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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ATHERTON PARK TOWNHOMES
A Planned Unit Development**

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EXHIBIT A – Legal Description of Property

EXHIBIT B – Percentage Interests

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ATHERTON PARK TOWNHOMES**

A Planned Unit Development

THIS DECLARATION made and executed this ___ day of _____, 20___, by 3900 JV, LLC, a Utah limited liability company, with its principal place of business located in Salt Lake City, State of Utah (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain tract of property more particularly described on Exhibit A attached hereto.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, restrictions, easements, charges, liens hereinafter set forth.

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be organized under the laws of the State of Utah, a non-profit corporation, ATHERTON PARK TOWNHOMES HOA, INC.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and lien hereinafter set forth.

I. DEFINITIONS

1.1. Association shall mean and refer to ATHERTON PARK TOWNHOMES HOA, Inc., a Utah nonprofit corporation.

1.2. Building Pad shall mean and refer to that area of ground in a Lot in which a living Unit can be located as shown on the Plat. If the Plat does not separately designate a Building Pad, the Building Pad shall be co-extensive with the Lot description, excluding, however, setbacks which may be required by the terms of this Declaration or by appropriate governmental agencies.

1.3. Common Areas shall mean and refer to that part of the Property which is not included with the Lots which is owned by the Association for the common use and enjoyment of the Owners, or the limited use of certain Owners as to limited common areas, together with all improvements thereon and

all easements appurtenant thereto including but not limited to private utility lines and personal property owned by the Association when the context so requires.

1.4. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.5. Developer shall mean 5900 JV, LLC, a Utah limited liability company, or any of its successors or assigns.

1.6. Development shall at any point in time mean, refer to and consist of the subdivision and any and all phases thereof then in existence.

1.7. Limited Common Areas shall mean and refer to those Common Areas designated herein or on the Plat as reserved for the use of a certain Lot or Lots to the exclusion of other Lots. Although not shown on the Plat, the following additional area is designated as Limited Common Areas: the entry hallways shown on the Plat (generally described as being located from the front facade of buildings to each Living Unit entry and which permit access to Living Units), such areas reserved solely to the Living Units intended to obtain entry through such entry hallway and each Owner of a Lot containing an entry hallway is deemed to have given and received from the Living Units adjacent to such entry hallways, an easement for ingress and egress to and from his or her Living Unit through such entry hallway to the Common Areas. The rear yards behind the Units are also hereby designated as Limited Common Areas.

1.8. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. Each Living Unit located on a Lot will be constructed as an attached home, meaning a single family dwelling, with walls or roofs in common with one or more other single family dwellings.

1.9. Lot shall mean and refer to anyone of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different lots; and (b) which is intended to be used as the site of a single Living Unit.

1.10. Member shall mean and refer to every person who holds a membership in the Association.

1.11. Mortgage shall mean any mortgage, deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust.

1.12. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.13. Officers shall mean and refer to the members of the Board of Directors or Trustees and the Officers of the Association as duly elected or appointed in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1.14. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.15. Parcel shall mean and refer to the Property which is subject to this Declaration, which is filed for record in the office of the County Recorder of Salt Lake County, Utah, is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise the Development. The real property described in Article II of this Declaration constitutes a Parcel.

1.16. Percentage Interest shall mean and refer to the undivided percentage interest of each Owner in the Common Areas and Facilities of the Property. The Percentage Interest which is appurtenant to a Living Unit shall be equal to (a) divided by (b), where (a) is the Size of such Living Unit, and (b) is the aggregate Size of all Living Units located in the Development. The Percentage Interest of each Living Unit is set forth in Exhibit B attached hereto and incorporated herein by reference. "Percentage Interests shall be the sum total of each and every Percentage Interest and shall equal 100%. Declarant is authorized to make minor adjustments in the Percentage Interests to assure that the total adds up to 100%.

1.17. Plat shall mean and refer to any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more lots; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision or lots created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Salt lake County, Utah. Recorded prior to this Declaration is a Plat of ATHERTON PARK TOWNHOMES, a Planned Unit Development, which was executed and acknowledged by Declarant on _____, and recorded in the offices of the Salt Lake County Recorder on _____, 20____, as Entry No. _____ in Book _____ at Page _____, creating separately numbered Lots. Said plat constitutes a Plat.

1.18. Private Streets shall mean and refer to all of the undedicated roads and streets within the Subdivision as designated upon a Plat which the Declarant has reserved as an easement for ingress and egress for pedestrian and vehicular traffic for the use, in common, of Members. Private Streets shall for all purposes be deemed to be Common Areas.

1.19. Property shall mean and refer to all of the real property which is covered by a Plat.

1.20. Size shall mean and refer to the area of floor space within a Living Unit, in square feet, rounded off to a whole number. Declarant's determination of the Size of a Living Unit which is based solely upon information obtained from Declarant's architects, engineers, and/or surveyors, as set forth in this Declaration or in any amendment or supplement hereto, shall be conclusive absent manifest error.

1.21. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

II. PROPERTY DESCRIPTION

2.1. Submission. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Salt Lake County, State of Utah.

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND INCORPORATED HEREIN BY REFERENCE.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Lots included with the above described tract; provided,

however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Living Unit on each and every Lot; and (ii) to improve the Common Areas with such facilities, including, but not limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

2.2. Annexation by Association. The Association may annex real property to the Development only after obtaining approval of such annexation from (a) the owner or owners of the real property to be annexed, and (b) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose and so long as the Class B membership exists, the written consent of the Declarant.

III. MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

3.2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to the number of votes appurtenant to each respective Living Unit which shall be equal to the product of the Percentage Interest set forth in Exhibit B attached hereto (as the same may be revised as the result of minor adjustments as provided in Section 1.15) multiplied by Ten Thousand (10,000). The number of votes appurtenant to each Unit as set forth in said Exhibit B (subject to revisions the result of minor adjustments as provided in Section 1.15) shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to

this Declaration. The number of votes appurtenant to each Unit may not be divided between multiple Owners of such Unit or between matters which require the vote of Owners.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to the number of votes appurtenant to each respective Living Unit which shall be equal to the product of the Percentage Interest set forth in Exhibit B attached hereto (as the same may be revised as the result of minor adjustments as provided in Section 1.15) multiplied by Thirty Thousand (30,000). The Class B Membership shall automatically cease sixty (60) days after the closing of the sale of the last Unit in the Development. Otherwise, the Class B Membership shall automatically and be converted to a Class A membership upon the expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

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

3.4. Record of Ownership and Initial Fees. Every new Owner (i.e., the purchaser of a Lot) shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Upon the purchase of a Lot, each new Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association, who shall maintain a record of ownership of the Lots. Simultaneously therewith, the new Owner shall also pay to the Association a reinvestment fee (which fee is waived for the Declarant) in the amount of .0025% of the sale price. The reinvestment fee affects the real property herein and obligates future buyers or sellers of the Lots to pay to the Association, upon and as a result of a transfer of a Lot, a fee that is dedicated to benefitting the Lot, including payment for: (a) common planning, facilities, and infrastructure; (b) Common Area facilities; (c) open space; (d) recreation amenities; and/or (e) association expenses. If the Association is managed by a management company, then the new Owner shall pay the reinvestment fee to the management company, rather than the secretary of the Association. In addition, each new Owner shall pay to the Association a \$200 move-in fee, which shall be deposited in the Association's general account. Unless the Association directs otherwise, the new Owner shall deliver the move-in fee to the secretary of the Association. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Section 5.5.

IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas and the Private Streets. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

4.2. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a lot shall describe the interest or estate involved substantially as follows:

Lot No. __, contained within ATHERTON PARK, A Planned Unit Development, as the same is identified in the Plat recorded as Entry No. 11988414 in Book 10294, at Page 218, and in the "Declaration of Covenants, Conditions and Restrictions of Atherton Park Townhomes, A Planned Unit Development" recorded as Entry No. _____ in Book _____ at Page _____, of the official records of the Salt Lake County Recorder. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and Private Street described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Salt Lake County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4.3. Transfer of Title. Declarant agrees to convey and by recording of the Plat does convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed.

4.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas and Private Streets shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the Architectural Control Committee to approve and designate the point of access to and from a Lot to the Private Streets in accordance with the requirements of Article VIII;

(c) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas, the Private Streets and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose written or printed notice setting forth the purpose of the meeting and the action proposes shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

V. ASSESSMENTS

5.1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, including but not limited to monthly assessments for the costs of exterior maintenance, together with the hereinafter provided for interest and costs of collection. All such assessment amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association of funds obtained from assessments, may include, but is not limited to, exterior maintenance of Living Units (as set forth in paragraph 6.1(c) hereafter), payment of the cost of taxes and insurance on the Common Areas; maintenance, repair and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

5.3. Maximum Monthly Assessment. As of the date set under Section 5.7, each of Lots 1 through 8 shall be subject to a monthly assessment, including that portion attributable to the Exterior Maintenance Assessment, of not more than One Hundred Seventy Five Dollars (\$175.00). From and after January 1, 2017, the maximum monthly assessments set forth above shall be increased by three percent (3%) per year over the previous year's maximum assessment without the vote of the Members or such maximum assessment amounts may be increased in a greater amount or decreased so long as the change is assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members) present in person or represented by proxy at a meeting duly called for such purposes. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Officers of the Association may from time to time and in their discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

5.4. Special Assessments. From and after the date set under Section 5.7 (the date of a first conveyance), the Association may levy special assessments against Owners (but not the Declarant) for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessments must be assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members), present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent

to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Association may not levy any special assessments against the Declarant.

5.5. Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to Sections 5.3 and 5.4 above, the Officers may levy at any time Special Assessments (a) on each Lot specifically benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 3.4, Section 6.1(c), Section 6.2(a), or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessment"). The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

5.6. Uniform Rate of Assessment. Except as provided in Section 5.5 above, monthly and special assessments shall be apportioned among all Owners in proportion to their respective Percentage Interests. See Exhibit B attached hereto for the allocation of assessments. No assessment shall levied against, nor be due or payable from the Declarant for any unsold Lot or Living Unit. Instead, Developer shall create and contribute to a Working Capital Fund as more particularly set forth in Section 5.11.1 hereafter.

5.7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the purchaser of a Lot, or if the sale is by way of an installment contract of sale, on the date the installment contract is executed by the parties thereto, or the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all monthly assessments shall be due and payable on the first day of each month. A monthly assessment not paid within ten (10) days of the due date thereof shall be deemed late and subject to a late fee of \$50.00. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

5.8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.9. Effect of Non-Payment; Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot, or pursue any other remedy available to the Association under Utah Code Ann § 57-

8a-301, *et seq.* Any judgment obtained by the Association shall include reasonable attorneys' fees (including those of a paralegal and any fees incurred on appeal), court costs, and each and every expense incurred by the Association in enforcing its rights.

5.10. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Salt Lake County. Each Owner of a Lot, as a Member of the Association, shall reimburse the Association for his pro-rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.11. Reserves and Reserve Study.

5.11.1. The Association shall maintain an adequate reserve fund for Common Expenses and maintenance of the Buildings as provided in this Declaration. The reserve fund shall include such amounts as the Association, by its Officers may deem proper for general working capital, for a general operating reserve, and for a reserve fund for replacements and major maintenance or capital replacement, and will be funded and maintained from monthly assessments. In addition the Declarant shall create a "Working Capital Fund" for the benefit of the Association for the initial months of operations of the Subdivision which shall be funded by purchasers of Lots as follows. At the closing of the sale of a Lot and Living Unit by Declarant to a purchaser, the purchaser shall pay to the Association an amount equal to the Association's estimate of one month of the then monthly assessment for the fiscal year in which the sale of the Lot and Living Unit occurs, and the Declarant shall pay the Association an amount equal to two months of the then monthly assessment. Two thirds (2/3) of the deposits from purchaser and Declarant shall be deposited into the Working Capital Fund and one third (1/3) thereof shall be deposited into the reserve fund. Funds not expended from the Working Capital Fund prior to the expiration of four (4) years from the first sale of a Lot and Living Unit, shall be transferred to the reserve fund. Thereafter, the Association may increase or decrease the reserve fund or replace funds withdrawn from the reserve fund with funds collected through monthly assessments. The Declarant shall have no right to use any of the Working Capital Fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

5.11.2. Payments by purchasers to the Association under paragraph 5.11.1 above shall not be credited against, or relieve purchasers from, their obligation to pay other assessments levied against Lots and Living Units by the Association.

5.11.3. Upon the sale of a Lot and Living Unit from one Owner to another, the Association shall not be obligated to return to the transferor any funds held in reserve.

5.11.4. The Association shall perform or obtain not less frequently every five (5) years a reserve analysis (herein a "Reserve Analysis") to determine (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities, including the exteriors of the buildings containing Lots/Units 1 through 8, that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the monthly assessments, and (b) the appropriate amount of any reserve fund to meet such items.

5.11.5. The Association shall review and if necessary update the most recently obtained Reserve Analysis no less frequently than every two years to determine the need for any modifications thereto.

5.11.6. Reserve Funds shall be maintained by the Association in a separate account from other funds and such Reserve Funds may not be used for daily maintenance expenses, unless a majority of the Owners of the Association vote to approve the use of such reserve funds for such purpose.

5.11.7. The provisions of Sections 5.11.4 through 5.11.6 shall not be applicable to any period that the Declarant maintains control of the Association.

VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(a) The Association shall accept all Owners as members of the Association.

(b) The Association shall accept title to all Common Areas conveyed to it by Declarant.

(c) The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass, Private Streets and other Common Area improvements. The Association may elect to maintain all grasses, trees, and bushes on the exterior of any Living Unit if the same were installed by the Developer as part of the construction of the Development, even if located upon a Lot, but the Association shall have no obligation to perform any maintenance of any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. The Association shall provide exterior maintenance of the Living Units including painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. In accordance with the requirements of Section 7.10, each Owner shall paint, repair, and otherwise maintain the interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing, heating, ventilating and air conditioning systems. In the event that the need for maintenance or repair of Common Areas or the exterior of a Living Unit (including exterior landscaping) as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the Officers may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

(d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(e) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(f) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all

times to direction by the Officers, with such administrative functions and powers as shall be delegated to the Managing Agent by the Officers. The compensation of the Managing Agent shall be such as shall be specified by the Officers. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

(g) As a Common Area expense, the Association shall cause all fire sprinkler systems which are installed and maintained in common for the benefit of multiple Living Units, to be inspected by qualified inspectors not less frequently than once each calendar year. The reports of such inspections shall be maintained by the Association for reasonable periods of time and shall be available to the Members upon reasonable request.

(h) The Association shall conduct or cause others to conduct a reserve analysis periodically as required by the provisions of Section 15.11 and shall otherwise comply with the requirements of Section 15.11 and/or Utah law as applicable thereto.

6.2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and any Bylaws, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as herein provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon as required by the provisions of this Declaration or if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article VII of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas or Lots, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas and exterior repairs of Living Units upon Lots on such terms and conditions as the Officers shall deem appropriate.

ii. Such insurance policies or bonds as the Officers may deem appropriate for the protection or benefit of Declarant, the Association, the Officers and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Officers may from time to time deem desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable;

v. Fire, police and such other protection services as the Officers may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Officers may deem necessary.

(c) The Officers may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Officers cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of One Thousand Dollars (\$1,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

(d) In addition to the foregoing, the Board may assess a fine against an Owner for a violation of the Association's governing documents, including but not limited to this Declaration and the Bylaws.

i. Before assessing a fine, the Board shall give the Owner a written warning that: (i) describes the violation; (ii) states the rule or provision of the Association's governing documents that the Owner's conduct violates; (iii) states that the Board may, in accordance with the provisions of Utah Code Ann. § 57-8a-208, assess fines against the Owner if a continuing violation is not cured or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the written warning or assesses a fine against the Owner under this section; and (iv) if the violation is a continuing violation, states a time that is not less than 48 hours after the day on which the Board gives the Owner the written warning by which the Owner shall cure the violation.

ii. The Board may assess a fine against an Owner if: (i) within one year after the day on which the Board gives the Owner a written warning described in Subsection 6.2(d)(i), the Owner commits another violation of the same rule or provision identified in the written warning; or (ii) for a continuing violation, the Owner does not cure the violation within the time period that is stated in the written warning described in Subsection Subsection 6.2(d)(i).

iii. After the Board assesses a fine against an Owner under this section, the Board may, without further warning, assess an additional fine against the Owner each time the Owner: (i) commits a violation of the same rule or provision within one year after the day on which the Board assesses a fine for a violation of the same rule or provision; or (ii) allows a violation to continue for 10 days or longer after the day on which the Board assesses the fine.

iv. A fine assessed under Subsection 6.2(d) shall: (a) be made only for a violation of a rule, covenant, condition, or restriction that is in the Association's governing documents; (b) unless otherwise determined by the Board following an informal hearing as described in sections 6.2(d)(v)-(vii) hereafter, the amount of the fine shall be \$500; and (c) accrue interest at the rate of 12% per annum together with late fees of \$10 per day for every day that the violation remains uncured. All such fines and fees shall constitute a lien on the Owner's Unit and shall be subject to collection and foreclosure as otherwise set forth in Section 5.9 above.

v. An Owner who is assessed a fine under Subsection 6.2(d) may request an informal hearing before the Board to dispute the fine within 30 days after the day on which the Owner receives notice that the fine is assessed.

vi. At any such hearing, the Board shall: (i) provide the Owner a reasonable opportunity to present the Owner's position to the Board; and (ii) allow the Owner, a Board member, or any other person involved in the hearing to participate in the hearing by means of electronic communication. At the conclusion of the hearing, or within a reasonable amount of time thereafter, the Board of Trustees shall determine whether a violation has occurred and, if so, may assess costs, impose a fine and/or issue sanctions, or take such other action as may be appropriate. The Board shall inform the Owner of its final decision, in writing, within ten (10) calendar days of the conclusion of the hearing.

vii. If an Owner timely requests an informal hearing under Subsection 6.2(d)(v) no interest or late fees may accrue until after the Board conducts the hearing and the Owner receives a final decision.

viii. An Owner may appeal a fine assessed under Subsection 6.2(d) by initiating a civil action within 180 days after: (a) if the Owner timely requests an informal hearing under Subsection 6.2(d)(v), the day on which the Owner receives a final decision from the Board; or (b) if the Owner does not timely request an informal hearing under Subsection 6.2(d)(v), the day on which the time to request an informal hearing under Subsection 6.2(d)(v) expires.

ix. The Board may delegate the Board's rights and responsibilities under this section to a managing agent, except that the Board may not delegate the Board's rights or responsibilities to conduct an informal hearing that is timely requested by an Owner.

x. Nothing herein shall be construed to prevent the Board of Trustees from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and a hearing.

6.3. Association Rules. The Officers from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; (f) regulation of parking; (g) fines and penalties for the violation of such Rules; and (h) other matters concerning the use and enjoyment of the Property and the conduct of residents. The Officers may also adopt additional Architectural Guidelines for the construction and/or maintenance of Living Units. Rules and Regulations and/or Architectural Guidelines adopted by the Officers may be enforced in accordance with the provisions of Section 7.16.

6.4. Limitation of Liability. No Officer shall be liable to the Association or the Owners for any mistake in judgment, for negligence, or on other grounds, except for such Officer's own individual gross negligence, willful misconduct or bad faith. The Association shall indemnify and hold harmless each Officer from and against all liability to third parties arising out of any contract made by the Officers on behalf of the Association or Owners, unless such contract was made in bad faith or contrary to the provisions of this Declaration. The liability of an Owner arising out of the foregoing indemnification shall be limited to the total liability concerned multiplied by such Owner's respective Percentage Interest. The Association shall be authorized to obtain liability insurance for the acts and/or omissions of such Officers.

6.5. Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements, if any, comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Atherton Park Townhomes HOA, Inc., for the use and benefit of the individual Members, Lot Owners and Mortgagees, as their interests may appear".

(b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$1,000,000 for anyone person injured; \$2,000,000 for all persons injured in anyone accident; and \$500,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

(c) **EACH OWNER SHALL MAINTAIN CASUALTY, FIRE AND EXTENDED COVERAGE INSURANCE IN SUCH AMOUNTS AND ACCORDING TO SUCH TERMS AS THE OWNER DEEMS APPROPRIATE.** Nevertheless, and notwithstanding anything to the contrary in this Section 6.5, the Association shall obtain and maintain insurance pursuant to the requirements of Utah Code Ann. § 57-8a-405. To that end, the insurance coverage of the Association shall be primary with respect to an Owner's Unit, including all covered losses. The insurance coverage of an Owner shall be primary with respect to the portion of any loss attributable to the deductible of the Association's policy, and with respect

to the Owner's personal property and contents. If two or more Owners suffer a loss in a single event, they are each responsible for payment of a portion of the Association's deductible based on the percentage of loss they each suffered. If an Owner has no insurance for a covered cause of a loss, the Owner is personally liable to pay for the loss up to the amount of the Association's deductible. The insurance coverage with respect to the Living Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners.

(d) The Association shall purchase for the benefit of and on behalf of the Association, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of members of the Board of the Association, Officers and employees of the Association and all others persons handling, or responsible for funds of or administered by the Association, destruction or disappearance of money or securities, and forgery. If funds are administered by a management agent, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the greater of (i) three (3) months assessments on all Lots and Living Units plus reserve funds, or (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions, and shall not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association and to any Fannie Mae servicer holding a Mortgage on behalf of Fannie Mae.

(e) The Association may, if it elects, purchase liability insurance for Officers to cover errors and omissions of Officers of the Association, and any obligation for indemnification as contained in Section 6.4.

The following additional provisions shall apply with respect to insurance required in this Section 6.5:

(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(2) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or

employee of the Association without a prior written demand that the defect be cured; without a prior written demand that the defect be cured; that any “no other insurance” clause therein shall not apply with respect to insurance held individually by Owners.

6.6. Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held sooner than seven (7) days nor more than forty-five (45) days following the immediately preceding meeting.

VII. USE RESTRICTIONS

7.1. Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

7.2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any lot or Living Unit without the prior written consent of the Association and applicable governmental entities. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

7.3. Building Features and Materials.

(a) Building Location. Each building (including Living Unit) shall be located such that:

i. The building shall be located solely within the outer boundaries of the Building Pad (exclusive or required setbacks) and oriented as shown on the Plat, except as to the common wall with the adjoining Living Units), or as may be consented to by the Architectural Control Committee in accordance with the provisions of Article VIII.

ii. For the purposes of this covenant, steps and open porches shall be considered as a part of a building, but the same may extend beyond the Building Pad if permitted by applicable building codes.

(b) Garages. Garages must be fully enclosed and located within the Building Pad, accommodate a minimum of two cars, except for those units which are initially designed to accommodate only one car, and be equipped with an automatic garage door opener. Carports are not permitted within the Subdivision.

(c) Exterior Building Wall Materials. Stone, brick, cultured stone, stucco, and fiber cement siding and other metal products intended for use on exterior building surfaces are permitted for the exteriors of Living Units. The use of any other materials for such buildings shall require the prior approval of the Architectural Control Committee.

(d) Roof, Soffit and Fascia. Roof material shall be restricted to shingles or other materials approved by the Architectural Control Committee. Soffit and fascia material shall be restricted to aluminum or other materials approved by the Architectural Control Committee. The use and design of roof, soffit and fascia materials is subject to the approval of the Architectural Control Committee.

(e) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not permitted unless approved by the Architectural Control Committee or are painted.

(f) Mailboxes. Mailboxes shall be provided by the Developer but shall be maintained by the Association.

(g) Fences and Walls. No fences, other than those installed by the Declarant, may be installed by a Lot Owner without the approval of the Association. Project, perimeter fences, if any, are to be maintained by the Association. The Owners shall not permit any structures or other items to be attached to or supported by fences.

(h) Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, or other materials approved by the Association.

(i) Antennas. Unless otherwise required by law, only one satellite dish antennas (of not more than two feet in diameter) shall be allowed on each of the Buildings, such dish antennas to be shared by all Owners of Living Units located within such Building.

(j) Sheet Metal, Flashing and Vents. All sheet metal, flashing, vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper.

(k) Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view. Heating equipment, swamp coolers and soft water tanks shall be insulated for sound attenuation. Air conditioning units and swamp coolers are not permitted on roofs or through windows unless screened from view and approved by the Architectural Control Committee.

(l) Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.

(m) Exterior Lighting. All exterior lighting to be installed by a Lot Owner is subject to the prior approval of the Architectural Control Committee.

(n) Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot.

(o) Site Grading and Drainage. No Lot Owner shall modify site grading or storm drainage floors without the prior written consent of the Architectural Control Committee.

(p) City and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no

responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines.

(q) Metal Awnings. Metal awnings, metal “lean-tos”, or metal patio covers shall not be permitted on any Lot, without the prior approval of the Architectural Control Committee. Shade structures of other materials shall be installed only with the prior written consent of the Architectural Control Committee.

(r) Size and Height of Living Unit Location. Each Living Unit shall be located and constructed within the exterior boundaries of the Building Pad.

(s) Recreational Equipment. Basketball hoops, standards, and swing sets shall not be permitted in front of any Living Unit or within the Common Areas.

(t) Outdoor Carpets. Outdoor carpets may be used upon private decks immediately adjacent to kitchens only, as long as they are not anchored to the surfaces of such decks.

(u) Screen Doors. Screen doors shall not be installed upon any exterior door of a Living Unit.

(v) Solar Panels. No solar panels may be installed on the front portion of the roof of any Living Unit. However, an Owner may install a solar panel (or panels) on the rear portion of the roof of the Owner’s Living Unit. Owner shall bear the entire cost and all of the risk associated with any such installation. Notwithstanding any provision in this Declaration to the contrary, neither the Developer nor the Association shall be liable for any installation defects or for any damage to the roof or to any other part of the Living Unit as a result of Owner’s installation of solar panels. Owner shall immediately repair, at Owner’s sole cost and expense, any damage to the roof and/or the Living Unit which result from the installation of solar panels. On an ongoing basis, Owner shall also maintain and repair any such solar panels at Owner’s sole expense.

(w) Window Treatments. Window treatments for those portions of Living Units facing public or Private Streets shall be restricted by color and type to the following: white, horizontal blinds which are at least 2 inches, but not more than 2 ½ inches wide, or white hex shades. Windows may not be treated with mirror type tinting.

(x) Decks. All decks must be kept in a neat and orderly condition and may not be used for storage purposes for any items, including but not limited to bikes, toys and other household items. No Owner shall be permitted to use any device which generates a flame or open fire, with the sole exception of a propane or natural gas barbecue. An Owner may keep patio furniture and planters upon a deck as long as the same are neat, maintained and fully functional (not in disrepair or worn out).

(y) Living Unit Modifications. No modification or addition shall be made to any mechanical, electrical, structural or other system of any Living Unit without the prior written approval of the Association, which approval may be conditioned upon the review of plans and specifications and the performance of any and/or all work by licensed contractors. No penetrations shall be made to the exterior surface of any building or Living Unit without the approval of the Association and if requested the posting of a bond to cover the cost of repairing any such penetrations.

7.4. Landscaping. The Association shall be responsible for the maintenance and replacement of all Common Area landscaping. Each Owner shall be responsible for the maintenance and replacement of landscaping in the rear yard of his Unit, within the fence lines.

7.5. Parking, Vehicles and RVs. Owners shall park and/or store their vehicles in the garages attached to their respective Units, not on driveways or on the street. Guest parking is limited to guest parking spaces and driveways, on a temporary basis. No boats, trailers, large trucks and commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Development. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, Private Street or other Common Areas, except that these restrictions shall not apply to emergency repairs to vehicles, and then only to the extent necessary to enable movement thereof to a proper repair facility. Any motor or recreational vehicle must be kept in an enclosed garage.

7.6. Pets. No animals other than three (3) household pets, including any combination of cats and/or household dogs shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Tropical fish and domesticated birds, excluding pigeons, are exempt for this pet count restriction. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals (including tropical fish or domesticated birds) may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. No exterior structure may be constructed or maintained by an Owner for the care, housing or confinement of any such pets unless the same is approved by the Architectural Control Committee. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Officers by resolution or as regulation may provide.

7.7. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- (a) Vehicular and pedestrian access to and from and movement within the Development.
- (b) Recreational use by Owners and occupants of Living Units and their guests.
- (c) Beautification of the Development.
- (d) Privacy for the Owners and occupants of Living Units.
- (e) Such other uses as shall be determined from time to time by the Officers for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7.8. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better).

7.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

7.10. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof). Or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner or the Association according to their respective obligations contained in this Declaration. No Owner shall have the right to install any trees or perennial bushes upon any lot or the Common Areas. However, an Owner may plant perennial bushes, but not trees, in the rear yard of the Unit. If the Owner elects to plant flowers on a Lot, but only at locations approved by the Association for such plantings, the Owner shall be solely responsible to maintain the same, including the removal of dead stock. Any pots used to hold flowers in any exterior area of a Living Unit shall be of plastic or pottery only. Each Owner shall paint, repair, and otherwise maintain the and interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

7.11. Nuisances and Smoking. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots, including the smoking of cigarettes, cigars, pipes or other similar devices which are declared to be a nuisance and health risk to all Owner and occupants within the subdivision. Without any limitation to the foregoing restrictions, no exterior speakers, horns, whistles, bells or other sound devices (except security devises used exclusively for security purposes) shall be located or placed on Lots or in Living Units; except that entertainment systems including tvs, stereos, radios and computers may be used within each Living Unit provided the same are not used to broadcast sound outside of such Living Unit. No smoking shall be permitted at any location within the Subdivision unless such area is not less than twenty-five (25) feet from any Building or Living Unit.

7.12. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any Manager, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration, the requirements of the Committee as specified in Article VIII, and the rules and regulations of the Association have been or are being complied with. In addition to the foregoing, a right of entry exists for such parties and maintenance personal that may need access to common areas, fire systems, satellite systems, utilities, HVAC, and/or other systems which may not be readily accessible except through an individual Living Unit regardless of whether or not such system is for the benefit of one or more Lots and/or Living Units. Right of Entry shall be by prior appointment except in circumstances which may be deemed an emergency. No Owner or occupant of a Living Unit shall have the right to exclude entry for any period in excess of five (5) days of the first requested inspection.

7.13. Signs and Flags. No signs or flags whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, on any Living Unit, or within any window of a Living Unit, except:

- (a) Such signs as may be required by legal proceedings.
- (b) Construction identification signs of a combined total face area of five hundred seventy-six (576) square inches or less for each Living Unit.
- (c) A "For Sale" or "For Rent" sign, non-illuminated, consisting of only one pole and a sign hanging form or attached to such pole not to exceed three (3) square feet in size.

(d) State and/or National Flags erected on temporary poles for the period of national or State of Utah holidays only. No flag pole shall be attached to a Living Unit or fence.

(e) A non-illuminated, permanent business sign on a ground floor entry door to promote a permitted home business, consisting of metal or vinyl, not to exceed four (4) square feet in size, but in all cases subject to the prior approval and requirements of any governmental authority having jurisdiction of such signs.

7.14. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Architectural Control Committee. Insofar as possible, such containers shall be maintained as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at this expense provide garbage cans and plastic liners therefor, unless the Association elects to provide the same.

7.15. Party Wall Provisions.

(a) General Rules of Law to Apply. Each wall which comprises a portion of a Living Unit and which is built as a part of the original construction upon the Property and placed on the dividing line between any Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 7.15, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Limitations Regarding Use of Party Wall. No Owner shall have the right to install "inwall" speaker within any party wall or to otherwise make a penetration of any party wall to facilitate the use of any audio or video system. This prohibition shall not preclude the use of surface mounted speakers, but Owners shall not operate any entertainment system in such a manner as may result in the creation of a nuisance or annoyance to his or her neighboring Owner.

(c) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

(e) Weatherproofing. Notwithstanding any other provision of this Section 7.15, an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

(f) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section 7.15 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(g) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 7.15, unless the parties can agree upon one arbitrator whose decision shall be binding, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Trustees of the Association shall select an arbitrator for the refusing party.

7.16. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration: (a) Declarant, so long as it has any interest in any of the Property; (b) Any Owner; or (c) The Association. The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

7.17. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the seven (7) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant.

VIII. ARCHITECTURAL CONTROL

8.1. Architectural Control Committee. The Officers of the Association shall appoint a three-member Committee, the function of which shall be to insure that all improvements and landscaping within the property harmonize with existing surroundings and structures (herein the "Committee"). The Committee need not be composed of Owners, but any non-owner member must be a director, officer, manager, member, trustee, beneficiary or other manager or beneficial owner of an entity owning a Lot or Living Unit. If such a Committee is not appointed the Officers shall perform the duties required of the Committee.

8.2. Submission to Committee. Except for Living Units constructed by the Declarant, no Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed unless complete plans and specifications therefor have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Officers.

8.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project.

8.4. Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in triplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association, one set will be retained by the reviewing

architect (if any) and the remaining set of plans will be returned to the property owner. All plans and specifications shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

8.5. Bond/Security Deposit. The Architectural Control Committee may require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Review Committee, in an amount not to exceed \$1,000.00 in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Architectural Review Committee. The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the construction of improvements.

8.6. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within Atherton Park Townhomes shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address:

3900 JV, LLC
676 E Markea Avenue, #9
Salt Lake City, Utah 84102

The Officers of the Association have the authority to change the address for the submittal of plans and specifications.

8.7. Construction.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

i. The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

ii. The front, side and rear yards of each Lot shall be landscaped within a period of one (1) year following completion or occupancy of the Living Unit. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

(b) Owners and contractors shall clean up all trash and debris on the construction site at the end of each workday. Trash and debris shall be removed from each construction site at least once a week to a dumping location off-site of the development. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials of the construction site. Owners and contractors are prohibited from dumping, burying or burning trash anywhere on the lot. During the construction period, each construction site shall be kept neat and shall be promptly removed from public or private roads, open spaces and driveways. Each property owner and contractor shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

Construction crews shall not park on, or otherwise use, other lots or any open space. All construction vehicles and machinery shall be parked only upon public streets or in areas designated by the Architectural Control Committee.

8.8. Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

8.9. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8.10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living Units erected by it and all improvements of the Common Areas accomplished by it in the Development (i) shall be architecturally compatible with respect to one another; and (ii) that on or before seven (7) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable all Common Areas of the Subdivision, all approximately in the locations shown on the Plat.

IX. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

9.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

9.2. Abandonment, Termination, Etc. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

(a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;

(b) To partition or subdivide any Lot or the Common Areas;

(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or

(d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

9.3. Notice of Substantial Damage or Destruction. The Association shall notify all holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$10,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

9.4. Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

9.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

9.6. Rights Upon Foreclosure of Mortgage. The lien of the assessments provided in Section 1, Article V shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a first mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for: unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a. reallocation of such assessments or charges to all Lots including the mortgage Lot.

9.7. Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration or the Articles of Organization of the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each Lot in which a mortgagee has an interest) of the individual Lots have given their prior written approval to such amendment.

9.8. Mortgagees' Rights to Inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

X. EXPANSION OF THE DEVELOPMENT

10.1. Reservation of Option to Expand. Declarant hereby reserves the option to expand the Development to include Lots and Living Units on up to 0.28 acres of land immediately north of and contiguous with the original Development ("Additional Land"). This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided, however, the option shall expire seven (7) years from the date following the first conveyance of a Lot in phase one to an Owner unless sooner terminated by Declarant's recorded waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. The expansion right may be exercised without first obtaining the consent or vote of Lot Owners and shall be limited only as herein specifically provided. Living Units may be constructed on any or all Lots within the Additional Property, except that the development of the Additional Property shall include Common Areas comparable to the Common Areas in phase one. The option to expand is subject to the provisions of this Declaration as to any and all parameters which are (or were) within Declarant's control with respect to the development of phase one. Declarant shall have the same rights, remedies and obligations with respect the development of the Additional Land which Declarant has (or had) under this Declaration with respect to the development of phase one. Notwithstanding the foregoing, this option to expand shall be subject to the prior written consent of the Construction Lender (as defined in paragraph 11.3 hereafter) so long as the Construction Lender has an interest in the Property, which consent will not be unreasonably withheld.

10.2. Supplemental Declarations and Supplemental Maps. The expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Map or Maps containing the same information with respect to the new Lots and Living Units as was required on the Map with respect to Lots and Living Units in phase one. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

10.3. Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Development as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Development, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Salt Lake County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots in the Development as it existed before such expansion the respective undivided interests in the new Common Areas added to the Development as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Development as it existed, interest so acquired by the Owner of the Lot encumbering the new Common Areas added to the Development as a result of such expansion.

10.4. Declaration Operative on New Lots. The new Lots and Living Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots and Living Units shall be subject to townhome ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the office of the Salt Lake County Recorder.

10.5. Right of Declarant to Adjust Ownership Interest in Common Areas. Each deed of a Lot shall be deemed to irrevocably reserve to the Declarant the power to appoint to Lot Owners, from time to time, the percentages in the Common Areas set forth in a Supplemental Declaration. The proportionate interest of each Lot Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Development as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with a Supplemental Declaration (or Supplemental Declarations) recorded pursuant hereto, and each deed of a Lot in the Development shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Lots may contain clauses designed to accomplish a shifting of Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the same instruments relating to the Development conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

10.6. Other Provisions Concerning Expansion. If the Development is expanded as set forth above, then it is further provide that:

(a) All or any part of the Additional Land may be added to the Development without any limitations whatsoever save and except that all additional Living Units created must be restricted to multi-family residential housing, limited to one family per Living Unit.

(b) Portions of the Additional Land may be added to the Development at different times without any limitations.

(c) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through any easement or the continuation of streets or roadways as shown on the Map. The Association shall not allow anything to be built upon or interfere with said easements (if any), streets or roadways.

(d) The Living Units created on any portion of the Additional Land will be substantially identical to those within the original Development, except that Living Units will be constructed of an equal or better quality of materials and construction than Living Units in phase one.

(e) No assurances are made concerning:

i. The locations of any improvement that may be made on any portion of the Additional Land which may be added to the Development.

ii. The type, kind, or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, buildings and Living Units will be comparable to the phase one facilities, building and Living Units on a per-unit basis and will be of similar or better quality of materials and construction to phase one.

iii. The type, size or maximum number of limited Common Areas which may be created within any portion of the Additional Land added to the Development.

(f) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as impose upon Declarant any obligation to (or to restrict Declarant in any way with regard to): (i) create, construct, or add to the Development any additional property; (ii) carry out in any particular way or within any particular time any development except as expressly stated herein; or (iii) take any particular action with respect to the Additional Land.

10.7. General Liability Insurance Policy for Expansion of the Development. Pursuant to Title 38, CFR § 36.4360(a)(5), which is incorporated herein by this reference, the Declarant shall purchase at its own expense and maintain a general liability insurance policy in the sum of not less than \$1 million to cover any liability which owners of previously sold Lots are exposed to as a consequence of further and future expansion of the Development as set forth herein.

XI. MISCELLANEOUS

11.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered or

if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

11.2. Amendment. Subject to the provisions of Section 2 of Article VIII above, and, so long as the Construction Lender (as defined in paragraph 11.13 hereafter) has an interest in the Property, subject to the prior written consent of the Construction Lender, which consent will not be unreasonably withheld, this Declaration may be amended by the Declarant, in its sole and separate capacity, and in its sole and separate discretion, until two-thirds (2/3) of the townhomes in the property have been sold to one or more Owners, those sales have closed, and the affected townhomes are occupied by the Owner or Owners (the "Development Period"). Thereafter, any amendment hereto shall require (i) the affirmative vote of at sixty-seven percent (67%) of all Class A membership votes, which Members present in person or represent by proxy are entitled to cast at a meeting duly called for such purpose; and (ii) so long as the Class B membership exists, the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held less than seven (7) nor more than forty-five (45) days following the immediately preceding meeting. During the Development Period, any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Declarant. After the Development Period, any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by two Officers of the Association, and by the Declarant if the Class B Membership then exists. In such instrument two Officers of the Association shall certify that the vote required by this Section for amendment has occurred.

11.3. Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 11.3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 11.3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

11.4. Leases. Long-term leases, meaning the rental of a Unit for not less than six (6) months, are allowed. Any such agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "Lease") shall be in writing. Every Lease shall provide that its terms shall be subject in all respects to the provisions of the Project Documents. Said Lease shall further provide that any failure by the resident(s) thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. If any Lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the Lease and binding on the Owner and resident(s) by virtue of their inclusion in this Declaration. Short-term leases for the rental of a Unit for less than six (6) months are not permitted. No Owner shall be permitted to lease his Unit for transient, seasonal, and corporate executive use or purposes. Daily or weekly rentals and timeshares are, likewise, not permitted. Furthermore, no Owner may lease individual rooms to separate persons or less than his entire Unit. Any Owner who shall lease his Unit shall be responsible for assuring compliance by the resident with the Project Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against the resident who is in violation of the Project Documents within ten (10) days after receipt of written demand so to do from the Board of Trustees, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or resident for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorney's fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Association to levy an individual assessment against such Owner and his Unit for all such expenses incurred by the Association. In the event such assessment is not paid within thirty (30) days of its due date, the Board of Trustees may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

11.4.1. Exceptions. Notwithstanding the foregoing, the following are exempt from the rental restrictions set forth above:

- (a) a Unit Owner in the military for the period of the lot owner's deployment;
- (b) a Unit occupied by a Unit Owner's parent, child, or sibling;
- (c) a Unit Owner whose employer has relocated the Unit Owner for no less than two years; and/or;
- (d) a Unit Owner by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - (i) the estate of a current resident of the Unit; or
 - (ii) the parent, child, or sibling of the current resident of the Unit;

In addition, a Unit Owner who has a rental in the association before the time the rental restriction described above is recorded with the Salt Lake County Recorder may continue renting the Unit until: (y) the Unit Owner occupies the lot; or (z) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit. The Association shall create, by rule or resolution, procedures to determine and track the number of rentals and Units in the Association subject to the provisions described above; and to ensure consistent administration and enforcement of the rental restrictions

11.5. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

11.6. Dissolution. Subject to the restrictions set forth in Article IX of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds (2/3) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the Articles of Organization or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non-profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Declaration.

11.7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct and complete all Common Areas improvements and amenities indicated on the Plat within two (2) years of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

11.8. Enforcement by City. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, Salt Lake County and/or any other governmental authority with jurisdiction to do so, shall have the right, but not the obligation, upon giving the Association thirty (30) days notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforceability of the remainder hereof.

11.9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

11.10. Property Part of Development. The Property shall comprise Atherton Park Townhomes, A Planned Unit Development.

11.11. Covenants to Run With Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, Instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11.12. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

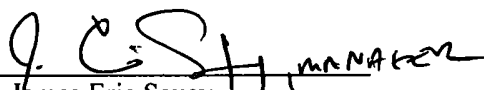
11.13. Lender's Agreement of Subordination. By its execution of this Declaration, Bank of American Fork, a Division of People's Intermountain Bank, a Utah corporation fka Bank of American Fork (hereinafter "Construction Lender"), agrees, covenants and declares that this Declaration shall be senior in priority to that Construction Deed of Trust made as of December 22, 2014, between 3900 JV, LLC, as "Trustor," and Bank of American Fork as "Trustee" and Construction Lender as "Beneficiary" (hereinafter "First Deed of Trust"), which First Deed of Trust was recorded on December 24, 2014, as Entry No. 11967323, in Book 10284, beginning at page 5061 of the Official Records of Salt Lake County, and that said First Deed of Trust shall be subordinate to and subject to this Declaration notwithstanding the fact that this Declaration is recorded later in time than the First Deed of Trust.

In the event of a transfer of any right, title or interest of Declarant in all or any portion of the Development pursuant to foreclosure of the First Deed of Trust (or pursuant to a deed in lieu of such foreclosure or other disposition under the First Deed of Trust), as of the date of such transfer all of the rights and interests which Declarant (as "Declarant" under this Declaration) has or hereafter may have reserved and identified in this Declaration, as amended, supplemented, or replaced from time to time (the "Declarant Rights"), shall vest automatically in the transferee (whether Construction Lender or a third party) (the "Successor Declarant"). The Successor Declarant does not assume any prior (i.e. before the date of the transfer) obligations or liabilities of Declarant, including without limitation: home warranties; express or implied warranties; defects in the design or construction of the Common Areas, Lots, or any improvements constructed thereon; unpaid monetary obligations; completion of the Common Areas; or prior breaches or defaults by Declarant under this Declaration. Any "reinvestment fee covenant" shall not apply to any transfer described in this Section 11.13. The Successor Declarant, in its sole discretion, may assign the Declarant Rights which have vested in the Successor Declarant. This Section 11.13 shall not be modified, replaced or deleted without Construction Lender's prior written consent.


EXECUTED the day and year first above written.

3900 JV, LLC
a Utah Limited Liability Company

By: Everest Builders, L.L.C.

By: 
Name: James Eric Saxey
Title: Manager

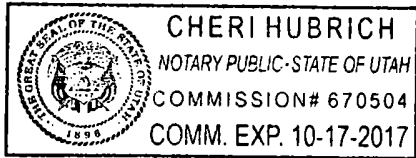
CONSTRUCTION LENDER:
BANK OF AMERICAN FORK,
A Division of People's Intermountain Bank, a
Utah corporation

By: 
Its: VICE PRESIDENT

ACKNOWLEDGEMENTS

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

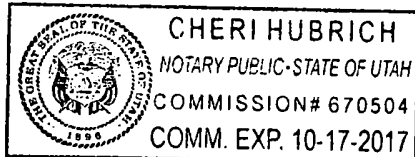
On the 1st day of JUNE, 2018, personally appeared before me **James Eric Saxey**, who being by me duly sworn did say that he is the Manager of Everest Builders, L.L.C., and that Everest Builders, LLC, is the Manager of **3900 JV, LLC**, that the within and foregoing instrument was signed in behalf of said limited liability companies by authority of resolutions of its members or in accordance with the terms of its operating agreements and said James Eric Saxey duly acknowledged to me that said limited liability companies executed the same.



Cheri Hubrich
NOTARY PUBLIC

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

On the 1st day of JUNE, 2018, personally appeared before me Darren Nate, who being by me duly sworn did say that he is the VICE PRES. of **BANK OF AMERICAN FORK**, a Division of People's Intermountain Bank, a Utah corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its members or in accordance with the terms of its operating agreement and duly acknowledged to me that said corporation executed the same.



Cheri Hubrich
NOTARY PUBLIC

EXHIBIT A
LEGAL DESCRIPTION

LOTS 1 through 8, contained within ATHERTON PARK, A Planned Unit Development, as the same is identified in the Plat recorded as Entry No. 11988414 in Book 10294, at Page 218 in the office of the Salt Lake County Recorder.

TOGETHER WITH the Common Areas and Private Street described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Salt Lake County Recorder.

Contains: 0.50 Acres

**EXHIBIT B
PERCENTAGE INTERESTS**

LOT/UNIT NO.	PERCENTAGE INTEREST	VOTES	% FOR EXTERIOR MAINTENANCE ASSESSMENT
1	12.5 %	1	12.5 %
2	12.5 %	1	12.5 %
3	12.5 %	1	12.5 %
4	12.5 %	1	12.5 %
5	12.5 %	1	12.5 %
6	12.5 %	1	12.5 %
7	12.5 %	1	12.5 %
8	12.5 %	1	12.5 %
TOTALS	100	8	100 %