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COUNTRY PARK VILLAS  
BOARD OF DIRECTORS  
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**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
FOR  
COUNTRY PARK VILLAS**

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**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS**

**FOR**

**COUNTRY PARK VILLAS**

This DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS for COUNTRY PARK VILLAS is made as of this 25 day of FEBRUARY, 2008, by Country Park Villas Owners Association, Inc. a Utah corporation ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property (the "Property") located in Salt Lake County, Utah, which property is described in Exhibit "A," which is attached hereto and incorporated herein by this reference.

B. Declarant intends to protect and enhance the value and desirability of the Community. Moreover, by the terms of this Declaration, the Declarant intends to maintain a community for persons 55 or older, to qualify for the age restriction exemption under The Fair Housing Act (Title VIII of the Civil Rights Act, 42 USC § 3601, *et seq.*) that allows communities to be operated for occupancy by persons 55 years of age or older, to satisfy those certain criteria set forth in The Housing for Older Persons Act (42 USC § 3607(b)(2)(C)) and to adopt certain age restriction rules and regulations and age verification procedures. It is assumed that each purchaser of a Residence in the Community will be motivated to preserve the Community through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

C. It is desirable for the efficient management and preservation of the value and appearance of the Community to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Community; maintaining and administering the Community Areas; maintaining, repairing or replacing for the common benefit of the Owners all exterior elements of a Residence such as exterior doorways, windows, rain gutters, shingles, address signs and all other similar exterior structural improvements of the Residences; maintaining, repairing or replacing for the common benefit of Owners all landscaped areas, concrete improvements, fences, patios and driveways located on a Lot; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Community and the Owners. Country Park Villas Owners Association, Inc., a Utah nonprofit corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the aforesaid powers and functions.

D. Each Owner shall receive fee title to his or her Lot and one Membership in the Association as provided herein.

E. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Community and the interests therein conveyed and to establish thereon a planned community.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

## ARTICLE 1

### DEFINITIONS

Each of the Recitals A through E are incorporated into and made a part of this Declaration for all purposes. Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Declaration shall have the meanings set forth in this Article 1. (Certain terms not defined herein are defined elsewhere in this Declaration.)

1.1 “Additional Land” means any parcel of property located within a three-mile radius of the exterior boundaries of the real property described in Exhibit “A”. A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Community in accordance with the provisions of this Declaration

1.2 “Adjoining Owner” means the immediately adjoining Owner that owns a Residence with a common Party Wall touching the contiguous, neighboring Residence of a different Owner.

1.3 “Annual Assessments” means the Assessments levied pursuant to Section 6.2.

1.4 “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

1.5 “Assessment” means any Annual Assessment or Special Assessment.

1.6 “Assessment Lien” means the lien created and imposed by Section 6.5.

1.7 “Association” means the Country Park Villas Owners Association, Inc., a Utah nonprofit corporation, and its successors and assigns.

1.8 “Association Rules” means the rules and regulations adopted by the Board pursuant to Section 5.4, as amended from time to time.

1.9 “Board” means the Board of Directors of the Association.

1.10 “Bylaws” means the Bylaws of the Association, as amended from time to time.

1.11 "Community" means such term as described and set forth in Recital B.

1.12 "Community Areas" means: (a) all roadway improvements within the Community shown on the Plat as private roads and which are not accepted for dedication by a Municipal Authority; (a) all land, and the Improvements situated thereon, within the Community that Declarant designates as a Community Area on the Plat or other Recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of the Owners for as long as the Association is the owner of the fee, which may include without obligation or limitation a clubhouse, movie theater, fitness facility, picnic area(s), walkways, trails and open space, landscaped areas, Community and street signage, lighting, sidewalks, and other similar Improvements; and (b) any real property or Improvements within the Community that the Association has the obligation to maintain, repair or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation, all utility and service lines, systems and similar Improvements, whether public or private-company owned, located on a Lot or lying outside of the exterior boundaries of the Residences as further described in Section 1.35 below.

1.13 "Community Documents" means this Declaration, the Articles, the Bylaws, the Association Rules, as each document may be amended from time to time.

1.14 "Community Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves as further described in 6.2.1 below.

1.15 "Declarant" means Country Park Villas Owners Association, Inc., a Utah corporation, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.16 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.17 "Declaration" means this Declaration of Covenants, Conditions, Easements and Restrictions for Country Park Villas, as amended from time to time.

1.18 "Eligible Mortgagee" means and refers to a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.19 "HOPA" means the Housing for Older Persons Act (42 USC § 3607(b)(2)(C)), as amended from time to time.

1.20 "Improvement(s)" means any improvement now or hereafter constructed at the Community and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any (a) Residence, building, screening wall, other accessory building, fence or wall; (b) any walkway, garage, road, driveway or parking area; (c) any mailbox, sign, shed, covered patio, stairs, deck, fountain, artistic work, craft work, figurine,



ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); (d) any clubhouse, patio, courtyard, barbeque, benches, radio or television antenna or receiving dish; (e) any paving, exterior lights, curbing, trees, shrubs, hedges, grass, windbreak or other landscaping improvements of every type and kind; (f) any excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment and (g) any other structure of any kind or nature.

1.21 “Lessee” means the lessee or tenant under a lease, oral or written, of any Residence (or part thereof), including an assignee of the lessee’s or tenant’s interest under a lease.

1.22 “Lot(s)” means a portion of the Community intended for independent ownership and residential use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residence, building, structure or other Improvements situated on the Lot.

1.23 “Member” means any Person who is a member of the Association as provided in Article 5.

1.24 “Membership” means a membership in the Association and the rights granted to the Members, including Declarant, pursuant to Article 5 to participate in the Association.

1.25 “Mortgage” means a deed of trust or a mortgage Recorded against a Lot, or any part thereof or interest therein. A “First Mortgage” means a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.26 “Mortgagee” means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot. A “First Mortgagee” means any Person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage Recorded against a Lot or any part thereof or interest therein.

1.27 “Municipal Authority” means any applicable governmental entity or municipality which has jurisdiction over all or some part of the Community including without limitation West Jordan City, Utah and Salt Lake County, Utah.

1.28 “Occupant” means any Person other than an Owner who has actual use, possession or control of a Residence, or any portion thereof, and shall include, without limitation, Persons, other than the Owner, who reside in any Residence.

1.29 “Owner” means the Person or Persons who individually or collectively own fee title to a Lot, including Declarant, and purchasers under installment purchase contracts. “Owner” shall not include Persons who hold an interest in a Lot merely as security for the performance of an obligation.

1.30 “Party Wall” means a wall that forms part of a Residence and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one Owner

and is used or is intended to be used by the Owners of the benefited Residences, which wall may be separated by a sound board between two or more Residences.

1.31 “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.32 “Plat” means that certain planned community plat entitled “COUNTRY PARK VILLAS” duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.33 “Property” means such term as described and set forth in Recital A. The term “Property” shall also include any of the Additional Land that is made subject to this Declaration by the recordation of a Supplemental Declaration and an amendment to the Plat, which inclusion shall be effective from and after the date of recordation of such Supplemental Declaration and amended Plat.

1.34 “Record,” “Recording,” “Recorded” and “Recordation” means placing or having placed an instrument of public record in the official records of Salt Lake County, Utah.

1.35 “Residence(s)” means any dwelling unit situated upon a Lot and attached to one or more other dwelling units in which each unit has its own principal access to the outside, no unit is located over another unit, and each dwelling unit is separated from any other unit by one or more common Party Walls, designed and intended for separate, independent residential use and occupancy.

1.35.1 For purposes of this Declaration, the “interior elements” of the Residences shall include all pipes, wires, conduits, lines or systems (which for brevity are herein and hereafter referred to as utilities), whether public or private-company owned, located from the connecting point to the exterior of the Residence where such utilities enter the Residence (stubbed location) and continuing into the interior portion of such Residence, interior spaces, flooring, partitions, Party Walls, plaster, gypsum drywall, wallpaper, paint, ceilings, all other materials constituting part of the interior surfaces of the Residences and other similar interior fixtures and Improvements as such interior elements may be further determined by the Board in its sole and exclusive discretion.

1.35.2 For purposes of this Declaration, the “exterior elements” of the Residences shall include all utilities, whether public or private-company owned, located on the Lots and which end at the connecting point to the exterior of the Residence where such utilities enter the Residence and are stubbed to provide utility service to the Residence but do not include any interior portion of such utilities located within a Residence which constitute interior elements as further defined in Section 1.35.1 above, rooftops, shutters, doorsteps, stoops, patios, exterior doors, exterior windows and other similar exterior Improvements as may be further determined by the Board in its sole and exclusive discretion, but shall specifically exclude all exterior screen doors which have been or may be installed by an Owner.

1.35.3 In the event of any disagreement or uncertainty as to which improvements or elements of a Residence constitute "interior elements" or "exterior elements", the Board shall have the sole and exclusive power to make such determination, including without limitation the sole power and authority to determine which portions of the utilities lie within the exterior or interior portions of a Residence, and the Board's determination shall be conclusive, final and unappealable.

1.36 "Special Assessment" means any Assessment levied pursuant to Section 6.3.

1.37 "Supplemental Declaration" means any recorded declaration, except for this Declaration, covering Lots on the Property recorded by Declarant to subject all or a portion of the Additional Land to this Declaration as further described in Section 2.5 below, as such Supplemental Declaration may be amended from time to time.

## ARTICLE 2

### DECLARANT'S RIGHTS AND OWNERS' OBLIGATIONS

2.1 Property Subject to this Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Community in order to protect and enhance the value and desirability of the Community. All of the property within the Community shall be held, sold and conveyed subject to this Declaration, including any of the Additional Land hereafter made subject to this Declaration by the recordation of a Supplemental Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2 No Condominium. Declarant and each Owner hereby agree and understand that the Property is **not**, by execution and recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the "Act"). This Declaration does not constitute a declaration as provided for in the Act and the provisions of the Act shall not be applicable to Property or any portion thereof, including without limitation all or a portion of the Additional Land made subject to this Declaration by the recordation of one or more Supplemental Declarations.

2.3 Lots and Residences. The Community shall consist of seventy (70) Lots, each of which is improved with a Residence, as such Lots are depicted on the Plat, subject to the

Declarant's right to expand the Community pursuant to the provisions of Section 2.5 below. Declarant reserves the right to adjust the location of each Residence in order to facilitate proper planning in the sole and exclusive discretion of the Declarant, subject to the terms and provisions of Section 2.12. Moreover, following the recording of this Declaration, Declarant, to the extent permitted by law, reserves the unilateral right to reconfigure, eliminate and/or change the design and arrangement of the Community Areas, and any Residence and to alter the boundaries between Lots as it shall determine in its sole and exclusive discretion, so long as the Declarant or a Declarant Affiliate owns the Lots or Residences so altered or obtains and duly records the written authorization of the Owner of any altered Lot or Residence not owned by Declarant. Such reconfiguration right shall include the right to change or alter the exterior elements or design of the Residences, including, but not limited to, altering or changing the placement, size, number, and configuration of doors, entry-ways, windows, and similar items, and to modify the principal type of construction and building materials of such Residences. Any change of the boundaries between Residences, Lots or Community Areas shall not require an amendment to this Declaration or to the Plat.

2.4 The Association. In addition to any other Association obligations and rights described in this Declaration, the Association shall have the following obligations and rights:

2.4.1 As further described in Article 7 below, the Association shall maintain in a safe, sanitary and attractive condition (i) the Community Areas and all Improvements thereon; (ii) the exterior elements of the Residences; and (iii) the landscape areas, concrete improvements, fences, patios and driveways located on a Lot. Such maintenance responsibility shall include, but shall not be limited to, painting, maintenance, repair and replacement of the stucco, brick, concrete and roofing materials of all Residences and the surrounding areas of the Lot including, without limitation, all driveways, including snow removal, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping and all portion of the Community Areas, subject to the willful and negligent act provisions described in Sections 2.7 and 7.4. Each Owner shall immediately repair and replace all broken glass of a Residence at such Owner's sole and exclusive expense. However, the Association shall repair and replace all broken glass of a Residence caused by the willful or negligent act of an agent acting on behalf of the Association in carrying out the Association's duties to maintain the Community Areas, certain portions of the Lots or exterior elements of the Residences, which broken glass repair and replacement shall constitute a Community Expense.

2.4.2 The Association shall assess and collect fees from the Members in accordance with the provisions hereof and the Bylaws. In particular, in order to preserve a Community maintenance standard, property values and uniform appearances of all Residences within the Community, the Association shall have the express obligation to repair, replace and maintain all exterior elements and improvements of the Residences, including without limitation, all doorways, windows, stucco, rain gutters, shingles, address signs and all other similar exterior elements of the Residences as the Board may determine in its sole and exclusive discretion.

2.4.3 As also described in Section 5.4 below, the Board shall have the right to promulgate and adopt the Association Rules, which Association Rules may further

limit and/or expand upon the use restrictions applicable to the Community as described herein without requiring a Recorded amendment to this Declaration.

2.5 Additional Land. Declarant reserves the right to subject all or a portion of the Additional Land to this Declaration by the recordation of one or more Supplemental Declarations without the prior consent of any other party or Owner except for the Owner of all or any portion of the Additional Land. Declarant shall identify in each Supplemental Declaration the Additional Land, specify the number of additional Lots and Residences, if any or if known, to be added to the Community, and the number of votes and Assessment units to be allocated to the Additional Land based upon the formulas described in this Declaration. The owner of such Additional Land, if different from the Declarant, shall also execute the Supplemental Declaration. Upon recordation of the Supplemental Declaration, the subject Additional Land shall be deemed added to the Property and the number of Lots and Residences, Assessment units and votes shall be automatically increased to include the Additional Land's Lots and Residences and other items for purposes of this Declaration. The Supplemental Declaration may modify any of the covenants, conditions and restrictions otherwise applicable to the Additional Land in the Supplemental Declaration where such changes are deemed necessary in the discretion of the Declarant to address a unique condition affecting or relating to the Additional Land that is the subject of the Supplemental Declaration or to more fairly allocate the benefits and obligations of membership within the Association. In the event that Declarant and the owner of any of the Additional Land fail to reach an agreement on the terms of inclusion within the Community, the Additional Land will still have such rights of access and be subject to such limitations as are contained in any other agreements with the owners of the Additional Land. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Community in accordance with the provisions of this Section 2.5.

2.6 Incidents of Ownership; Membership in the Association. Every Lot shall have appurtenant to it one Membership in the Association, and a nonexclusive easement for each Owner for use, enjoyment, ingress and egress over the Community Areas subject to such restrictions and limitations as are contained in the Community Documents and subject to other reasonable regulation by the Association.

2.7 Responsibility for Community Areas Damage. Each Owner shall be personally liable to the Association for the cost of all repairs or replacement of any portion of the Community Areas, the Lot, or the exterior elements of the Residence resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees to the extent that such costs are not covered by insurance maintained by the Association. The Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner enforceable in the same manner as the enforcement of the payment of Assessments. The failure of the Association to continue any insurance in effect shall not be a defense to any such Owner's personal liability.

2.8 Reservation of Right to Construct Residences and Improvements. Declarant intends, without obligation, to sell, convey and transfer the Lots to Owners at the time that such Lots are improved with Residences. In addition to the reservations of rights set forth in this Declaration, Declarant reserves the sole and exclusive right, without obligation, to construct

and/or directly supervise the construction of all Residences and Improvements to be erected on the Community Areas and the Lots which are a part of the Community. An Owner of a Lot other than Declarant or a Declarant Affiliate shall not have the right to independently construct a Residence or any other Improvement thereon, or approve or supervise the construction of any Residence or Improvement within the Community. Notwithstanding the foregoing intention to construct all of the Residences, Declarant reserves the right to sell, convey, transfer, assign or otherwise dispose of any Lot to a Declarant Affiliate or any other third party, without first constructing a Residence thereon, and to authorize such new Owner the right to independently construct a Residence or other Improvement thereon as Declarant shall determine in its sole and exclusive discretion.

2.9 Declarant's Disclaimer of Representations. Nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Declarant or any Declarant Affiliate shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any Property subject to this Declaration.

2.10 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE ASSOCIATION, THE BOARD, OR THE DECLARANT, (COLLECTIVELY, THE "PROJECT GOVERNING BODIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, HOWEVER, AND THE PROJECT GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGE THAT THE PROJECT GOVERNING BODIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, TENANT, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE PROJECT GOVERNING BODIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO LOTS, TO PERSONS, TO RESIDENCES, TO IMPROVEMENTS AND TO THE CONTENTS OF RESIDENCES AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE PROJECT GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROJECT.

2.11 Readjustment of Lot Line Boundaries. Declarant hereby reserves for itself, Declarant Affiliate and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines for purposes of proper configuration and final engineering of the Community; provided that any such realignment and adjustment does not affect any existing Residence or Improvement (other than landscaping) on the affected Lot. The authority to realign and adjust such Lot boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.11. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Lot boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots in relationship to the development of the Community. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat shall be required to effectuate any Lot boundary line adjustments so long as such adjustments are made pursuant to § 17-27-808(7), Utah Code Ann., as amended. More particularly, boundary line adjustments between adjacent Lots may be executed upon the approval of the appropriate Municipal Authority and upon recordation of an appropriate deed if:

2.11.1 No new Residence or Improvement results from the Lot boundary line adjustment and exchange of title;

2.11.2 The adjustment does not result in violation of applicable Municipal Authority zoning requirements; and

2.11.3 The appropriate Municipal Authority Records a notice of approval in accordance with § 17-27-808(7)(c), Utah Code Ann.

The foregoing Sections 2.11.1, 2.11.2, and 2.11.3 are subject to automatic modification to be consistent with any amendments or changes to § 17-27-808(7), Utah Code Ann.

2.12 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, and subject to the approval of the appropriate Municipal Authority, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Property owned by the Declarant or changing the nature or extent of the uses to which such Property may be devoted.

2.13 Community Area Improvements. Declarant, so long as Declarant or a Declarant Affiliate owns a Lot within the Community, reserves the unilateral right to construct Improvements on any area of the Community Areas and modify the location, type and nature of Community Areas as it shall determine in its sole and exclusive discretion, including, without limitation, the right to construct or create storage facilities, walking trails, picnic areas or other Improvements thereon. Such construction and relocation rights shall not be subject to the consent of the Owners, Board, Mortgagees or any other person or entity. After the termination of Declarant's rights under Section 2.14 below, the Board shall have the right to exercise such

construction and relocation powers in connection with the Community Areas upon the vote or written assent of two-thirds (2/3rds) of the members of the Board present at any annual or special meeting of the Board pursuant to the approval procedures described in the Bylaws. Within forty-five (45) days after Declarant has transferred and conveyed the last Lot that may be created within the Community to an Owner other than Declarant or a Declarant Affiliate, Declarant shall convey the Community Areas to the Association via a Recorded deed for the permanent use and benefit of the Owners.

### ARTICLE 3

#### LAND USES, PERMITTED USES AND RESTRICTIONS

3.1 Land Uses. Except as otherwise specifically provided in this Declaration, no Residence shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto, provided, however, that no Residence may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, off-campus housing by unrelated students, or any similar type of lodging, care or treatment facility. The foregoing residential use restriction is subject, however, to any applicable current or future federal or Utah housing law that may now or in the future render such residential use restriction unenforceable in whole or in part, in which event such residential use restriction shall restrict use of the Community only to the extent permitted by law. Notwithstanding the foregoing: (i) an Owner or Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Residence), making professional telephone calls, or corresponding, in or from a Residence, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions.

3.2 Age Restrictions on Rentals and Initial Sale of Residences.

3.2.1 The rental and initial sale of Residences by Declarant shall be restricted such that, when all seventy (70) of the Residences have been rented or initially sold by Declarant, at least fifty-six (56) of those Residences ("Qualifying Residences"), the identity of which shall be determined exclusively by Declarant, shall have been rented or initially sold by Declarant either: (i) to an individual who, at the time of such rental or initial sale, was at least 55 years of age, or (ii) in the case of multiple purchasers of a Residence, to purchasers at least one of whom was an individual at least 55 years of age at the time of such rental or initial sale (collectively "Age 55 Criteria"). There shall be no minimum or maximum number of Qualifying Residences that may be rented as opposed to sold by Declarant; provided, however, that, if and when Declarant sells a Residence that Declarant has been renting and whose inclusion was necessary to achieve a minimum number of Qualifying Residences, Declarant may sell that Residence only to a purchaser or purchasers meeting the Age 55 Criteria. Any updated or current changes in Federal Law supersedes the above.

3.2.2 Following Declarant's conveyance of all Residences in the Community, at least eighty percent (80%) of the occupied Residences within the



Community shall at all times, except as otherwise provided herein, be occupied by at least one (1) person not less than fifty-five (55) years of age. Each Owner hereby agrees and acknowledges that in the event he or she purchased a Qualifying Residence, he or she shall be bound by the Age 55 Criteria and the Owner's rental and sale of such Qualifying Residence shall be restricted by the Age 55 Criteria. For the purposes of this Section 3.2, a Residence is "occupied" when an Owner or Occupant has possession of the Residence and has the right to actually use or control such Residence. In compliance with HOPA, the Association, shall (i) publish and adhere to Age 55 Criteria policies and procedures that demonstrate the intent to operate this Community as a community for persons who are 55 years of age or older as such intent is set forth in this Section 3.2; and (ii) shall establish policies for age verification of each Owner or Occupant by reliable surveys and affidavits, which surveys and affidavits shall be of the type that may be admissible in administrative and judicial proceedings for the purposes of such verification, such as a driver's license, birth certificate, passport, immigration card or military identification. The only exception to the Age 55 Criteria as applied to the eighty percent (80%) of Residences occupied by persons age 55 or older is for the non-age qualified surviving spouse of an age qualified decedent Owner who had occupied the Qualified Residence, until such time as the non-age qualified surviving spouse remarries at which time the exception expires.

3.3 Additional Restrictions on Use. In addition to all of the covenants contained herein, the use of the Residences and Community Areas are subject to the following (as such restrictions on use may be amended, supplemented and/or expanded by the Board via its promulgation of the Association Rules as further described in Section 2.4 above):

3.3.1 Insurance. Nothing shall be done or kept in any Residence, on any Lot or in or on the Community Areas which will increase the rate of insurance maintained by the Association or that will result in the cancellation of said insurance. No Owner shall permit anything to be done or kept in his or her Residence or Lot or in or on the Community Areas which is in violation of any law or regulation of any governmental authority.

3.3.2 Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows of Residences or placed on the outside walls of a Residence or otherwise outside of a Residence, or any part thereof, except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige, gray, off-white, light earth tones or light to medium natural wood colors, or as otherwise authorized by the Board. No awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof of a Residence, or the exterior of any door or window of a Residence, or in, on, or over a patio, porch or balcony of a Residence, visible to the exterior, unless authorized by the Board. Notwithstanding the foregoing, nothing in this Declaration shall be deemed to prohibit the unobtrusive placement of reasonably small satellite discs on the roofs of individual Residences by the Owner or Owners of those Residences, as such unobtrusive placement may be determined by the Board in its sole and exclusive discretion.

3.3.3 Offensive Activities. No noxious or offensive activity shall be carried on in any Residence, on any Lot or in or on the Community Areas, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Owner or lawful Occupant of other Residences.

3.3.4 Structural Integrity. Nothing shall be done in any Residence, on any Lot or in, on, or to the Community Areas which will impair the structural integrity of any Residence or structurally change the same or any part thereof except as is otherwise provided in this Declaration.

3.3.5 Community Areas. The Community Areas shall be kept free and clear of all rubbish, debris, and other unsightly materials. The Community Areas shall be used in common by Owners and lawful Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of Residences. Unless expressly provided otherwise herein, no Community Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Owners and Occupants. There shall be no obstruction of the Community Areas, nor shall anything be kept or stored on any part of the Community Areas in violation of the rules adopted by the Board. Nothing shall be altered on, constructed in, or removed from, the Community Areas except upon the prior written consent of the Board.

3.3.6 Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Residence or on the Community Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Residence, provided that: (i) no more than one pet may be maintained in any Residence, except that, if a Owner, prior to the commencement of occupancy of a Residence, requests the Board, in writing, for permission to maintain two pets in a Residence, the Board, in its discretion, may, in writing, authorize two pets, provided the two pets are either dogs of a miniature breed or cats who have or will have a combined mature weight not in excess of twenty (20) pounds, the pets shall be house pets only and not permitted in Community Areas, those pets are owned by the Owner at the time of commencement of occupancy of a Residence, and the Owner shall not be permitted to replace the first of those two pets who dies; (ii) the maintaining of animals shall be subject to the Association Rules as the Board may from time to time promulgate, including, without limitation, the right to prohibit pets entirely, to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (iii) the right of a lawful Occupant to maintain an animal in a Residence shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Community or other Residences or Occupants.

3.3.7 No Admission Fee. Other than the right of the Association to charge a reasonable fee for use of a clubhouse (if and when a clubhouse is built) to reimburse the Association for the cost of clean up, maintenance, and/or repair of damage required by

such use, no admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Community Areas. Nothing in this subparagraph shall be construed to relieve Owners or Occupants from their responsibility to repair any damage caused by them as may be required by other provisions of this Declaration or in any Association Rules adopted by the Board.

3.3.8 Renting and Leasing. No Residence or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental under which Occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Residence only. No lease may be of less than an entire Residence. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions of this Declaration, and to the Association Rules promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Community Documents and Association Rules established by the Board shall be a default under the lease. Any Owner who sells or leases a Residence within the Community shall disclose in the advertisements, purchase or lease documents that the Community is a 55 year age restricted community under HOPA. An Owner's or the Owner's realtor's failure to disclose that this Community is intended to be operated for persons age 55 and older shall not prevent the Association from enforcing the age restriction policies against any Owner, Occupant and/or renter for non-compliance. Prior to the commencement of the term of a lease, the Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Any violation of this Declaration or of the Association Rules by a tenant shall also constitute a violation by the Owner, and the Board shall have the right to enforce this Declaration against the Owner and such tenant.

3.3.9 Signs and Flags. No sign or flag of any nature, except the flag of the United States, may be displayed to the public view on the Community except: (a) on the Community Areas, signs posted by the Association regarding and regulating the use of the Community Areas; (b) on the interior side of the window of a Residence, one professionally prepared sign not in excess of nine square feet in size, advertising the Residence for sale or rent; (c) on the Community Areas and model Residences, signs advertising the sale and/or rental of Residences by the Association as further described in this Declaration; and (d) an Owner's display of the flag of the United States of America as provided for in § 57-24-102, Utah Code Ann. All such signs in the Community related to "Qualifying Residences" (as such term is defined in Section 3.2.1 above), whether placed by an Owner or by a realtor, shall prominently display that this is a "55 YEAR AGE RESTRICTED COMMUNITY".

3.3.10 Vehicles. The Board may establish as a part of the Association Rules certain rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats, and recreational vehicles on the Lots and Community Areas, or parts thereof, and may enforce such regulations or restrictions

by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it, in its sole discretion, deems appropriate.

3.3.11 Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association, or the Board which in any manner would discriminate against any Owner in favor of another. In addition, notwithstanding any provision hereof, or any Association Rule, the Board shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Community as compared to any other Owner, provided that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.

3.3.12 Architectural Control. No building, fence, wall, sign, or other structure or improvement shall be commenced, erected, or maintained upon the Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing by the Board, acting as the "Architectural Review Committee" for the Community, or its designated representative or representatives, in its or their sole and unfettered discretion. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained on the Residences, on the Lots or on or in Community Areas unless approved, in writing, by the Board or its designated representative or representatives, in its or their sole and unfettered discretion, or unless the same is authorized by existing Association Rules adopted by the Board.

3.4 Required Approvals for Further Property Restrictions. The Property is subject to the following additional approvals:

3.4.1 No Lot, or portion thereof, shall be further subdivided, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant.

3.4.2 No site plan, subdivision plat, declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be Recorded, submitted to any Municipal Authority unless the same has first been approved in writing by the Board; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Board hereunder unless such changes or modifications have first been approved by the Board in writing.

3.5 Lots and Improvements. Declarant shall not be restricted in the location or in the number of Lots, Residences, Community Areas or other Improvements that may be created on the Property, except as may be required by the Community Documents, applicable zoning requirements, ordinances or regulations, and provided that when completed, the Community shall not contain more than seventy (70) Lots and seventy (70) Residences. The Lots and Residences located on the Property shall be subject to the use restrictions contained in the Community Documents. No structures other than Residences and Improvements approved by

the Board will be erected on the Property; provided, however, that Declarant reserves the right to create additional Community Areas and Improvements on the Property without limitation. Declarant makes no assurances as to location, size, type or number of Community Areas or other Improvements to be created on the Property.

## ARTICLE 4

### EASEMENTS

#### 4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant, each Owner and Occupant shall have a nonexclusive right and easement of enjoyment in, to and over the Community Areas, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of the Community Documents including, without limitation, the following:

4.1.1.1 Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Community Areas shall be effective unless approved by Owners representing two-thirds (2/3) of the votes of the Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person, to dedicate portions of the Community Areas to the public, or grant easements over, under or through portions of the Community Areas to the public, to any Municipal Authority, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by any Municipal Authority or other entity having jurisdiction.

4.1.1.2 The Association shall have the right to regulate the use of the Community Areas through the Association Rules and to prohibit access to such portions of the Community Areas, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

4.1.1.3 The Declarant and the Association shall each have the right to grant easements or licenses to Persons for the construction of Improvements on the Community Areas, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the Community Areas in the Community to Persons who are not Members.

4.1.2 Occupants Use of the Community Areas. If a Residence is leased or rented by its Owner, the Occupants of such Residence shall have the right to use the Community Areas during the term of the lease, and the Owner of such Residence shall have no right to use the Community Areas until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Community Areas, certain portions of the Lots and other property as may be depicted on the Plat for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television, telecommunications and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company or Municipal Authority to install and maintain the necessary equipment on the Community Areas, certain portions of the Lots and other property as may be depicted on the Plat. However, except within the public utility easements which may be depicted on the Plat, no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Community Areas, Lots, and other property except as initially designed, approved and/or constructed by the Developer or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). If any utility company or Municipal Authority requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Community Areas, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate. All utility lines shall be maintained, repaired and replaced in accordance with Sections 7.1.3 and 7.6 below.

4.3 Easements for Community Ingress and Egress; Easements for Emergency Vehicle Access. It is intended that all roadways and parking areas within the Community not located on a Lot shall be constructed and maintained as private Improvements to be owned by the Association as Community Area for the exclusive use and benefit of the Owners and Occupants as Declarant shall determine in its sole and exclusive discretion (collectively referenced the "Private Roadway"). The Private Roadway is not intended to be a public access route, thoroughfare or street. To the extent that certain Private Roadway improvements are not dedicated to a Municipal Authority, then the Association shall maintain, repair and replace such Private Roadway as a portion of the Community Areas as set forth in Section 7.1. The Private Roadway and Community Areas are subject to the following easements:

4.3.1 There is hereby created an exclusive easement for ingress and egress for owners and residents, through and across trails, sidewalks, paths, walks and lanes that from time to time may exist upon the Community Areas. Such easements shall run in favor of and be for the exclusive use and benefit of the Owners and Occupants and their guests, families, tenants and invitees. The Board shall have the right to relocate and/or reconfigure any and all such Community access easements from time to time as it sees fit without the consent of any Owners or Mortgagees.

4.3.2 There is also hereby created a perpetual nonexclusive emergency access easement upon, across and over the Private Roadway for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. Such easements shall run in favor of and be for the exclusive use and benefit of all emergency personnel, including but not limited to, the West Jordan City Fire Department, the West Jordan City Police Department, any successor or replacement agencies and service providers, and other local, state and federal emergency vehicles and personnel.

4.4 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.4.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.4.2 For inspection, maintenance, repair and replacement of portions of the Community Areas accessible only from such Lot or Lots;

4.4.3 For correction of emergency conditions on one or more Lots or on portions of the Community Areas accessible only from such Lot or Lots;

4.4.4 For the purpose of enabling the Association, the Board, or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Community Documents;

4.4.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Community Documents;

4.4.6 For inspection, maintenance, repair and replacement of the landscaped areas, concrete improvements, fences, patios and driveways located on the Lots which the Association is obligated to repair, replace and maintain pursuant to the provisions of this Declaration and the other Community Documents; and

4.4.7 For inspection, maintenance, repair and replacement of the exterior elements of the Residences located on the Lots which the Association is obligated to repair, replace and maintain pursuant to the provisions of this Declaration and the other Community Documents.

4.5 Easement for Party Wall. Each Owner, for each Lot that he, she or it owns, hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot. To the extent the Party Wall does encroach upon or overlap a Lot, the Owner of said Lot hereby grants to the Adjoining Owner of the other Lot that shares a Party Wall an easement over and upon its Lot for the purpose of maintaining the Party Wall and carrying out the other obligations set forth in this Declaration. By accepting a deed to a Lot, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall and the performance of the Association's obligations and each Owner's respective obligations under this Declaration.

## ARTICLE 5

### THE ASSOCIATION; ORGANIZATION; ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Community Documents.

5.2 Governing Board and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Community Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Community Areas. The Board shall determine the compensation to be paid to any such manager. The initial number of directors on the Board shall be five (5). The Board shall continue in office until the next special or annual meeting of Members who shall then have authority to elect a new Board in accordance with the Association's Bylaws. Moreover, the terms of the directors of the Board, the filling of Board vacancies and similar operational matters of the Board shall be conducted in accordance with the Association's Bylaws.

5.3 Manner of Exercising Votes for Directors. At any meeting, the votes exercised by the Owner or Owners of a Lot shall be the number of votes determined by multiplying the number of Lots times the number of seats to be filled. Said votes may be voted in favor of as many candidates as there are director seats to be filled.

5.4 Association Rules. It is currently contemplated that the Board will enact and promulgate the Association Rules which shall govern the Owners and the Community. The Board may, from time to time, and subject to the provisions of this Declaration, amend and repeal the Association Rules or adopt new Association Rules which generally pertain to: (a) the management, operation and use of the Community Areas; (b) traffic and parking restrictions on the Lots including areas reserved for the exclusive use and occupancy of an Owner and speed limits on the private street within the Community; (c) minimum standards for any maintenance of Community Areas, Lots, Residences and Improvements within the Community; or (d) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.5 Personal Liability. No member of the Board, or any other committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other



committee of the Association; provided, however, the limitations set forth in this Section 5.5 shall not apply to any person who has engaged in intentional misconduct.

5.6 Borrowing Power. The Association may borrow money in accordance with the Bylaws in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Members. The Association may secure such loans by pledging any of its properties including future Assessments.

5.7 Express and Implied Rights. The Association may exercise any expressed or implied right or privilege given to the Association expressly by the Community Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege. In particular, subject to the rights of Declarant described in this Declaration, the business, property and affairs of the Association shall be managed, operated, and maintained by the Board and by any manager it may designate and the Board, acting for and on behalf of the Association, shall have, and is hereby granted, the following specific authority and powers:

5.7.1 Without the vote or consent of the Owners or any other persons, the Board may grant or create, to the extent permitted by law and on such conditions as it deems advisable, utility and similar easements, over, under, across and through the Community Areas;

5.7.2 The Board may execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by any vote or consent necessary to authorize such amendment;

5.7.3 The Board shall have the authority to enforce this Declaration on behalf of the Association and its Members;

5.7.4 The Board shall have authority to enter into contracts which in any way concern the Community on behalf of the Association, so long as any vote or consent of the Owners which may be necessitated by the subject matter of the agreement has been obtained;

5.7.5 The Board shall have authority to purchase, otherwise acquire, and accept title to, in the name of the Association, any personal property and/or interest in real property, and to convey or transfer any interest in real property, so long as such action has been authorized by any vote or consent of the Owners which may be necessary under the circumstances;

5.7.6 The Board may add any interest in real property obtained pursuant to subparagraph 0 immediately above to the Community, so long as such action has been authorized by any necessary vote or consent of the Owners;

5.7.7 The Board may adopt Bylaws of the Association;

5.7.8 The Board may promulgate, from time to time, such reasonable rules, regulations, and procedures as may be necessary or desirable to aid in carrying out the

Association's functions and/or to govern the reasonable use, maintenance, and operation of the Community, including without limitation those certain rules, regulations and age verification policies described in Section 3.2 above;

5.7.9 The Board shall have authority to maintain, repair, replace, restore, operate, and manage the Community Areas, the exterior elements of Residences, landscaped areas, concrete improvements, fences, patios and driveways located on a Lot, and all property that may be acquired by the Association, to appoint a Manager in regard to such activities, and to establish an adequate reserve fund for repair, replacement, and restoration thereof;

5.7.10 The Board shall have authority to secure fidelity bond coverage and such other policy or policies of insurance as the Board deems necessary or desirable in protecting the interests of the Association and the Owners; and

5.7.11 The Board may perform any other acts and may enter into any other transactions which are permitted by the Bylaws, which may be deemed reasonably necessary by the Board for the Board to perform its function, and which Utah law shall permit.

5.8 Membership in the Association. Every Owner shall be a member of the Association.

5.9 Votes in the Association. Each Owner of a Lot shall be a member of the Association and is allotted one (1) vote per Lot owned. Each membership in the Association shall be held jointly by all Owners of that Lot.

5.10 Voting Procedures. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded, or, in connection with Owners who are vendees, upon the execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provided satisfactory evidence thereof. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

5.11 Transfer of Membership. The voting rights and Assessment obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to

make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. In the event the Owner of any Lot should fail or refuse to transfer the Membership registered in his or her name to the purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right, but not the obligation, to record the transfer upon the books of the Association. All transfers shall be subject to the transfer fee described in Section 6.14.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. Owners for each Lot, hereby covenants and agrees, by becoming the Owners of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

6.2 Annual Assessment. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Community Expenses and to perform its duties and obligations under the Community Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot which shall be billed monthly to each Owner. Annual Assessments shall be computed and assessed against all Lots in the Community as follows:

6.2.1 Community Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Community Areas, exterior elements of the Residences, landscaped areas, concrete improvements, fences, patios and driveways located on a Lot, and furnishing common utility services and other common items to the Residences. Such estimated expenses may include, without limitation, the following: landscaping and pressurized irrigation costs, exterior maintenance of Residences, management expenses; real property taxes on the Community Areas;

premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a manager; utility charges, including charges for utility services to the Community Areas; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Community Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Community Expenses, and all funds received from Assessments under this Section 6.2.1 shall be part of the Community Expense fund. Two separate and distinct accounts shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Community Expense fund.

6.2.2 Apportionment. Community Expenses shall be equally apportioned among and assessed to all Members. Each Owner, for each Lot that he, she or it owns, shall be liable for an equal share of the Community Expenses.

6.2.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 1 of each year thereafter fiscal year. The Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Community shall be operated during such fiscal year.

6.2.4 Notice and Payment. The Board shall give notice of the Annual Assessment to each Owner at least ten (10) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Community Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board.

6.2.5 Effective Date of Assessments. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Owner subject thereto at least ten (10) days prior to the due date thereof as described in Section 6.2.4 above, or, if it is to be paid in installments, the due date of the first installment thereof. Written notice mailed or delivered to an Owner's Residence shall constitute notice to that Owner, unless the Owner has delivered written notice to the Board of a different address for such notices, in

which event the mailing of the same to that last designated address shall constitute notice to that Owner.

6.3 Special Assessments. The Association may levy against each Lot, in any fiscal year, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Community Areas, including fixtures and personal property related thereto, exterior elements of the Residences, and landscaped areas, concrete improvements, fences, patios and driveways located on a Lot; provided, however, that any Special Assessment shall have the assent of two-thirds (2/3rds) of the votes entitled to be cast by the Members who are voting in person or by proxy at a meeting duly called for such purpose, if the cost of such new improvements would exceed five percent (5%) of that budget for the fiscal year.

6.4 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt Association Rules setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his, her or its liability for any Assessment or charge under this Declaration. However, no Assessment Lien shall be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during a fiscal year; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.5 Effect of Nonpayment of Assessments; Remedies of the Association.

6.5.1 Any Assessment, or any installment of an Assessment, not paid within ten (10) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within ten (10) days after such payment was due.

6.5.2 If any installment of an Assessment assessed by the Board is not paid within ten (10) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

6.5.3 The Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Board may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the

records of the Association, the legal description of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

6.5.4 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any Municipal Authority or assessment district; and (c) the lien of any First Mortgage as provided in this Section 6.5.4. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed First Mortgage on a Lot recorded prior to the date on which such lien of the Association is recorded and any holder of such First Mortgage which comes into possession of a Lot pursuant to the remedies provided in the First Mortgage, foreclosure of the First Mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid installments of assessments and charges against the Lot which (i) are so subordinate to such First Mortgage and (ii) became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner by virtue of such process. The foregoing will not relieve any successor Owner from the obligation for Assessments accruing thereafter.

6.5.5 The Board shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.5.6 The Board shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys fees and any other sums due to the Association in any manner allowed by law, including but not limited to taking either or all of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Board does not prejudice or waive its right to exercise the other remedy): (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforce the Assessment Lien against the applicable Lot by sale or foreclosure conducted in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the foreclosure rights and methods described in the Community Association Act, Chapter 57, Title 8a, Utah Code Ann., the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code Ann., as amended from time to time, or any other manner permitted by law, and the Lot may be redeemed after foreclosure sale if provided by law. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board may designate a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title or interest in the Community beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Lots arising pursuant hereto. In any such foreclosure, the Owner of the Lot being foreclosed shall be required to pay the costs and expenses of such proceeding (including

reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.5.7 If an Owner fails or refuses to pay any Assessment when due, the Board shall have the right, after giving notice and an opportunity to be heard in accordance with the Community Association Act, Chapter 57, Title 8a, Utah Code Ann., to terminate an Owner's right (a) to receive utility services paid as a Community Expense and (b) of access and use of the recreational facilities constituting a portion of the Community Areas.

6.6 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

6.7 Encumbrances. Any encumbrancer holding a lien on a Residence may pay any amounts secured by the Assessment Lien created by this Article 6, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

6.8 Effect of Conveyance. In any voluntary conveyance, except to a First Mortgagee in lieu of foreclosure of the First Mortgage, the grantee of a Residence shall be jointly and severally liable with the grantor for all unpaid Assessments against the Residence for his share of the Community Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth.

6.9 Tenant Recovery. If an Owner shall at any time let or sublet his Residence and default for a period of one month or more in the payment of any Assessments, the Association may, at its option, so long as such default shall continue, demand and receive from such tenant or subtenant or property manager the rent due or becoming due under such tenancy. The payment of such sum shall, to the extent of such payment, discharge such tenant or subtenant's or property manager's rental obligation to the Owner and shall, to the extent of such payment, discharge said Owner's obligation for unpaid Assessment(s) and costs to the Association.

6.10 Statement of Account. Upon payment of a reasonable fee and upon written request of any Owner or any lien holder, prospective lien holder, or prospective purchaser of a Residence, the Board shall issue, within twenty (20) days following such request, a written statement setting forth: (i) the amount of the unpaid Assessments, if any, with respect to such Residence; (ii) the amount of the current yearly Annual Assessment and the date that such Assessment becomes or became due, and (iii) any credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgage which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligation of the purchaser shall be released automatically if (i) the statement is not furnished within such twenty (20) day period and within ten (10) days after an additional written request is made by such purchaser and (ii) the purchaser subsequently acquires the Residence.

6.11 Purposes for Which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Community and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Community, which may be necessary, desirable or beneficial to the general common interests of the Community, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance and repair of the exterior portion of Residences, maintenance and repair of the landscaped areas, concrete improvements, fences, patios and driveways located on a Lot, social interaction among Members and Occupants, maintenance of landscaping on Community Areas and public right-of-way and drainage areas within the Community, construction, operation and maintenance of recreational picnic areas and other facilities on Community Areas, recreation, insurance, communications, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Association, employment of professional managers, hiring professional consultants such as architects, engineers, attorneys and accountants, and pledging future Assessments as collateral to secure Association financing.

6.12 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.



6.13 Transfer Fee. Each subsequent purchaser of a Lot from an Owner shall notify the Board of his or her purchase of such Lot so that the Board may maintain an accurate roster of Owners. In order to recover the expenses associated with updating its roster of Owners, the Board may require the purchaser of a Lot to pay to the Association a reasonable transfer fee in an amount to be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

6.14 Notice for Meetings to Consider Special Assessments. All written notices of any meeting called for the purpose of approving the establishment of any Special Assessment shall be sent to all Members in accordance with the time periods and provisions set forth in the Bylaws.

## ARTICLE 7

### MAINTENANCE

#### 7.1 Association's Duty to Maintain Community Areas, Right of Way, Lots and Exterior Elements of Residences.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Community Areas and all Improvements located thereon, except the Association may, without obligation, maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Community Areas and other properties maintained by the Association. In the event of any disagreement or uncertainty, the Board shall have the sole and exclusive power and authority to determine which real property and Improvements constitute Community Areas to be maintained by the Association, which determination shall be conclusive, final and unappealable. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.1.3 In addition to the foregoing maintenance obligations, the Association shall have the duty of maintaining and repairing the landscaped areas, concrete improvements, fences, patios and driveways located on a Lot and all of the exterior elements of the Residences, including without limitation, the utility and other service lines, whether public or private-company owned, constituting exterior elements as further described in Section 1.35.2 above, and the structural integrity of exterior structural walls of Residences, and the cost of said maintenance and repair shall be a Community Expense of all of the Owners. The Board shall not need the prior approval of the Members of the Association to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof. West Jordan City shall have no obligation or duty to maintain, replace or repair any utility or other service lines within the Community, including without limitation any sewer or culinary lines; provided, however, that West Jordan City shall maintain, replace and repair all fire service lines that it owns which are constructed and installed for fire emergency water access within the Community.

7.1.4 The Association shall, through the Board or its representatives, provide to the Owners the following services which shall be paid for via the Assessments, to-wit:

7.1.4.1 maintain the parking areas, the landscaping, and sidewalks;

7.1.4.2 administer and manage the Community;

7.1.4.3 provide common utilities unless otherwise separately metered;

7.1.4.4 set aside reserves for future maintenance, repairs, and replacements of all areas and Improvements that the Association is obligated as required by this Declaration;

7.1.4.5 provide snow removal;

7.1.4.6 obtain the insurance required in Article 8 below;

7.1.4.7 acting as attorney-in-fact in the event of damage or destruction as provided for in Article 8 below; and

7.1.4.8 performing all other acts required by this Declaration, the Articles, the Bylaws or the other Community Documents.

7.2 Owner's Right and Obligation to Maintain Interior Elements of Residence. Each Owner shall maintain his, her or its Residence in a safe, sanitary and attractive condition subject to the following provisions:

7.2.1 Each Owner shall not do anything that would interfere with the clean and sanitary condition of his or her Lot or Residence or that would interfere with or prevent the Association from performing its maintenance obligations on such Lot and exterior elements of the Residence as further described in this Declaration. For purposes of maintenance, repair, alteration, and remodeling, an Owner shall maintain and be permitted to alter or remodel all interior elements and non-structural walls of Residences, and the Association shall maintain the structural integrity of exterior elements of the Residence as further described in this Declaration.

7.2.2 Each Owner shall not alter, disturb or relocate utilities which are located on his, her or its Lot and the exterior elements of the Residence. The Owner shall maintain and keep in repair all utilities installed within the interior and exterior boundaries of his, her or its Residence at the point such utilities enter the Residence.

7.2.3 An Owner shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Residence, any Party Wall, impair any easement or hereditament, or violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, or any other agency or entity which may then have jurisdiction over said Residence. Any expense to the

Association for investigation under this Section shall be borne by Owner if such investigation establishes a violation of this Section.

7.3 Installation and Maintenance of Landscaping. In order to maintain uniformity of appearance, the Association shall install (if not already installed) grass, trees, plants and other landscaping improvements (together with a pressurized irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) as the Association deems appropriate, on all portions of the Lots and the Community Areas for the benefit of the Owners. The cost of any such installation and maintenance thereof shall be paid to the Association by the Owners as a part of the Annual Assessment upon demand and assessment from the Board. All landscaping must be installed in accordance with plans approved by the Board. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Community Areas, Lots or exterior elements of a Residence or any other area maintained by the Association is caused through the willful or negligent act of any Owner, his, her or its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.5 Improper Maintenance and Use of Lots. In the event any portion of any Lot or Residence is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Community which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Residence is being used in a manner which violates the Community Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.6 Maintenance of Party Walls. By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees and understands that it is essential that the Party Wall be maintained in good condition and repair to preserve the integrity of the Residences as they are used and occupied by the Owners. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Residence. With respect to pipes, conduits, ducts and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good

condition and repair, including the making of replacements as needed. In the event that the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner, his, her or its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners benefited by the Party Wall agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If the Party Wall is destroyed or damaged by fire, water, utility service line ruptures or other casualty, either Owner may restore it, and the other Adjoining Owner shall contribute one-half or his or her equal share of the cost of restoration thereof; provided, however, that any such single maintenance or repair activity, including a replacement as necessary, which is expected to exceed \$5,000.00 shall, except in an emergency, be undertaken only with the approval of the Board and all Owners benefited by the Party Wall, which approval shall not be unreasonably withheld, conditioned or delayed.

7.7 Failure to Maintain Party Wall. If any Owner shall fail to comply with the provisions of this Declaration as to maintenance, repair, or use of the Party Wall, or the obtaining of insurance as set forth in Section 8.7 below, or other obligations contained herein ("Defaulting Owner"), then in any such event the Adjoining Owner shall have the right, upon thirty (30) days written notice to the Defaulting Owner (unless within such 30-day period the Defaulting Owner shall cure such default, or in the case of a nonmonetary default which by its nature cannot be cured within such 30-day period, the Defaulting Owner shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion) to proceed to take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Owner. The Defaulting Owner shall on demand reimburse the other Adjoining Owner taking such action for the monies actually expended by such Adjoining Owner and the Adjoining Owner's reasonable out-of-pocket expenses in so doing, together with interest thereon as set forth below from the date of demand to the date of payment. Notwithstanding the foregoing, if the nondefaulting Adjoining Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no notice shall be required and the nondefaulting Adjoining Owner may act promptly without giving notice and take such action as is necessary to cure the alleged failure. Any Adjoining Owner performing any action pursuant to the preceding sentence shall interfere to the minimum extent possible with the Defaulting Owner's use and occupancy of such Defaulting Owner's Residence, and, with reasonable promptness, shall give verbal or written notice to the Defaulting owner of such action and the claimed failure.

7.7.1 Any unresolved dispute, disagreement or controversy between a Defaulting Owner and an Adjoining Owner shall at the request of either party be submitted to an arbitration board of at least three (3) members with one chosen by the Adjoining Owner, the other by the Defaulting Owner and a third by the other two arbitrators so chosen. The arbitrators shall act in accordance with the commercial Arbitration Rules then in effect of the American Arbitration Board. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to the maintenance of Party Walls or rules or regulations adopted by the Association, the arbitrators may issue an order prohibiting the action upon which the claim is based. An award must be made within thirty (30) days

after the conclusion of arbitration, unless a shorter period is agreed upon by the Adjoining Owner and the Defaulting Owner. The decision of the majority of such arbitrators shall be binding on the Adjoining Owner and the Defaulting Owner. Such decisions shall include the awarding of costs, including reasonable attorneys fees, as the arbitrators shall determine. The decision of the arbitrators shall be judicially enforceable as a judgment.

7.7.2 All sums required to be reimbursed or otherwise paid hereunder by one Defaulting Owner to the other Adjoining Owner shall bear interest per annum at the floating rate of 1% over the then current "prime rate" of interest announced in the Wall Street Journal. Such interest rate shall be determined monthly on the first day of each calendar month. In addition, any Defaulting Owner who fails to pay its obligations under this Declaration agrees to pay the other Adjoining Owner's reasonable collection costs, including reasonable attorneys' fees.

7.7.3 All remedies hereby specifically set forth in this Section 7.7 are cumulative and shall be deemed to be in addition to any remedies available at law or in equity which shall include the right to restrain by injunction any violation or threat of violation by any Owner of any of the terms, covenants, or conditions of this Declaration governing Party Walls and by decree to compel specific performance of any such terms, covenants, or conditions governing Party Walls, it being agreed that the remedy at law for any breach of any such term, covenant, or condition governing Party Walls is not adequate. Notwithstanding the foregoing, no default by any Owner under this Agreement shall entitle any other Adjoining Owner to terminate, cancel, or otherwise rescind this Declaration or any terms, covenants or conditions governing Party Walls.

7.7.4 The Board, without obligation and in its sole and exclusive discretion, may also notify the Defaulting Owner of the work required to the Party Wall and demand that it be done within a reasonable and specified period and individually charge the enforcement costs thereof to such Defaulting Owner, which enforcement costs shall be secured by the Assessment Lien. Moreover, in the event a medical emergency, a property damage emergency or similar type of emergency which requires immediate curing shall arise in connection with an Owner's Lot, Residence or other Improvement, the Board shall have the right, but not the obligation, to immediately enter upon the Lot or gain entrance into the Residence to abate the emergency upon reasonable advance notice to such Owner considering the nature, scope and extent of the emergency (e.g. advance telephone calls or doorbell ringing or knocking). The Board shall have the right to individually charge the cost to cure the emergency condition to such Owner if such emergency was the personal responsibility of the Owner or if it was caused by the Owner's negligent or willful acts.

## ARTICLE 8

### INSURANCE

8.1 Scope of Coverage. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Property insurance on the Community Areas and Lots insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Community Areas, Lots and Residences, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Community Areas, Lots, exterior elements of the Residences and other portions of the Community which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

8.1.4 Fidelity bonding of the Board and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

8.1.5 Errors and omissions insurance coverage for the Board; and

8.1.6 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.7 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

8.1.7.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

8.1.7.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

8.1.7.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

8.1.7.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

8.1.7.5 Statement naming the Association as the insured; and

8.1.7.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

8.3 Certificates of Insurance. An insurer which has issued an insurance policy under this Article 8 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

8.4 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.5 Payment of Insurance Proceeds. With respect to any loss to the Community Areas, Lots or Residences covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 8.6, the proceeds shall be disbursed for the repair or restoration of the damage to the Community Areas, Lots or Residences.

8.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Community Areas, Lots or Residences which is damaged or destroyed shall be repaired or

replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Community Areas, Lots or Residences is not repaired or replaced, insurance proceeds attributable to the damaged Community Areas, Lots or Residences shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association; or (iii) shall be distributed in equal shares per Membership to the Owners of each Lot as their interests appear.

8.7 Insurance of Party Walls; Waiver. By acceptance of a deed to a Lot, each Owner hereby acknowledges his, her or its independent insurance obligations for the respective Party Wall which constitutes a portion of the Owner's Residence, and agrees to maintain in full force and effect "all-risk" property insurance with respect to the Residence owned by such Owner. Such insurance shall be in an amount equal to at least 100% of the replacement cost of such Owner's Residence, exclusive of the cost of excavation, foundations and footings, and shall protect against loss or damage by fire, water, utility service line ruptures and all other hazards that are normally covered by the standard extended coverage endorsement. Each policy shall be carried with a company rated X or better in "Best's Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and the other Adjoining Owner and such policy shall require thirty (30) days notice to the Board and the other Adjoining Owner before the policy can be cancelled. All policy proceeds payable with respect to damage or destruction of the Party Wall shall be used by the Owners, to the extent necessary, to repair and restore the damage or destruction for which the proceeds are payable. Each Owner agrees to make such repair and restoration whether or not the policy proceeds are adequate for such purposes or whether or not the occurrence resulting in such damage or destruction is covered by insurance. Each Owner hereby waives any rights it may have against the other Adjoining Owner on account of any loss or damage to its Residence which arises from any risk covered by fire and extended coverage insurance carried hereunder, whether or not such other Adjoining Owner may have been negligent or at fault in causing such loss or damage. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the other Adjoining Owner for loss covered by such insurance. It is understood that such subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board and the other Adjoining Owner.

## ARTICLE 9

### MORTGAGEE REQUIREMENTS

9.1 Notice of Action. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein and in Section 1.18 above. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified



copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

9.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

9.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association.

9.2 Availability of Community Documents and Financial Statements. The Association shall maintain and have current copies of the Community Documents, membership register, books, records, and financial statements available for inspection by Members or by Eligible Mortgagees. Generally, these documents shall be available during the Association's normal business hours, and may be maintained and kept at the office of the manager for the Association. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Member's interest in the Association.

9.3 Subordination of Lien. The Assessment or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Lot shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Lot, shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned. The provisions of this Section 9.3 shall be in addition to the rights of a First Mortgagee under Section 6.5.4.

9.4 Notice to Eligible Mortgagees. The Association shall give timely written notice of the events listed in Section 9.1 above to any Eligible Mortgagee who requests such notice in writing.

9.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Community Areas are not timely paid, or in the event the required hazard insurance described in Section 8.2 lapses, is not maintained, or the premiums therefore are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

9.6 Priority. No provision of this Declaration or the Articles gives or may give a Member or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Community Areas. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

## ARTICLE 10

### CONDEMNATION

10.1 Notice. Whenever all or any part of the Community Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Member shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Members in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

10.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Members to be disbursed as follows: If the taking involves a portion of the Community Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Members representing at least two-thirds (2/3rds) of the total votes of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Community Areas to the extent lands are available therefore, in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in Article 8 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Community Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to Members in proportion to their respective Membership Interests, first to the Mortgagees and then to the Members.

10.3 Complete Condemnation. If the entire Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the

Community Areas shall be distributed to Members based upon the relative value of the Lots prior to the condemnation.

## ARTICLE 11

### TERM, TERMINATION AND AMENDMENT

11.1 Term; Method of Termination. This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting two-thirds (2/3rds) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.2 Amendments. This Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or by separate written ballot without a meeting, the Members casting at least sixty two-thirds (2/3rds) of the total votes of the Association at the election voted affirmatively for the adoption of the amendment. Within twenty-five (25) years from the date of Recording this Declaration, and so long as the Declarant is the Owner of any Lot in the Community, this Declaration may be amended or terminated only with the written approval of the Declarant.

11.3 Unilateral Amendments. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by the Board (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots and Residences subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

11.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article or Declaration to the contrary notwithstanding, the Board reserves the unilateral right to amend all or any part of this

Declaration to such extent and with such language as may be necessary to satisfy any HOPA requirements or as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Community and all persons having an interest therein. If any amendment requested pursuant to the provisions of this Section 11.4 deletes, diminishes or alters such control, the Board alone shall have the right to amend this Declaration to restore such control.

## ARTICLE 12

### GENERAL PROVISIONS

12.1 Enforcement. The Association or any Owner shall have the right to enforce the Community Documents.

12.2 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

12.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

12.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

12.5 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

12.6 Association Rules. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the

right to adopt, as part of the Association Rules, additional rules and regulations with respect to any other aspects of the Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Community Documents.

12.7 Laws, Ordinances and Regulations.

12.7.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board, with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

12.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Community is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

12.8 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Community may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

12.9 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

12.10 Captions and Title; Section References; Exhibit. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to a lettered Exhibit, shall be deemed to be references to those paragraphs or Exhibit so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibit referred to in this Declaration is hereby incorporated herein by reference and fully made a part hereof.

12.11 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Community Documents or resolution of the Board to be given to any Owner, Lessee or Occupant then, unless otherwise specified in the Community Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be deemed satisfied if notice of such action, proposed action or meeting is: (a) sent by United States mail to the last known mailing address of the Owner, Lessee or Occupant (as applicable), as shown in the records of the Association; or (b) if no such mailing address is reflected on the records of the Association, then sent by United

States mail to the mailing address of the Lot (as applicable) on file with the Salt Lake County Assessor's Office; or (c) if there is no such mailing address reflected in the records of the Association and there is no then current address on file with the Salt Lake County Assessor's Office, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Salt Lake County, Utah. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

12.12 Board Member Indemnification. The Association shall indemnify each and every director and officer of the Association, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid.

12.13 Owner Indemnification. The Association shall indemnify each and every Owner against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Owner in connection with any action, suit or other proceeding (including settlement of any suit or proceeding) to which he or she may be a party by reason of the Association, or its agents, failure to procure the insurance required by Article 8 above or the performance of its maintenance responsibilities on any portion of a Lot as required by this Declaration, unless the liability for such expenses arises out of his or her own intentional misconduct. No Owner shall have any personal liability with respect to any contract or other

commitment made by the Board on behalf of the Association to perform its maintenance responsibilities on any Lot (except indirectly to the extent that such Owner may also be a Member and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Owner free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Owner may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Owner who may be entitled to indemnification hereunder to enable such Owner to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Owner by reason of his or her being, or having been, an Owner. In the event it is ultimately determined that an Owner to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section, such Owner shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid.

12.14 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Community Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Residence (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section 12.14 shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Community Areas, which shall be subject to Article 4) which may or may not be subject to this Declaration.

12.15 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

12.16 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Community Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the

notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

12.17 Disclaimer of Representations. While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

12.18 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Board.

12.19 Conflicts. In the event of any conflict or inconsistency between this Declaration and the other Community Documents, priority shall be given to the Community Documents in the following order: this Declaration, Articles, Bylaws, and Association Rules, as each respective document may be amended from time to time.

12.20 Authority to Enter into Public or Private Bulk Service Agreements and Contracts. Subject to the disclaimers of representations set forth in Section 2.9 above and elsewhere in this Declaration, the Association may, without obligation, provide Community Services (as such term is defined below) pursuant to the terms and provisions of this Section 12.20. The Board shall have the right, power and authority to determine whether or not such Community Services shall be provided by private or public entities.

12.20.1 The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots both within the Community, or within one or more portions thereof, certain facilities, services, and/or personnel for the collection and disposal of solid waste and refuse, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services (collectively, "Community Services"): (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar



services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

12.20.2 If all Lots within the Community are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement, as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly. Such "separate billing" may be made as one or more separate line items on billings or invoices from the Association to the affected Owner(s) for Assessments or other charges. If not all Lots within the Community will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

12.20.3 Owners, for each Lot, hereby covenants and agrees, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Section 0 and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

12.20.4 No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Residence or other Improvement has been completed.

12.20.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide any Community Service to Owners, Occupants, Residences, Lots or any Community Areas pursuant to a "Bulk Service Agreement" (as defined below).

12.20.6 "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide Community Services to Owners, Occupants, Residences, Lots or any Community Areas.

12.20.7 The Board shall not, without the approval of Members holding at least majority of all Members represented in person or by proxy at an annual or special meeting of the Association, enter into a Bulk Service Agreement which imposes on the Association or the Members any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for Community Services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Members of any Bulk Service Agreement which imposes on the Association or the Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Salt Lake County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

**COUNTRY PARK VILLAS OWNERS' ASSOCIATION.**  
a Utah corporation

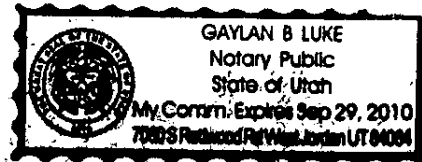
By: Cyril W. Gray  
Its: PRESIDENT HOA.

STATE OF UTAH )  
 )  
County of Salt Lake ) :ss.

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of February, 2008, by Cyril W. Gray, the President HOA of Country Park Villas Owners' Association, Inc., a Utah corporation, on behalf of such entity.

Gaylan B Luke  
Notary Public

My Commission Expires:  
9/29/10



**EXHIBIT A**

Community Legal Description