(ii) Fifteen (15) years from the anniversary date of closing of escrow for the first Lot after the first sale to an Owner;

(iii) When, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs first, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one vote for each Lot in which it holds the interest required for membership. Nothing herein, however, eliminates any special Declarant rights with respect to approving or disapproving Association action, including amendments as set forth hereafter.

In the event that Class "B" membership has not terminated when more than 50% of the maximum number of Lots to be developed, including those subject to Article VII herein, are sold to Owners, then the Association shall form a "Transitional Advisory Committee" which shall be comprised of at least three (3) Lot Owners who shall have the responsibility to attend Board meetings in order to become familiar with Association operations, though such Committee members have no vote in any such matters.

3.4 Board of Directors. The Board of Directors shall be established, and its members elected, as provided for in the attached Bylaws.

#### **ARTICLE IV** **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION/GENERAL** **ENFORCEMENT**

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, private streets, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration and the Bylaws, the cost of which shall be a Common Expense.

**4.2 Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B", personal property and leasehold and other property interest. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. The Declarant shall convey the initial Common Area to the Association prior to the conveyance of a Lot to any Person other than a Builder.

**4.3 Enforcement/Hearings for Fines** The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the Bylaws, or Association rules in accordance with procedures set forth in Article X of the Bylaws, including reasonable monetary fines and suspension of the right to vote. In addition, in accordance with Section 5.2 of this Declaration, the Association may exercise self-help to cure violations and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the association. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs incurred in such action. Notwithstanding any other provision of this Section, prior to collecting a fine, the Board shall provide notice of the violation and provide an informal hearing to the alleged offending Owner. After the hearing, if the Board determines that no legitimate circumstances warrant the removal of the fine, then formal collection efforts shall commence.

**4.4 Implied Rights: Board Authority.** The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the board without a vote of the membership.

**4.5 Indemnification.** The Association shall indemnify every officer, director, and committee member, including members of the committees established under Article IX, against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been a officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Utah Law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee

member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Salt Lake County, Utah or to any other local, state or federal governmental or quasi-governmental entity subject to such approval as may be required by Section 2.3.

4.7 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each person using the properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

## **ARTICLE V** **MAINTENANCE**

### **5.1 Association's Responsibility.**

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, domestic water system, a dry grassland management program for the purpose of controlling vegetation in those areas that cannot be irrigated by the domestic water system or water rights, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, including any roads, a fire protection system which is always readily available for use by the fire district, parking areas, sidewalks, paths and trails, situated upon the Common Area;

(ii) landscaping and signage within public rights-of-way or designated easements within the Properties; except to the extent that such responsibility is assigned to Owners under Section 5.2;

(iii) any ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein;

(iv) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

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



(b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill the responsibilities described in this Declaration. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owners(s) thereof.

**5.2 Owner's Responsibility.** Each Owner shall maintain his or her Lot in a neat and tidy condition consistent with the prevailing Community Wide Standard. All structures, parking areas, and other improvements comprising the Lot, and all land within public or private rights-of-way between such Owner's Lot and the paved roadway located in rights-of-ways adjacent to such Owner's Lot, in a manner consistent with the Community Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Lot. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**5.3 Standard of Performance.** Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property, which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

**5.4 Standing and Enforcement Authority of South Jordan City.** South Jordan City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance and snow removal within the Common Areas if the Association fails adequately to perform such.

In the event South Jordan City exercises this right, the City shall be entitled to recover any associated costs and attorney fees.

In addition, the Owners within the project, by virtue of purchasing a dwelling unit within this

development, gives South Jordan City the right but not the duty to form, under State statutes, a Special Services District (SSD) for the purpose of ongoing maintenance or a Special Improvement (SID) for the purpose of making needed improvements within the project. The City may take this action when either asked to take over improvements or maintenance tasks by the Home Owners, Association, or by an Owner.

The City Council may also take one or both of these actions when it determines the need based on a historical pattern of lack of care and maintenance. The Governing body of any such district formed, as stated in this paragraph, shall consist of the South Jordan City Mayor, City Council and the Home Owners Association President of the project. This Section shall not be amended or deleted without the approval of the City of South Jordan.

## **ARTICLE VI**

### **INSURANCE AND CASUALTY LOSSES**

#### **6.1 Association Insurance.**

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

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf, if generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage's or limits;

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

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Lots plus

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

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance, earthquake insurance and building ordinance coverage.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Salt Lake County, Utah area. All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association at the request of such Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductibility against such Owner(s) and their Lots pursuant to Section 8.6.

(c) All insurance coverage obtained by the Board shall:

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

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

(iii) Not be brought into contribution with insurance purchased by Owners, occupants or their Mortgagees individually;

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement, if the policy contains a co-insurance clause.

(d) In addition, the Board shall use reasonable efforts to secure insurance policies, which lists the Owners as additional insurers and provide;

(i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents and guests;

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

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

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

(v) A cross liability provision; and

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

(e) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of the Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

**6.2 Owners' Insurance.** By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community Wide Standard. The Owner shall pay all costs, which are not covered by insurance proceeds.

**ARTICLE VII**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

**7.1 Annexation Without Approval of Membership.** Until all property described on **Exhibit "B"** has been subjected to this Declaration or twenty years after the recording of this Declaration in the Public Records, whichever is earlier. Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in **Exhibit "B"**. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in **Exhibits "A"** or **"B"** and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed, Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in **Exhibit "B"** in any manner whatsoever,

**7.2 Annexation With Approval of Membership.** The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided herein.

**7.3 Withdrawal of Property.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Section 7.1 for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties and does not reduce the total number of Lots then subject to this Declaration by more than 5%. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

**7.4 Additional Covenants and Easements.** The Declarant may subject any portion of the Properties to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**7.5 Amendment.** This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in **Exhibits "A"** or **"B"**.

**ARTICLE VIII**

## ASSESSMENTS

**8.1 Creation of Assessments.** There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments to the Association.

All assessments, together with interest (at a rate not to exceed 18% or the highest rate allowed by Utah law, if less than 18%) as computed from the date the delinquency first occurs, a late charge equal to the greater of \$20.00 or 5% of the principal amount past due, costs, and reasonable attorneys fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments, which accrued prior to such acquisition of title.

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

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion.

Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year and shall be considered delinquent if not paid within the time specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The Board may further prescribe: (a) procedures for collecting General Assessments or installments thereof in advance from new Owners out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a history of being untimely in the payment of assessments if the circumstances so justify such procedures.

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

any other action it takes.

**8.2 Declarant's Obligation for Assessments.** During the Class "B" Control Period, Declarant may annually elect either to pay General and Special Assessments on any of its unsold Lots which are subject to assessment in the same manner as any other Owner, or to pay the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Such obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other Personnel for payment of Common Expenses.

**8.3 Computation of General Assessment.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared pursuant to Section 8.4.

General Assessments shall be levied equally on all Lots subject to assessment under Section 8.8, and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves.

In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Lots subject to assessment under Section 8.8 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant owns any property subject to this Declaration, the Declarant may, but shall not be obligated to reduce the General Assessment for any fiscal year by payment of a subsidy, which may be treated as either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists.

If the Board fails for any reason to determine the budget for any year, or the budget is disapproved, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4 Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget, which takes into account the number and nature of the Association's replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by General Assessments over the budget period.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed \$300.00 in any one fiscal year shall require the affirmative vote or written consent of Class "A" Members representing at least 51% of the total Class "A" votes, and the written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board, may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Specific Assessments. The Board shall have the power to levy a Specific Assessment against any Lot or Lots for monetary fines authorized by this Declaration or the Bylaws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Lots within the Properties, whether such expenses are incurred (a) upon request of the Owner of a Lot for specific items or services relating to the Lot, or (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests. The Association may also levy a Specific Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Lot Owner and an opportunity for a hearing in accordance with the Bylaws.

8.7 Transfer Fee Upon Sale By Declarant or Neighborhood Builder. Upon the sale of a Lot by Declarant or Neighborhood Builder to an Owner other than Declarant or Neighborhood Builder, the Owner shall be obligated to pay the Association a Transfer Fee of \$300.00. The amount of the Transfer Fee may be increased or decreased at the sole discretion of the Board upon duly adopted resolution. The Transfer Fee shall be collected from the Owner of each Lot at the Close of Escrow for the purchase of the Lot. The Transfer Fee provision shall not be considered as an advance payment of Assessments. Each Lot's Transfer Fee may be collected and then contributed to the Association by the Declarant or Neighborhood Builder. Until paid to the Association, the Transfer Fee due pursuant to this provision shall be considered an unpaid Common Assessment, with a lien on the Declarant's or Neighborhood Builder's unsold Lots or Condominiums.

8.7.A. Transfer Fee Upon Sale By Owner Other Than Declarant or Neighborhood Builder. Upon the sale of a Lot by an Owner other than the Declarant or a Neighborhood Builder, each new Owner shall be obligated to pay to the Association a Transfer Fee, as defined in Section 8.7 above. The Transfer Fee shall be deposited by the purchaser (prospective Owner) into the purchase and sale escrow and distributed therefrom at the Close of Escrow to the Association. Until paid to the Association, the Transfer Fee due pursuant to this provision shall be considered an unpaid Common Assessment, with a lien on the new Owners Lot(s).

8.8 Lien for Assessments; Remedies for Nonpayment; Foreclosure. The Association shall have a continuing lien against each Lot to secure payment of delinquent assessments, as well as interest, the late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the lines of all taxes, bonds, assessments, and other



levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit Judgment, and judicial or nonjudicial foreclosure.

By acceptance of a deed for a Lot, each Owner as Trustor, conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Lot and apurtenant Limited Common Area, if any, and all improvements thereon for the purpose of securing payment of all assessments provide for in this Declaration. The Trustee shall be the Association's present attorney, licensed in as such in Utah, and the Association may provide notice and disclosure of a substitution of Trustee by recording a "Substitution of Trustee" or "Appointment of Trustee" in the Public Records. Each Owner hereby also grants the Association and Trustee all powers and rights of a non-judicial trust deed foreclosure provide for in Utah Code Ann. §§ 57-1-19, et seq.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged against such Lot had it not been acquired by the Association.

The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment including such acquirer, its successors and assigns.

**8.9 Date of Commencement of Assessments.** The obligation to pay assessments shall commence as to each Lot on the first day of the first month following the conveyance of the Lot by the Declarant. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time the obligation for assessments commences on the Lot.

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

**8.11 Exempt Property.** The following property shall be exempt from payment of assessments:

- (a) All Common Area of the Association; and
- (b) Any property dedicated to and accepted by a governmental authority or public

utility (except that utility easements across Lots shall not affect the Lot's liability for assessments).

**ARTICLE IX**  
**ARCHITECTURAL STANDARDS**

9.1 General. No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval. However, modifications to the interior of porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect and approved by the Design Review Committee.

This Article shall not apply to the activities of the Declarant or the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2 Architectural Review. Responsibility for administration of the Design Guidelines of the Association and review of all applications for construction and modifications under this Article shall be handled by the two committees described in subsections (a) and (b) below (the "Committees"). The members of the committees need not be Members of the Association or representatives of members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of application hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

(a) Design Review Committee. The Design Review Committee (DRC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the DRC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, either appoint the members of the DRC, who shall thereafter serve and may be removed in the Board's discretion, or combine the DRC and the MC (hereafter defined) into a single architectural review committee which shall assume all powers and responsibilities of both

committees under this Declaration.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than Five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Lots or containing Lots and the adjacent open space. The DRC shall have the right to veto any action taken by the MC, which the DRC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the DRC.

### 9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant has prepared Design Guidelines for the Properties. There is no requirement that the Design Guidelines be recorded in the Public Records but they must not be inconsistent with the provisions of this Declaration. In the event of an inconsistency between any provision of this Declaration and the Design Guidelines, the terms of this Declaration shall control.

The Design Guidelines contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. The Design Guidelines are not the exclusive basis for decision of the committees and compliance with the Design Guidelines does not guarantee approval of any application.

The DRC shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the DRC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The DRC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended by the DRC from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the DRC. Any architectural guidelines and standards adopted by the MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

Notwithstanding the above, the DRC may, by resolution, exempt certain activities from the

application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate committee, unless the DRC has granted a variance in writing pursuant to Section 9.5. So long as the DRC has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the DRC or the MC, as appropriate. Such application shall be in the form required by the Committee having jurisdiction and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore, and other features of proposed construction, as applicable. Either Committee may require the submission of such additional information, as it deems necessary to consider any application.

In reviewing each submission, the Committees may consider (but shall not be restricted to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the committees may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Committee members change over time.

In the event that the DRC or MC fails to approve or disapprove in writing any application within twenty days after submission of all information and materials reasonably requested, the applicant may notify the appropriate committee by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Design Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within 15 days of the committee's receipt of the Owner's notice, as evidenced by the return receipt, the application shall be deemed approved.

A response shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRC pursuant to Section 9.5.

If construction does not commence on a project for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration. All work shall be completed within 20 months from commencement of such other period as the Committee may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the committee having jurisdiction or its designated agent.

9.4 No Waiver of Future Approvals. Approval of proposals, plans and specification, or

drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.5 Variance. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted resolutions. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.6 Limitation of Liability. The standards and procedures established by this Article are intended to enhance the overall aesthetics of the Properties and shall not create any duty to any Person. Neither the DRC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage and general site work. Neither the Declarant, the Association, the Board, any Committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the committees and their members shall be defined and indemnified by the Association as provided in Section 4.5.

9.7 Enforcement. Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming, except to the extent that a variance has been granted pursuant to Section 9.5. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment.

The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce. Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with Bylaws to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures

contained in the Bylaws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

**ARTICLE X**  
**USE RESTRICTIONS AND RULES**

10.1 Plan of Development: Applicability: Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within planned community and to regulate and control the Area of Common Responsibility.

The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

10.2 Nuisances. Unreasonable Annoyance and Noxious Activities. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the subdivision. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted.

10.3 Signs. No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written approval having been first obtained from the Association; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven square feet or smaller in size which states that the premises are for rent or sale. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by the Declarant or its agents in connection with the original construction and sale of the Lots.

10.4 Antennas. Except for satellite dishes one (1) meter or less in diameter, all television and radio antennas, satellite dishes or other electronic reception devices shall be completely erected, constructed and placed within the enclosed area of Residence or garage on the Lot, or located and screened so as to not be visible from the Street or an adjacent Lot. Exceptions must first be expressly approved in writing by the Management Committee.

10.5 Animals. No horses, cows, pigs, fowls or other animals other than ordinary household pets which do not constitute a nuisance, shall be allowed within the Subdivision. Dogs and cats belonging to owners, occupants or their licensees or invitees within the Property must be kept within an enclosure (or on a leash being held by a person capable of controlling the animal). The enclosure must be maintained such that the animal cannot escape therefrom. Any such contained enclosure areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. In no case may any household pet or other animal kept at or

around the Residence be allowed to create a nuisance for neighboring Lot owners due to the noise, or otherwise.

**10.6 Storage of Vehicles and Materials.** No truck larger than 1/2-ton, trailer, or recreational vehicle, including but not limited to campers, boats, motor homes, off-road vehicles, motorcycles and similar equipment not used on a regular basis (hereinafter collectively referred to as the "Recreational Vehicles") shall be permitted to be parked overnight or for any period of time longer than twenty-four (24) hours, upon any portion of the Streets, or on any Lot, driveway or off-street parking area of a Lot in front of the front set-back line of the Residence. The Recreational Vehicles shall be allowed to remain on the Property only if housed in a garage, carport, or Residence. Appropriate and reasonable screening for any such parking area behind the front set-back line of the Residence may be required by the Management Committee at the Committee's sole discretion and at the sole expense of the Owner. Failure to comply with the provisions hereof shall constitute a nuisance. No storage of articles, materials, equipment or vehicles of any nature is permitted in the front portion of any Lot (in front of the front set-back line of the Residence), except that a reasonable number of regularly used passenger cars, in proper working order, may be parked on driveway or off-street parking areas.

**10.7 Rubbish and Unsightly Debris, Garbage, etc.** Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become so physically encumbered with rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Management Committee or the Association. Within ten (10) days of receipt of written notification by the Association of such failure, the Owner shall be responsible to make the appropriate corrections.

**10.8 Authority to Promulgate Use Restrictions and Rules.** The Board shall have the authority to adopt rules and regulations to better clarify, supplement and interpret the use restrictions set forth in this Declaration and the Bylaws. Such rules and regulations shall be adopted by the Board and notice thereof shall be provided to the membership prior to taking effect. All such rules and regulations shall be consistent with the terms of this Declaration. Nothing in this Article, however, shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

**10.9 Owner's Acknowledgment.** All Owners and occupants of Lots are given notice that use of their Lots is limited by these Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected and that the Use Restrictions and Rules may change from time to time.

**10.4 Rights of Owners.** Except as may be specifically set forth in this Declaration (either initially or by amendment) or in the Rules and Regulations, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.

(b) **Speech.** The rights of Owners and occupants to display political signs and symbols in or on their Lots shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing

damage and disturbance to other Owners and occupants of Lots.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Lots 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 Lot and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and 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 Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, or from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. The Association or the Board may require a minimum lease term of up to 6 months and may, by amendment, adopt other rental restrictions as deemed to be in the best interests of the community.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

## **ARTICLE XI** **EASEMENTS**

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

### 11.2 Easements for Utilities. Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any



property described on Exhibit "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plat of the Properties.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B".

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.3 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees and managers, members of the Design Review Committee or Modifications Committee pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

## **ARTICLE XII**

### **MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of

such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

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

(b) Any delinquency in the payment of assessment or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within 60 days; or

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

12.2 No Priority. No provision of the Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the ease of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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

### **ARTICLE XIII DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. Nor such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities,

No person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of

Declarant so long as the Declarant owns any portion of the Properties primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

#### **ARTICLE XIV**

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

14.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 14.2, shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

14.2 Exempt Claim. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.3:

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);
- (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions and Rules);
- (c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of Utah in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;
- (d) Any suit arising out of any written contract between Owners, or between the Declarant and any Builder, which would constitute a cause of action under the laws of the State of Utah in the absence of the Declaration, Bylaws, and Articles of the Association; and
- (e) Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.3 shall require the approval of the Association.

14.3 Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

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

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

(ii) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

(iii) What Claimant wants Respondent to do or not do to resolve the Claim;

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

(b) Negotiation.

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet with the person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the community.

(c) Mediation

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the State of Utah upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set

forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a zero or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration

(i) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

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

14.4 Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 14.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 14.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 14.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 14.4(c).

(c) Any Award that is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to the Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

14.5 Enforcement of Resolution. After resolution of any Claim through negotiation, mediation, or arbitration in accordance with Section 14.3, if any Party fails to abide by the terms of the agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing

such agreement or Award, including, without limitation, attorneys fees and court costs.

**ARTICLE XV**  
**GENERAL PROVISIONS**

**15.1 Duration.**

(a) Unless terminated as provided in Section 15.1(b), this Declaration shall have perpetual duration. If Utah law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Unless otherwise provided by Utah law, in which case such law shall control, this Declaration may not be terminated within the first 20 years after the date of recording without the consent of all Lot Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Lots within the Properties and the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Public Records, Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

15.2 Amendment. The Declarant may amend this Declaration if such amendment is specifically required to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Lots. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Lots within the Properties and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, (respectively or the assignee of such right or privilege).

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

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. A procedural challenge to an amendment 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.

15.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way

affect other provisions or applications.

15.4 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to *ad valorem* taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIV, if applicable.

15.5 Cumulative Effect: Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6 Use of the Words "South Jordan High Pointe". No Person shall use the words "South Jordan High Pointe" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "South Jordan High Pointe" in printed or promotional matter where such terms are used solely to specify that particular property is located within the South Jordan High Pointe and the Association shall be entitled to use the words "South Jordan High Pointe" in its name.

15.7 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, any applicable Supplemental Declaration, the Bylaws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by an aggrieved Lot Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.9 Exhibits. Exhibits "A", "B" and "C" attached to this Declaration are incorporated by this reference.

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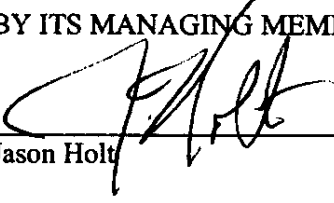
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IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration, having received the necessary votes to do so, this the 18<sup>th</sup> day of MAY, 2008.

J and K INVESTMENTS, LLC

BY ITS MANAGING MEMBER:

  
\_\_\_\_\_  
Jason Holt

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

On the 1 day of May, 2008, \_\_\_\_\_ personally appeared before me Jason Holt who being by me duly sworn did that say that he/she is the authorized party to execute this Amended and Restated Declaration and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Declarant/Board; and acknowledged said instrument to be his/her voluntary act and deed.



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



**EXHIBIT A  
(LEGAL DESCRIPTION)**

**PROPERTY DESCRIPTION PARCEL A (PHASE 1):**

COMMENCING AT A FOUND REBAR AND CAP AT THE WEST QUARTER CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 0°00'01" EAST, ALONG THE WESTERLY LINE OF SAID SECTION, AS MONUMENTED, A DISTANCE OF 986.01 FEET AND NORTH 89°59'59" EAST A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION AND ALSO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF 4000 WEST STREET; THENCE THE FOLLOWING SIX COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY OF RUSHTON VIEW DRIVE: THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 25.00 FEET, THE CENTER OF WHICH BEARS NORTH 89°59'59" EAST, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.27 FEET, SAID ARC SUBTENDED BY A CHORD BEARING NORTH 45°00'28" EAST, A DISTANCE OF 35.36 FEET; THENCE NORTH 89°59'59" EAST, A DISTANCE OF 51.79 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 436.00 FEET, THROUGH A CENTRAL ANGLE OF 41° 11' 00", A DISTANCE OF 313.39 FEET, SAID ARC SUBTENDED BY A CHORD BEARING NORTH 69°24'29" EAST, A DISTANCE OF 306.69 FEET; THENCE NORTH 48°48'59" EAST, A DISTANCE OF 147.52 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 264.00 FEET, THROUGH A CENTRAL ANGLE OF 55°07'16", A DISTANCE OF 253.98 FEET, SAID ARC SUBTENDED BY A CHORD BEARING NORTH 76°22'40" EAST, A DISTANCE OF 244.30 FEET; THENCE SOUTH 76°03'39" EAST, A DISTANCE OF 223.96 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE TO A POINT ON A NON-TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 25.00, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.27 FEET, SAID ARC SUBTENDED BY A CHORD BEARING SOUTH 58°56'21" WEST, A DISTANCE OF 35.36 FEET; THENCE SOUTH 13°56'21" WEST, A DISTANCE OF 181.63 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 481.00, THROUGH A CENTRAL ANGLE OF 03°22'52", A DISTANCE OF 28.39 FEET, SAID ARC SUBTENDED BY A CHORD BEARING SOUTH 12°14'55" WEST, A DISTANCE OF 28.38 FEET; THENCE SOUTH 76°03'39" EAST, A DISTANCE OF 96.47 FEET; THENCE SOUTH 00°08'39" WEST, A DISTANCE OF 105.68 FEET; THENCE SOUTH 89°59'59" WEST, A DISTANCE OF 139.51 FEET; THENCE NORTH 00°00'01" WEST, A DISTANCE OF 11.03 FEET; THENCE NORTH 89°44'59" WEST, A DISTANCE OF 98.50 FEET; THENCE SOUTH 00°00'01" EAST, A DISTANCE OF 184.71 FEET; THENCE NORTH 89°47'13" WEST, A DISTANCE OF 25.00 FEET; THENCE SOUTH 00°00'01" EAST, A DISTANCE OF 89.05 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 1,019.00 FEET AND A CENTRAL ANGLE OF 00°32'53"; THENCE EASTERLY ALONG THE ARC A DISTANCE OF 9.75 FEET, SAID ARC SUBTENDED BY A CHORD BEARING NORTH 89°38'05" WEST, A DISTANCE OF 9.75 FEET; THENCE NORTH 89°47'13" WEST, A DISTANCE OF 45.25 FEET; THENCE SOUTH 00°00'01" EAST, A DISTANCE OF 137.03 FEET; THENCE NORTH 89°47'13" WEST, A DISTANCE OF 167.00 FEET; THENCE NORTH 00°00'01" WEST, A DISTANCE OF 20.09 FEET; THENCE NORTH 89°47'13" WEST, A DISTANCE OF 458.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF 4000 WEST STREET SECTION; THENCE NORTH 00°00'01" WEST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 494.16 FEET TO THE POINT OF BEGINNING.

CONTAINS 58 LOTS

CONTAINS 11.872 ACRES, MORE OR LESS.

**PROPERTY DESCRIPTION PARCEL B (OPEN SPACE):**

COMMENCING AT A FOUND REBAR AND CAP AT THE WEST QUARTER CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°36'02" EAST, ALONG THE WEST-EAST CENTER QUARTER SECTION LINE, AS MONUMENTED, 1416.32 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE SOUTH 89°36'02" EAST, ALONG SAID WEST-EAST CENTER QUARTER SECTION LINE, A DISTANCE OF 105.71 FEET; THENCE SOUTH 35°58'41" EAST, A DISTANCE OF 43.47 FEET; THENCE SOUTH 23°40'38" EAST, A DISTANCE OF 67.66 FEET; THENCE SOUTH 20°55'38" EAST, A DISTANCE OF 157.80 FEET; THENCE SOUTH 30°46'03" EAST, A DISTANCE OF 36.85 FEET; THENCE SOUTH 39°52'55" EAST, A DISTANCE OF 89.63 FEET; THENCE SOUTH 45°57'25" EAST, A DISTANCE OF 102.54 FEET; THENCE SOUTH 41°14'29" EAST, A DISTANCE OF 112.45 FEET; THENCE SOUTH 31°29'29" EAST, A DISTANCE OF 74.57 FEET; THENCE SOUTH 18°25'35" EAST, A DISTANCE OF 77.04 FEET; THENCE SOUTH 07°43'40" EAST, A DISTANCE OF 109.08 FEET; THENCE SOUTH 83°46'51" WEST, A DISTANCE OF 80.03 FEET; THENCE NORTH 07°43'40" WEST, A DISTANCE OF 99.48 FEET; THENCE NORTH 18°25'35" WEST, A DISTANCE OF 60.39 FEET; THENCE NORTH 31°29'29" WEST, A DISTANCE OF 58.58 FEET; THENCE NORTH 41°14'29" WEST, A DISTANCE OF 102.33 FEET; THENCE NORTH 45°57'25" WEST, A DISTANCE OF 103.49 FEET; THENCE NORTH 39°52'55" WEST, A DISTANCE OF 100.25 FEET; THENCE NORTH 30°46'03" WEST, A DISTANCE OF 50.11 FEET; THENCE NORTH 20°55'38" WEST, A DISTANCE OF 162.77 FEET; THENCE NORTH 23°40'38" WEST, A DISTANCE OF 57.12 FEET; THENCE NORTH 35°58'41" WEST, A DISTANCE OF 59.11 FEET; THENCE NORTH 43°33'25" WEST, A DISTANCE OF 38.77 FEET TO THE POINT OF BEGINNING. CONTAINS 1.618 ACRES, MORE OR LESS.

**PROPERTY DESCRIPTION PARCEL C (OPEN SPACE):**

COMMENCING AT A 4"X4" CONCRETE MONUMENT AT THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°00'01" WEST, ALONG THE WEST SECTION LINE, AS MONUMENTED, A DISTANCE OF 1821.95 FEET; THENCE NORTH 89°59'59" EAST A DISTANCE OF 1863.41 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE NORTH 83°46'51" EAST, A DISTANCE OF 80.74 FEET; THENCE SOUTH 13°59'48" EAST, A DISTANCE OF 18.71 FEET; THENCE SOUTH 76°00'12" WEST, A DISTANCE OF 80.00 FEET; THENCE NORTH 13°59'48" WEST, A DISTANCE OF 29.64 FEET TO THE POINT OF BEGINNING. CONTAINS 0.044 ACRES, MORE OR LESS.

**EXHIBIT B  
(LEGAL DESCRIPTION)**

## PHASE 4 BOUNDARY DESCRIPTION

COMMENCING AT A FOUND BRASS CAP REPRESENTING THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°50'52" EAST, ALONG THE WESTERLY LINE OF SAID SECTION, AS MONUMENTED 853.12 FEET; THENCE NORTH 0°09'08" EAST, 660.52 FEET TO THE POINT OF BEGINNING; THENCE NORTH 12°58'02" EAST, 90.00 FEET; THENCE NORTH 77°01'58" WEST, 28.50 FEET; THENCE NORTH 12°58'02" EAST, 408.50 FEET; THENCE SOUTH 77°01'58" EAST, 232.00 FEET; THENCE SOUTH 12°58'02" WEST, 28.50 FEET; THENCE SOUTH 77°01'58" EAST, 303.27 FEET; THENCE NORTH 12°58'02" EAST, 43.64 FEET; THENCE SOUTH 69°46'47" EAST, 115.46 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 146.00 FEET AND A CENTRAL ANGLE OF 3°07'11"; NORTHERLY 7.95 FEET (CHORD BEARS NORTH 18°39'37" EAST, 7.95 FEET); THENCE SOUTH 72°53'58" EAST, 38.00 FEET TO A POINT ON A CURVE TO THE LEFT HAVING A RADIUS OF 184.00 FEET AND A CENTRAL ANGLE OF 14°09'47"; THENCE EASTERLY ALONG THE ARC 45.48 FEET (CHORD BEARS NORTH 10°01'09" EAST, 45.37 FEET); THENCE SOUTH 87°03'45" EAST, 102.70 FEET; THENCE NORTH 07°06'08" EAST, 16.35 FEET; THENCE NORTH 89°41'42" EAST, 139.15 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 427.50 FEET AND A CENTRAL ANGLE OF 4°16'57"; THENCE EASTERLY ALONG THE ARC 31.95 FEET (CHORD BEARS SOUTH 1°50'10" WEST, 31.94 FEET); THENCE SOUTH 81°10'19" EAST, 139.16 FEET; THENCE SOUTH 26°14'08" WEST, 71.70 FEET; THENCE SOUTH 29°46'00" WEST, 108.85 FEET; THENCE SOUTH 24°26'25" WEST, 108.27 FEET; THENCE SOUTH 17°08'23" WEST, 54.97 FEET; THENCE SOUTH 7°11'09" WEST, 54.95 FEET; THENCE SOUTH 2°19'01" WEST, 105.96 FEET; THENCE SOUTH 3°31'51" WEST, 104.20 FEET; THENCE SOUTH 1°12'43" WEST, 138.72 FEET; THENCE SOUTH 17°32'14" WEST, 44.33 FEET; THENCE SOUTH 39°51'51" WEST, 39.86 FEET; THENCE SOUTH 77°05'19" WEST, 35.16 FEET; THENCE NORTH 55°35'32" WEST, 36.06 FEET; THENCE NORTH 22°14'51" WEST, 99.81 FEET; THENCE NORTH 35°41'16" WEST, 55.07 FEET; THENCE NORTH 50°33'34" WEST, 59.37 FEET; THENCE

NORTH 60°59'45" WEST, 55.58 FEET; THENCE  
NORTH 75°40'29" WEST, 58.54 FEET; THENCE  
SOUTH 89°11'58" WEST, 57.41 FEET; THENCE  
SOUTH 65°44'34" WEST, 56.00 FEET; THENCE  
SOUTH 58°15'10" WEST, 56.43 FEET; THENCE  
NORTH 61°48'10" WEST, 96.32 FEET; THENCE  
NORTH 10°23'34" EAST, 155.845 FEET; THENCE  
NORTH 77°01'58" WEST, 129.495 FEET; THENCE  
SOUTH 12°58'02" WEST, 34.995 FEET; THENCE  
NORTH 77°01'58" WEST, 313.905 FEET TO THE POINT OF BEGINNING.

CONTAINS 591,017 SQUARE FEET OR 13.568 ACRES.  
CONTAINS 62 LOTS

**SJHP PHASE 4 OPEN SPACE BOUNDARY DESCRIPTION**

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°50'52" EAST ALONG SAID SECTION LINE, A DISTANCE OF 1,970.33 FEET; THENCE NORTH 0°09'08" EAST, A DISTANCE OF 854.70 FEET TO A POINT ON THE EAST LINE OF WELBY JACOB CANAL AND THE POINT OF BEGINNING; THENCE ALONG SAID EAST LINE THE FOLLOWING 2 COURSES:

1. NORTH 29°46'00" EAST, 77.90 FEET;
2. NORTH 26°14'08" EAST, 149.30 FEET; THENCE SOUTH 71°49'39" EAST, A DISTANCE OF 293.77 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT ALONG THE EAST LINE OF SAND DUNES, LLC; THENCE ALONG SAID EAST LINE OF WHICH THE RADIUS POINT LIES NORTH 71°49'39" WEST, A RADIAL DISTANCE OF 2,795.74 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 5°11'41", A DISTANCE OF 253.48 FEET (CHORD BEARS SOUTH 20°46'12" WEST A DISTANCE OF 253.39 FEET); THENCE LEAVING SAID RIGHT OF WAY AND RUNNING NORTH 66°37'57" WEST, A DISTANCE OF 320.20 FEET TO THE POINT OF BEGINNING.

CONTAINS 73,576 SQUARE FEET OR 1.689 ACRES, MORE OR LESS.

**SJHP PHASE 5 BOUNDARY DESCRIPTION**

COMMENCING AT A FOUND BRASS CAP REPRESENTING THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 0°07'15"EAST, ALONG THE WESTERLY LINE OF SAID SECTION, AS MONUMENTED 697.75 FEET; THENCE NORTH 89°52'45" EAST, 42.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 0°07'15" WEST, 102.50 FEET; THENCE SOUTH 89°50'48" WEST, 2.50 FEET; THENCE NORTH 0°07'15" WEST, 372.11 FEET; THENCE SOUTH 89°54'27" EAST, 458.00 FEET; THENCE SOUTH 00°07'15" EAST, 20.09 FEET; THENCE SOUTH 89°54'27" EAST, 167.00 FEET; THENCE SOUTH 89°45'18" EAST, 110.55 FEET; THENCE SOUTH 85°23'16" EAST, 57.30 FEET; THENCE SOUTH 77°01'58" EAST, 105.00 FEET; THENCE SOUTH 12°58'02" WEST, 380.00 FEET; THENCE SOUTH 77°01'58" EAST, 28.50 FEET; THENCE SOUTH 12°58'02" WEST, 90.00 FEET; THENCE NORTH 77°01'58" WEST, 68.50 FEET; THENCE SOUTH 88°42'33" WEST, 348.18 FEET FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 181.00 FEET AND A CENTRAL ANGLE OF 18°52'08"; THENCE WESTERLY ALONG THE ARC 59.61 FEET (CHORD BEARS NORTH 24°06'22" WEST, 59.34 FEET); THENCE SOUTH 75°19'42" WEST, 143.71 FEET; THENCE NORTH 11°08'31" WEST, 16.51 FEET; THENCE SOUTH 89°52'45" WEST, 98.55 FEET; THENCE SOUTH 0°07'15" EAST, 1.47 FEET; THENCE SOUTH 89°52'45" WEST, 134.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 405,308 SQUARE FEET OR 9.304 ACRES.  
CONTAINS 52 LOTS

TOTAL AREA 474,422 SQUARE FEET OR 10.891 ACRES.  
MORE OR LESS (TO INCLUDE OPEN SPACE)



**PHASE 5 OPEN SPACE BOUNDARY DESCRIPTION**

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°50'52" EAST ALONG SAID SECTION LINE, A DISTANCE OF 1,896.22 FEET; THENCE NORTH 00°09'08" EAST, A DISTANCE OF 664.74 FEET TO A POINT ON THE EAST LINE OF WELBY JACOB CANAL AND THE POINT OF BEGINNING; THENCE ALONG SAID EAST LINE THE FOLLOWING 4 COURSES:

1. NORTH 7°11'09" EAST, 24.78 FEET; THENCE
2. NORTH 17°08'23" EAST, 47.50 FEET; THENCE
3. NORTH 24°26'25" EAST, 102.81 FEET; THENCE
4. NORTH 29°46'00" EAST, 30.17 FEET; THENCE SOUTH 66°37'57" EAST, A DISTANCE OF 320.20 FEET; TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT ALONG THE EAST LINE OF SAND DUNES, LLC; THENCE ALONG SAID EAST LINE OF WHICH THE RADIUS POINT LIES NORTH 66°37'57" WEST, A RADIAL DISTANCE OF 2,795.74 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 4°41'36", A DISTANCE OF 229.01 FEET (CHORD BEARS SOUTH 25°42'51" WEST A DISTANCE OF 228.95 FEET); THENCE LEAVING SAID RIGHT OF WAY AND RUNNING NORTH 61°56'21" WEST, A DISTANCE OF 305.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 69,114 SQUARE FEET OR 1.587 ACRES, MORE OR LESS.

**EXHIBIT "A "**

Escrow No. **301-4660976 (js)**  
A.P.N.: **27-17-300-007-0000**

PARCEL 1:

**PROPOSED PHASE 3 BOUNDARY DESCRIPTION:**

COMMENCING AT A FOUND BRASS CAP REPRESENTING THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°50'52" EAST, ALONG THE SOUTHERLY LINE OF SAID SECTION, AS MONUMENTED 659.51 FEET; THENCE NORTH 00°09'08" EAST, 1153.06 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°07'15" WEST, 137.03 FEET; THENCE SOUTH 89°54'27" EAST, 45.25 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 1,019.00 FEET AND A CENTRAL ANGLE OF 00°32'53"; THENCE EASTERLY ALONG THE ARC 9.75 FEET (CHORD BEARS SOUTH 89°38'01" EAST, 9.75 FEET); THENCE NORTH 00°07'15" WEST, 89.05 FEET; THENCE SOUTH 89°54'27" EAST, 25.00 FEET; THENCE NORTH 00°07'15" WEST, 184.71 FEET; THENCE SOUTH 89°52'14" EAST, 98.50 FEET; THENCE SOUTH 00°07'15" EAST, 11.03 FEET; THENCE NORTH 89°52'45" EAST, 139.51 FEET; THENCE NORTH 00°01'25" EAST, 105.68 FEET; THENCE NORTH 76°10'53" WEST, 96.47 FEET TO A POINT ON A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 79°33'45" EAST, A RADIAL DISTANCE OF 481.00 FEET; THENCE NORTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 03°22'52", 28.39 FEET (CHORD BEARS NORTH 12°07'41" EAST 28.38 FEET; THENCE NORTH 13°49'07" EAST, 181.63 FEET TO A POINT ON A CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 76°10'08" EAST, A RADIAL DISTANCE OF 25.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 89°59'15", 39.27 FEET (CHORD BEARS NORTH 58°49'30" EAST 35.35 FEET); THENCE SOUTH 76°10'54" EAST, 57.98 FEET TO A POINT ON A CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES NORTH 13°49'36" EAST, A RADIAL DISTANCE OF 636.00 FEET; THENCE EASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 23°29'06", 260.69 FEET (CHORD BEARS SOUTH 87°54'57" EAST 258.87 FEET TO A POINT OF REVERSE CURVATURE OF WHICH THE RADIUS POINT LIES SOUTH 9°39'31" EAST, A RADIAL DISTANCE OF 264.00 FEET; THENCE EASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 25°34'38", 117.85 FEET (CHORD BEARS SOUTH 86°52'12" EAST 116.88 FEET); TO THE NORTHWEST CORNER OF THE SOUTH JORDAN HIGH POINTE PHASE 2, THENCE ALONG THE WESTERLY PROPERTY LINE OF SAID PHASE 2 SOUTH 06°20'23" EAST, 531.48 FEET; TO THE SOUTHWEST CORNER OF SAID PHASE 2, THENCE ALONG THE SOUTH BOUNDARY LINE OF SAID PHASE 2 NORTH 83°39'37" EAST, 375.00 TO THE SOUTH EAST CORNER OF SAID PHASE 2; THENCE NORTHERLY ALONG THE EAST BOUNDARY LINE OF THE SOUTH JORDAN HIGH POINTE PHASE 2 SUBDIVISION NORTH 6°20'23" WEST, 409.50; THENCE TO A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE EASTERLY ALONG THE ARC 39.27 FEET (CHORD BEARS NORTH 38°39'36" EAST, 35.36 FEET); THENCE NORTH 83°39'37" EAST, 4.05 FEET TO A POINT ON THE WEST LINE OF WELBY JACOB CANAL RIGHT OF WAY; THENCE ALONG SAID CANAL THE FOLLOWING 8 COURSES:

1. SOUTH 14°07'12" EAST, 87.73 FEET; THENCE
2. SOUTH 20°20'53" EAST, 109.39 FEET; THENCE
3. SOUTH 20°58'06" EAST, 162.40 FEET; THENCE
4. SOUTH 22°52'12" EAST, 163.48 FEET; THENCE
5. SOUTH 20°27'24" EAST, 160.53 FEET; THENCE
6. SOUTH 04°30'51" EAST, 47.63 FEET; THENCE
7. SOUTH 13°24'39" WEST, 48.07 FEET; THENCE

8. SOUTH 26°14'08" WEST, 90.87 FEET; THENCE LEAVING SAID CANAL AND RUNNING NORTH 81°10'19" WEST, 139.16 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES NORTH 84°49'55" WEST, A RADIAL DISTANCE OF 427.50 FEET; THENCE NORTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 04°16'57", 31.95 FEET (CHORD BEARS NORTH 01°50'10" EAST 31.94 FEET); THENCE SOUTH 89°41'42" WEST, 139.15 FEET; THENCE SOUTH 07°06'08" WEST, 16.35 FEET; THENCE NORTH 87°03'45" WEST, 102.70 FEET TO A POINT ON A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 87°03'45" WEST, A RADIAL DISTANCE OF 184.00 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 14°09'47", 45.48 FEET (CHORD BEARS SOUTH 10°01'07" WEST 45.36 FEET); THENCE NORTH 72°53'58" WEST, 38.00 FEET TO A POINT ON A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 72°54'03" WEST, A RADIAL DISTANCE OF 146.00 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 03°07'11", 7.95 FEET (CHORD BEARS SOUTH 18°39'33" WEST 7.95 FEET); THENCE NORTH 69°46'47" WEST, 115.46 FEET; THENCE SOUTH 12°58'02" WEST, 43.64 FEET; THENCE NORTH 77°01'58" WEST, 303.27 FEET; THENCE NORTH 12°58'02" EAST, 28.50 FEET; THENCE NORTH 77°01'58" WEST, 232.00 FEET; THENCE SOUTH 12°58'02" WEST, 28.50 FEET; THENCE NORTH 77°01'58" WEST, 105.00 FEET; THENCE NORTH 85°23'16" WEST, 57.30 FEET; THENCE NORTH 89°45'18" WEST, 110.55 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PHASE 3 OPEN SPACE BOUNDARY DESCRIPTION

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°50'52" EAST ALONG SAID SECTION LINE, A DISTANCE OF 2,074.48 FEET; THENCE NORTH 00°09'08" EAST, A DISTANCE OF 1,056.52 FEET TO A POINT ON THE EAST LINE OF WELBY JACOB CANAL AND THE POINT OF BEGINNING; THENCE ALONG SAID EAST LINE THE FOLLOWING 8 COURSES:

1. NORTH 26°14'08" EAST, A DISTANCE OF 20.36 FEET; THENCE
2. NORTH 13°24'39" EAST, A DISTANCE OF 61.44 FEET; THENCE
3. NORTH 04°30'51" WEST, A DISTANCE OF 62.37 FEET; THENCE
4. NORTH 20°27'24" WEST, A DISTANCE OF 168.51 FEET; THENCE
5. NORTH 22°52'12" WEST, A DISTANCE OF 163.70 FEET; THENCE
6. NORTH 20°58'06" WEST, A DISTANCE OF 161.31 FEET; THENCE
7. NORTH 20°20'53" WEST, A DISTANCE OF 106.43 FEET; THENCE
8. NORTH 14°07'12" WEST, A DISTANCE OF 48.61 FEET; THENCE NORTH 75°52'58" EAST, A DISTANCE OF 80.00 FEET TO THE WEST LINE OF SAND DUNES, LLC; THENCE ALONG SAID WEST LINE THE FOLLOWING 6 COURSES:

1. SOUTH 14°07'12" EAST, A DISTANCE OF 44.25 FEET; THENCE
2. SOUTH 20°20'53" EAST, A DISTANCE OF 101.64 FEET; THENCE
3. SOUTH 20°58'06" EAST, A DISTANCE OF 159.55 FEET; THENCE
4. SOUTH 22°52'12" EAST, A DISTANCE OF 164.05 FEET; THENCE
5. SOUTH 20°27'24" EAST, A DISTANCE OF 181.39 FEET; THENCE
6. SOUTH 04°30'51" EAST, A DISTANCE OF 45.83 FEET; THENCE SOUTH 89°59'56" EAST, A DISTANCE OF 236.70 FEET TO THE POINT ON A NON-TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 76°10'11" WEST, A RADIAL DISTANCE OF 2,795.74 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 04°20'32", A DISTANCE OF 211.88 FEET (CHORD BEARS SOUTH 16°00'05" WEST A DISTANCE OF 211.83 FEET); THENCE LEAVING SAID R.O.W. AND RUNNING NORTH 71°49'39" WEST, A DISTANCE OF 293.77 FEET TO THE POINT OF BEGINNING.

## **PHASE 6 BOUNDARY DESCRIPTION**

COMMENCING AT A FOUND BRASS CAP REPRESENTING THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°50'52" EAST, ALONG THE SOUTHERLY LINE OF SAID SECTION, AS MONUMENTED 805.15 FEET TO THE POINT OF BEGINNING; THENCE NORTH 0°09'12" EAST, 142.53 FEET; THENCE SOUTH 89°50'48" EAST, 3.43 FEET; THENCE NORTH 0°09'12" EAST, 98.50 FEET; THENCE SOUTH 89°50'48" EAST, 39.76 FEET; THENCE NORTH 0°09'12" EAST, 157.05 FEET; THENCE NORTH 65°43'26" WEST, 112.02 FEET; THENCE SOUTH 78°49'49" WEST, 39.52 FEET; THENCE NORTH 8°19'11" WEST, 147.80 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 219.00 FEET AND A CENTRAL ANGLE OF 15°39'54"; THENCE WESTERLY ALONG THE ARC 59.88 FEET (CHORD BEARS SOUTH 73°50'52" WEST, 59.69 FEET); THENCE NORTH 32°57'05" WEST, 124.73 FEET; THENCE NORTH 88°42'33" EAST, 226.23 FEET; THENCE SOUTH 77°01'58" EAST, 382.41 FEET; THENCE NORTH 12°58'02" EAST, 35.00 FEET; THENCE SOUTH 77°01'58" EAST, 129.495 FEET; THENCE SOUTH 10°23'34" WEST, 155.845 FEET; THENCE SOUTH 61°48'10" EAST, 96.32 FEET TO THE WELBY JACOB CANAL RIGHT OF WAY THENCE ALONG SAID CANAL RIGHT OF WAY THE FOLLOWING 6 COURSES:

1. SOUTH 58°15'10" WEST, 201.17 FEET; THENCE
2. SOUTH 33°0'45" WEST, 54.95 FEET; THENCE
3. SOUTH 11°45'11" WEST, 154.87 FEET; THENCE
4. SOUTH 21°00'22" WEST, 48.49 FEET; THENCE
5. SOUTH 33°10'27" WEST, 46.96 FEET; THENCE
6. SOUTH 43°58'28" WEST, 12.20 FEET TO THE SOUTH LINE OF SAID SECTION 17, THENCE ALONG SAID SOUTH SECTION LINE WESTERLY NORTH 89°50'52" WEST, 262.35 FEET TO THE POINT OF BEGINNING.

CONTAINS 281,237 SQUARE FEET OR 6.456 ACRES.

## **PHASE 6 OPEN SPACE BOUNDARY DESCRIPTION**

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°50'52" EAST ALONG SAID SECTION LINE, A DISTANCE OF 1886.38 FEET; THENCE NORTH 00°09'08" EAST, A DISTANCE OF 486.22 FEET TO A POINT ON THE EAST LINE OF WELBY JACOB CANAL RIGHT OF WAY AND THE POINT OF BEGINNING; THENCE ALONG SAID EAST LINE THE FOLLOWING 3 COURSES:

1. NORTH 3°31'51" EAST, 50.73 FEET; THENCE
2. NORTH 2°19'01" EAST, 104.38 FEET; THENCE
3. NORTH 7°11'09" EAST, 23.75 FEET; THENCE

SOUTH 61°56'22" EAST, 305.08 FEET TO A POINT ON THE BANGERTER HIGHWAY RIGHT OF WAY SAID POINT ALSO LIES ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2795.74 FEET AND A CENTRAL ANGLE OF 3°37'16"; THENCE SOUTHERLY ALONG THE ARC 176.70 FEET (CHORD BEARS SOUTH 29°52'17" WEST, 176.67 FEET); THENCE NORTH 58°19'05" WEST, 225.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 44,892 SQUARE FEET OR 1.030 ACRES, MORE OR LESS.

**PHASE 6A**  
**BOUNDARY DESCRIPTION**

COMMENCING AT A FOUND BRASS CAP REPRESENTING THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°50'52" EAST, ALONG THE SOUTHERLY LINE OF SAID SECTION, AS MONUMENTED 685.15 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°09'12" EAST, 89.53 FEET TO A POINT ON A CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 42°49'58"; THENCE WESTERLY ALONG THE ARC 11.21 FEET (CHORD BEARS NORTH 21°15'47" WEST, 10.95 FEET); THENCE NORTH 00°09'06" EAST, 43.67 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 70°57'37"; THENCE NORTHERLY ALONG THE ARC 18.58 FEET (CHORD BEARS NORTH 35°08'06" EAST, 17.41 FEET) TO A POINT OF COMPOUND CURVATURE TO THE LEFT HAVING A RADIUS OF 481.00 FEET AND A CENTRAL ANGLE OF 43°52'39"; THENCE WESTERLY ALONG THE ARC, 368.35 FEET (CHORD BEARS NORTH 22° 17'02" WEST, 359.42 FEET); THENCE NORTH 44°13'22" WEST, 29.52 FEET; THENCE NORTH 45°46'38" EAST, 38.00 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 84°25'52"; THENCE EASTERLY ALONG THE ARC 22.10 FEET (CHORD BEARS SOUTH 86°26'17" EAST, 20.16 FEET) TO A POINT OF REVERSE CURVATURE TO THE RIGHT HAVING A RADIUS OF 219.00 FEET AND A CENTRAL ANGLE OF 30°20'02" THENCE EASTERLY ALONG THE ARC 115.94 FEET (CHORD BEARS NORTH 66°30'48" EAST, 114.60 FEET); THENCE SOUTH 8°19'11" EAST, 147.80 FEET; THENCE NORTH 78°49'49" EAST, 39.52 FEET; THENCE SOUTH 65°43'26" EAST, 112.02 FEET; THENCE SOUTH 0°09'12" WEST, 157.05 FEET; THENCE NORTH 89°50'48" WEST, 39.76 FEET; THENCE SOUTH 0°09'12" WEST, 98.50 FEET; THENCE NORTH 89°50'48" WEST, 3.43 FEET; THENCE SOUTH 0°09'12" WEST, 142.53 FEET; THENCE NORTH 89°50'52" WEST, 120.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 83,331 SQUARE FEET OR 1.913 ACRES.

**PHASE 6A**  
**OPEN SPACE**  
**BOUNDARY DESCRIPTION**

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°50'52" EAST ALONG SAID SECTION LINE, A DISTANCE OF 1882.80 FEET; THENCE NORTH 00°09'08" EAST, A DISTANCE OF 408.86 FEET TO A POINT ON THE EAST LINE OF WELBY JACOB CANAL RIGHT OF WAY AND THE POINT OF BEGINNING; THENCE ALONG SAID EAST LINE THE FOLLOWING 2 COURSES:

1. NORTH 1°12'43" EAST, 24.47 FEET; THENCE  
2. NORTH 3°31'51" EAST, 52.99 FEET; THENCE  
SOUTH 58°19'05" EAST, 225.09 FEET TO A POINT ON THE BANGERTER HIGHWAY RIGHT OF WAY SAID POINT ALSO LIES ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2795.74 FEET AND A CENTRAL ANGLE OF 1°29'22"; THENCE SOUTHERLY ALONG THE ARC 72.68 FEET (CHORD BEARS SOUTH 32°25'36" WEST, 72.67 FEET); THENCE NORTH 56°49'43" WEST, 186.80 FEET TO THE POINT OF BEGINNING.

CONTAINING 14,457 SQUARE FEET OR 0.331 ACRES, MORE OR LESS.

**EXHIBIT C**  
**BYLAWS**  
**OF**  
**SOUTH JORDAN HIGH POINTE HOMEOWNERS**  
**ASSOCIATION**  
(a Planned Unit Development)

**ARTICLE I**  
**GENERAL**

1.1 Purpose of Bylaws. These Bylaws are adopted for the regulation and management of the affairs of South Jordan High Pointe Homeowners Association, a Utah nonprofit corporation (the "Association"), organized to be the Association to which reference is made in the Amended Declaration of Covenants, Conditions, and Restrictions of South Jordan High Pointe P.U.D., as amended or supplemented from time to time (the "Declaration"), to perform the functions as provided in the Declaration and to further the interests of Owners of Lots within the Development.

1.2 Terms Defined in Declaration. Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to them below or as such terms in the Declaration.

**ARTICLE II**  
**OFFICES**

2.1 Principal Office. The principal office of the Corporation shall be at 132 E. 13065 S. Draper, Utah 84020. The Board of Directors, in its discretion, may change from time to time the location of the principal office.

2.2 Registered Office and Agent. The Act requires that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles of Incorporation and may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law with the Division.

**ARTICLE III**  
**MEMBERS**

3.1 Members. A "Member," as provided in the Declaration, is the person or, if more than one, all persons collectively, who constitute the Owner of a Lot within the Development.

3.2 Memberships Appurtenant to Lots. Each Membership shall be appurtenant to the fee simple title to a Lot. The person or persons who constitute the owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

3.3 Members' Voting Rights. Subject to the provisions in the Declaration and the Articles of



Incorporation, a Class A Member shall be entitled to one (1) vote for each Lot which he or it owns within the Development, and a Class B Member, if any, shall be entitled to the number of votes accorded to such Member as provided in the Declaration.

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

3.5 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board of Directors of the Association shall act as arbitrators and the decision of a disinterested majority of the Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

3.6 Suspension of Voting Rights. The Board of Directors may suspend the voting rights of a Member for any period during which an assessment remains unpaid. The Board of Directors may also, after Notice and Hearing, suspend the voting rights of a Member and the right of the Member to use the Common Area and Facilities during and for up to thirty (30) days following any breach by such Member or Occupant of any provision of the Declaration or of any Rule or Regulation adopted by the Association unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues.

3.7 Transfer of Memberships on Association Books. Transfer of Membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

3.8 Assignment of Voting Rights to Tenants and Mortgagees. A Member may assign his right to vote to a tenant occupying his Unit or to a mortgagee of his Unit for the term of the lease or the mortgage and any sale, transfer or conveyance of the Unit and the Lot upon which it is situated shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights to any tenant or mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the Secretary of the Association.

#### **ARTICLE IV** **MEETING OF MEMBERS**

4.1 Place of Members' Meetings. Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Development, as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual Meetings of the Members shall be held at such time of day as is fixed by the Board of Directors and specified in the notice of meeting. The Annual Meetings shall be held to elect Directors of the Association and to transact such other

business as may properly come before the meeting.

**4.3 Special Meetings of Members.** Special Meetings of the Members may be called by the President or the Board of Directors or by Members holding not less than twenty-five percent (25%) of the total votes of all Members, excluding votes of Declarant, or by Declarant if it holds at least ten percent (10%) of the total votes of all Members. No business shall be transacted at a Special Meeting of Members except as indicated in the notice thereof.

**4.4 Record Date/Members List.**

(a) The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection 4.4(b) below, unless the Board of Directors, in advance of sending notice, set a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

(b) Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(c) Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (i) the close of business on the day on which the Board of Directors adopts the resolution relating to the exercise of the right; or (ii) the close of business on the sixtieth (60<sup>th</sup>) day before the date of the exercise of the right. A record date fixed under this Section may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. A determination of members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote.

(d) The Association shall only be required to prepare a list of the names of the Members as provided for in Section 9.3(c).

**4.5 Notice of Members' Meetings.** Written notice stating the place, day and hour of any meeting shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by first class or registered mail, by or at the direction of any of the Officers of the Association, or the Officers or persons calling the meeting, to each Member entitled to vote at such meeting. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Act.

The notice of an Annual, Regular or Special Meeting shall include (a) the names of any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a director or has a financial interest, if any; (c) notice of any indemnification or advance of expenses to a director in connection with a legal "proceeding" as defined in the Act; (d) notice of any amendment to these Bylaws

proposed by the Members and a copy, summary or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of the properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a person entitled to call a Special Meeting and the request is received by the Secretary or President at least ten (10) days before the Association gives notice of the meeting.

The notice of a Special Meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the United States mail addressed to the Member at the street address given by the Member to the Association, or to the residence of such Member if no address has been given to the Association.

**4.6 Proxies and Ballots Used at Meetings; Ballots Without a Meeting.** A Member entitled to vote at a meeting may vote in person or ballot, or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the meeting prior to the time the proxy is exercised. Any proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the Secretary or other person authorized to tabulate proxy or ballot votes (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot.

A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the Secretary or other Officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

In addition to utilizing a ballot in connection with a meeting, the Association may utilize ballots without a meeting to take any action that may be taken at any annual, regular or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when (1) the time by which all ballots must be received has passed so that a quorum can be determined and (2) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (a) set forth each proposed action, (b) provide for an opportunity to vote for or against each proposed action, (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

Any written ballot shall comply with the requirements in this Section and shall be counted equally with the votes of Members in attendance (by person or proxy) at any meeting for

every purpose, including satisfaction of a quorum requirement.

**4.7 Telecommunications.** Any or all of the Members may participate in an Annual, Regular, or Special Meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by a means permitted under this Section is considered to be present in person at the meeting.

**4.8 Quorum at Members' Meetings.** Except as may be otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy or by ballot, of Members entitled to cast at least twenty-five percent (25%) of the votes of all Members shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

If a quorum is not present at any meeting, another meeting may be called by the Board of Directors issuing a Notice of Members Meeting at which meeting the members that are present in person or by proxy or represented by ballot shall constitute a quorum, except as otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

**4.9 Adjournment of Members' Meetings.** Members present in person or by proxy at any meeting at which a quorum or reduced quorum, as the case may be, was present may adjourn the meeting from time to time, without notice other than announcement at the meeting, for a total period or periods not to exceed forty-five (45) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall be the same as the quorum requirement of the meeting so adjourned, and any business may be transacted which might have been transacted at the adjourned meeting.

**4.10 Vote Required at Members' Meetings.** At any meeting where a quorum is present, a majority of the votes present in person, ballot or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, except that, in the case of elections in which there are more than two (2) candidates, the persons receiving the highest number of votes shall be elected.

**4.11 Cumulative Voting.** Cumulative voting is not permitted. A plurality shall be sufficient for the election of a candidate.

**4.12 Order of Business.** The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

**4.13 Expenses of Meetings.** The Association shall bear the expenses of all Regular and Annual Meetings of Members and of Special Meetings of Members.

4.14 Waiver of Notice. A Member may waive any notice required by the Act or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver.

A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

4.15 Action of Members Without a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if a consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. Directors may not be elected by written consent except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section is not effective unless all written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronically transmitted facsimile or other form of communication providing the Association with a complete copy of the written consent, including a copy of the signature to the written consent.

4.16 Signature of Members. Except as otherwise provided in the Act, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; *i.e.*, owner, partner, president, director, member, trustee, conservator, guardian, etc.

## **ARTICLE V** **BOARD OF DIRECTORS**

### 5.1 Powers and Duties of the Board of Directors.

(a) The Board of Directors shall have power to:

(i) adopt and publish rules and regulations governing the use of the Common Areas, and personal conduct of the Members and their guests thereon, and establish penalties for the infractions thereof;

(ii) suspend the voting rights and the rights to use recreational facilities which may be provided of a Member during a period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(iii) exercise for the Association of powers duties, authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;

(iv) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from four consecutive regular meetings of the Board of Directors without cause; and

(v) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

(b) It shall be the duty of the Board of Directors to:

(i) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Class A Members who are entitled to vote;

(ii) supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;

(iii) as more fully provided in the Declaration, to:

(A) fix the amount of the monthly assessment against each Lot and to send written notice of such assessment to every Owner subject thereto as provided in the Declaration.

(B) foreclose the lien against any Lot for which assessments are not paid within thirty days after due date or to bring an action at law against the owner personally obligated to pay the same.

(C) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;

(D) procure and maintain adequate liability, hazard and other insurance on property owned by the Association as required by the insurance provisions of the Declaration;

(E) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(F) cause the Common Areas to be maintained, and, also, if an Owner of any Lot shall fail to maintain his Lot and the Unit located thereon in a manner satisfactory to the Design Review Committee and/or the Board of Directors, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents or employees, or through an independent contractor, to enter upon his Lot and to repair, maintain and restore the Lot and the exterior of the Unit and any other improvements erected thereon.

**5.2 Qualifications of Directors.** A Director must be a natural person 18 years of age or over and an Owner of a Lot within the Development or, if the Owner of any such Lot is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company. If a Director conveys or transfers title to his Lot, or if a Director who is a designated representative of a partnership,

corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Lot, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Notwithstanding anything in this Section to the contrary, none of the initial Directors, as designated in the Articles of Incorporation, shall be required to have any ownership interest in any Lot in order to qualify to serve as a Director until the first election of Directors by the Members. Any Director no longer qualified to serve under the standards provided for in this Section 5.2 may be removed by a majority vote of the Directors then in office.

**5.3 Number of Directors.** The affairs of the Association shall be managed by a Board of Directors composed of three (3) to five (5) individuals. Directors must be Members of the Association or spouses or agents of Members.

**5.4 Tenure of Directors.** The Directors shall be classified with respect to the time for which they shall severally hold office, by dividing them into three classes, to be known as classes "A", "B", and "C".

Of the Directors first chosen, Class A shall consist of one Director to hold office for one (1) year; Class B shall consist of two Directors, each to hold office for two (2) years; and Class C shall consist of two Directors, each to hold office for three (3) years.

At each annual election, the successor(s) to the class of Directors whose terms shall expire in that year shall be elected to hold office for the term of three (3) years. Any change in the number of Directors may be made only by amendment of the Articles. Each Director shall hold office until his term expires and until his successor has been duly elected and qualifies.

**5.5 Nominating Committee.** Nominations for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the Annual Meeting. 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 prior to each annual meeting of the Members, to serve from the close of such Annual Meeting until the close of the next annual meeting and such appointment shall be announced at each 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.

**5.6 Removal of Directors by the Members.** At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

**5.7 Resignation of Directors.** Any Director may resign at any time by giving written notice to the President, to the Secretary, or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver to the Utah Department of Commerce, Division of Corporations and Commercial Code a statement setting forth (a) that person's name; (b) the name of this Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or Officer; and (d) the date on which the person ceased to be a Director or Officer or a statement that the person did not hold

the position for which the person was named in the corporate report or other document.

5.8 Vacancies in the Board of Directors. Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board of Directors to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board of Directors. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. Should any vacancy of the Board of Directors remain unfilled for a period of two (2) months, the Members may, at a Special Meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

5.9 Appointment of Committees. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more committees which shall consist of two or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board of Directors in the management of the Association, except authority with respect to those matters specified in the Act as matters which such committee may not have and exercise the authority of the Board of Directors.

5.10 General Provisions Applicable to Committees. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board of Directors shall be applicable to meetings of committees of the Board of Directors.

## **ARTICLE VI**

### **MEETING OF DIRECTORS**

6.1 Place of Directors' Meetings. Meetings of the Board of Directors shall be held at the principal office of the Association or at such other place, as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2 Annual Meeting of Directors. The Annual Meeting of the Board of Directors shall be held on the same date as, or within ten (10) days following, the Annual Meeting of Members and also on the date that newly elected Directors take office. The Business to be conducted at the Annual Meeting of the Board of Directors shall consist of the appointment of Officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the Annual Meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the Annual Meeting of Members at which the Board of Directors is elected or if the time and place of the Annual Meeting of the Board of Directors is announced at the Annual Meeting of Members.

6.3 Other Regular Meetings of Directors. The Board of Directors may hold other regular



meetings and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

6.4 Special Meetings of Directors. Special Meetings of the Board of Directors may be called by the President or any two (2) members of the Board of Directors other than the President.

6.5 Notice of Directors' Meetings. In the case of all meetings of the Board of Directors for which notice is required by these Bylaws, notice stating the place, day and hour of the meeting shall be delivered not less than three (3) nor more than thirty (30) days before the date of the meeting, by mail, fax, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If mailed, such notice shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the United States mail addressed to the Director at his home or business address as either appears on the records of the Association, with postage thereon prepaid.

If faxed, such notice shall be deemed delivered when the transmission is complete. If by telephone such notice shall be deemed to be delivered when given by telephone to the Director. If given personally, such notice shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any Regular or Special Meeting of the Board of Directors need be specified in the notice or waiver of such meeting.

6.6 Proxies. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (i) to another Director who is present at the meeting; and (ii) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 6.6 and as permitted by Section 6.12, Directors may not vote or otherwise act by proxy.

6.7 Telecommunications. The Board of Directors may permit any Director 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 participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting.

6.8 Quorum of Directors. A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person or by proxy, if applicable.

6.9 Adjournment of Directors' Meeting. Directors present at any meeting of the Board of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods of not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum

requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

6.10 Vote Required at Directors' Meeting. At any meeting of the Board of Directors, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws.

6.11 Officers at Meetings. The President shall act as chairman and the Board of Directors shall appoint a secretary to act at all meetings of the Board of Directors.

6.12 Waiver of Notice. A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, or (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

(a) Dissent or Abstention. The right of dissent or abstention pursuant to this Section 6.12 is not available to a Director who votes in favor of the action taken.

(b) Action of Directors Without a Meeting. Any action required to be taken or which may be taken at a meeting of the Board of Directors may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors. Any action taken under this Section 6.12 is not effective unless all written consents are received within a sixty (60) day period and have not been revoked.

## **ARTICLE VII** **OFFICERS**

7.1 Officers, Employees and Agents. The Officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer. Any two (2) or more officers, other than the office of President and Secretary, may be held by the same person. Officers need not be Members of the Board or Association.

7.2 Tenure. The Officers of the Association shall be elected by the Board of Directors annually at the first meeting of the Board held after the annual meeting of the Members. If election of Officers does not occur at such meeting it shall be held as soon thereafter as is convenient. Each Officer shall hold office until his successor has been duly elected and qualifies or until he is removed. Any officer may be removed by the Board whenever in its judgment the best interests of the Association would be served thereby.

7.3 Resignation and Removal of Officers. An Officer may resign at any time by giving

written notice of resignation to the Association. A resignation of an Officer is effective when the notice is received by the Association unless the notice specifies a later effective date.

If a resignation is made effective at a later date, the Board of Directors may: (a) (i) permit the Officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b) (i) remove the Officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board of Directors may remove any Officer at any time with or without cause. An Officer who resigns, is removed, or whose appointment has expired may file a statement in the same form as provided in Section 5.7.

**7.4 Vacancies in Officers.** Any vacancy occurring in any position as an Officer may be filled by the Board of Directors. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

**7.5 President.** The President shall be a Member of the Board of Directors and shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Directors and of the Members of the Association.

**7.6 Vice President.** The Vice President, if any, may act in place of the President in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the President.

**7.7 Secretary.** The Secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors, and of committees of the Board of Directors; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the President. The Board of Directors may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his death, absence or inability to act. The duties of the Secretary may be delegated to a property management company.

**7.8 Treasurer.** The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board of Directors may, from time to time, require; shall arrange for the annual report required under Section 9.6 of these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or by the President. The Board of Directors may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his death, absence or inability to act. The duties of the Treasurer may be delegated to a property management company.

7.9 Bonds. The Association shall require and pay for fidelity bonds covering Officers or other persons handling funds of the Association as required in the Declaration. The Association shall pay the premiums for such bonds.

**ARTICLE VII**  
**INDEMNIFICATION OF OFFICIALS AND AGENTS**

8.1 Right of Indemnification. The Association shall indemnify any Director, Officer, employee, fiduciary and agent (including without limitation the property manager) to the fullest extent allowed under Sections 16-6a-901 through 16-6a-910 of the Act, or any replacement Sections thereof.

8.2 Authority to Insure. The Association may purchase and maintain liability insurance on behalf of any Director, Officer, employee, fiduciary and agent against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, including liabilities for which he might not be entitled to indemnification hereunder.

**ARTICLE IX**  
**MISCELLANEOUS**

9.1 Amendment/Conflict. These Bylaws may be amended, at any Regular, Annual, or Special Meeting of the Board of Directors, by a vote of the majority of the Board of Directors, except if 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. The Members may amend the Bylaws even though the Bylaws may also be amended by the Board of Directors. Amendments to the Bylaws by Members shall be made in accordance with the Act. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control.

9.2 Compensation. The Board may provide by resolution that the Directors, Officers, or Committee Members shall be paid their expenses, if any, by attendance at meetings. Directors, Officers, and Committee Members shall not be paid any salary or other compensation for their services as Directors, Officers, and Committee Members and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as Directors.

9.3 Books and Records.

(a) The Association shall keep as permanent records: (a) minutes of all meetings of its Members and Board of Directors; (b) a record of all actions taken by the Members or Board of Directors without a meeting; (c) a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the Association; (d) a record of all waivers of notices of meetings of Members and of the Board of Directors or any committee of the Board of Directors; and (e) a copy of the Declaration, as the same may be amended.

(b) The Association shall maintain appropriate accounting records.

(c) The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the name and address of all Members: (a) in alphabetical order, by class, and (b) showing the number of votes each Member is entitled to vote.

(d) The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) The Association shall keep a copy of each of the following records at its principal office: (a) its Articles of Incorporation; (b) its Bylaws; (c) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members; (d) the minutes of all Members' meetings; (e) records of all actions taken by Members without a meeting; (f) all written communications to Members generally as Members for a period of three years; (g) a list of the names and business or home addresses of its current Directors and Officers; (h) a copy of its most recent annual report; and (i) all financial statements prepared for periods ending during the last three (3) years.

#### 9.4 Inspection of Records.

(a) A Director or Member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 9.3.(e): (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least five (5) business days before the date on which the Member wishes to inspect and copy the records.

(b) In addition to the rights set forth in Subsection 9.4(a), a Director or Member is entitled to inspect and copy any of the other records of the Association; (a) during regular business hours; (b) at a reasonable location specified by the Association; and (c) at least five (5) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Subsection 9.4(c); and (ii) gives the Association written demand.

(c) A Director or Member may inspect and copy the records described in Subsection 9.4(b) only if: (a) the demand is made: (i) in good faith; and (ii) for a proper purpose; (b) the Director or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

(d) Notwithstanding any other provision in these Bylaws, for purposes of this Section: (a) "Member" includes: (i) a beneficial owner whose membership interest is held in a voting trust; and (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and (b) "proper purpose" means a purpose reasonably related to the demanding Member's or Director's interest as a Member or Director.

(e) The right of inspection granted by this Section may not be abolished or limited by the Articles of Incorporation or these Bylaws.

(f) This Section does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article, to compel the production of corporate records for

examination.

(g) A Director or Member may not use any information obtained through the inspection or copying of records permitted by Subsection 9.4(b) for any purposes other than those set forth in the demand made under Subsection 9.4(c).

**9.5 Scope of Inspection Right.** A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 9.4 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. Except for requests for financial statements, the Association may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the Director or Member. The charge may not exceed the estimated cost of production and reproduction of the records.

The nonprofit corporation may comply with a Director's or Member's demand to inspect the record of Members under Subsection 9.3(c) by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Subsection 9.3(c); and (b) is compiled no earlier than the date of the Director's or Member's demand. Concerning financial statements, by no later than fifteen (15) days after the day on which the Association receives a written request of any Member, the Association shall mail to the Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual financial statements, if any; and (b) the Association's most recently published financial statements, if any.

Without consent of the Board of Directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member.

**9.6 Annual Report.** The Board of Directors shall cause to be prepared and distributed to each Member and any First Mortgagee of a Member who has filed a written request therefor, not later than ninety (90) days after the close of each fiscal year of the Association, an annual report containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found.

**9.7 Statement of Account.** Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Lot or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall furnish, within ten (10) days after the receipt of such request, a written statement of account setting forth the amount of unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot and the Unit thereon, and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot and the Unit thereon. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have been levied.

**9.8 Annual Corporation Reports.** The Association shall file with the Division of Corporations and Commercial Code for the Utah Department of Commerce, within the time

prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.9 Fiscal Year. The fiscal year of the Association shall be the calendar year, and shall begin on January 1 and end the succeeding December 31. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.10 Seal. The Board of Directors may adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "UTAH".

9.11 Shares of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or Officers. Notwithstanding the foregoing paragraph, the Association may issue certificates evidencing Membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.12 Loans to Directors, Officers and Members Prohibited. No loan shall be made by the Association to its Members, Directors or Officers, and any Director, Officer or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

9.13 Limited Liability. The Association, the Board of Directors, the Architectural Control Committee, and Declarant, and any agent or employee of any of the same shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

9.14 Minutes and Presumptions Thereunder. Minutes or any similar record of the meetings of Members or of the Board of Directors, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

9.15 Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

9.16 Execution of Documents. The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and 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 to render it liable for any purpose or in any amount.

9.17 Right to Inspect. Notwithstanding the other provisions of this Article, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

**ARTICLE X**  
**NOTICE AND HEARING PROCEDURE**

10.1 Association's Enforcement Rights. In the event of an alleged violation by a Member or Occupant ("Respondent") of the Declaration, these Bylaws, or the Rules and Regulations of the Association, the Board of Directors shall have the right, upon an affirmative vote of a majority of all Directors on the Board of Directors, to take any one or more of the actions and to pursue one or more of the remedies permitted under the provisions of the Declaration, these Bylaws, or the Rules and Regulations of the Association.

If, under the provisions of the Declaration, these Bylaws, or the Rules and Regulations, a Notice of Noncompliance and Right to Hearing is required prior to taking action or pursuing remedies, the Board shall give the Member notice and an opportunity to be heard. The remedies set forth and provided in the Declaration, the Rules and Regulations of the Association or these Bylaws shall be cumulative and none shall be exclusive.

However, any individual Member must exhaust all available internal remedies of the Association prescribed by the Declaration, these Bylaws, and the Architectural Control Committee Rules and Regulations, and other Rules and Regulations of the Association before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Declaration, these Bylaws, or the Rules and Regulations of the Association, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply (i) to the Board of Directors or to any Member where the complaint alleges nonpayment of assessments, special assessments or other assessments, or (ii) to matters the Board of Directors determines in its discretion will (a) affect the safety of the Common Area or Facilities or the Owners or their property or (b) will result in irreparable harm to the Association if not quickly remedied, in such cases, the Board of Directors may immediately file suit.

**ARTICLE XI**  
**ASSESSMENTS**

11.1 Monthly and Special Assessments. As more fully provided in the Declaration, each Member (subject to exceptions provided for Declarant in the Declaration) is obligated to pay to the Association monthly and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made, provided, however, that such lien shall be subordinate to the lien of any first mortgage.

Any assessment which is not paid when due shall be delinquent. If the assessment is not paid within thirty days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 18% per annum together with a late payment service charge equal to five percent (5%) of each delinquency, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, late payment service fee, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.



**CERTIFICATE OF ASSOCIATION**

I, the undersigned, do hereby certify that:

1. I am the duly authorized representative of the South Jordan High Pointe Homeowners Association, a Utah nonprofit corporation ("Association"); and
2. The foregoing Bylaws, constitute the Bylaws of the Association.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 1<sup>ST</sup> day of  
MAY, 2008.

**SOUTH JORDAN HIGH POINTE HOMEOWNERS ASSOCIATION**

  
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Name: Jason Holt

Title: Manager