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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MILLCREEK TOWNHOMES BY SEGO HOMES
(INCLUDING BYLAWS)

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by Seگو Ventures #2, LC (hereafter "Declarant").

RECITALS

A. The Declarant is the owner of certain land in Salt Lake County, Utah, shown on the Record of Survey Map entitled, Millcreek Townhomes by Seگو Homes, to be recorded in the Recorder's Office of Salt Lake County, state of Utah, (the Recorder's Office) and more particularly described in **Exhibit A** attached hereto and made part hereof.

B. It is the intention of the Declarant to develop the land subject to this Declaration as a residential planned unit development, and to insure a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens, as set forth herein for the following primary purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of the Common Areas and the buildings in the Community, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an Association to be delegated and assigned the powers of maintaining and administering the Common Areas (as hereinafter defined) and other improvements, and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created upon the Property designated by this Declaration; which association shall be incorporated under the laws of the state of Utah as a nonprofit corporation for the purpose of exercising the functions mentioned herein.

C. The Community is not a condominium or cooperative project.

NOW, THEREFORE, the Declarant does hereby declare as follows:

ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Act" shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

1.2 "Assessment" means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to a Governing Document or applicable law.

1.3 *“Association”* means the Millcreek Townhomes by Sego Homes Association, or any successor incorporated or unincorporated association of the Lot Owners acting under the authority of this Declaration and the Bylaws.

1.4 *“Builder”* means any person or entity, if any, other than the Declarant, which shall, in the ordinary course of such person’s or entity’s business, construct a Unit on a Lot and sell or lease it to another person to occupy as such person’s residence.

1.5 *“Board of Directors”* means the entity, established in accordance with the Bylaws, with primary authority to manage the affairs of the Association.

1.6 *“Bylaws”* means the Bylaws of the Association (initially attached hereto as **Exhibit B**) as they may be amended from time to time.

1.7 *“Common Area”* means, refers to, and includes: (a) The real property and interests therein, excluding all Lots as defined herein, which comprise the Project; (b) All common areas and facilities designated as such elsewhere herein or on the Plat, except as otherwise stated herein; (c) All installations for and all equipment connected with the furnishing of the Project’s utility services and existing for common use, such as electricity, gas, water and sewer, except as otherwise provided herein; (d) In general, all apparatus, installations and facilities included within the Project and existing for common use; (e) The Project’s roads; (f) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (g) All common areas as defined in the Act, whether or not enumerated herein; and (h) All Limited Common Areas (except inasmuch as it is treated differently than Common Area elsewhere herein for maintenance, use or insurance purposes).

1.8 *“Community”* means all of the land described in the Plat.

1.9 *“Declarant”* means Sego Ventures #2, LC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.10 *“Governing Documents”* shall mean and refer to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules, and architectural or design guidelines.

1.11 *“Improvement”* means every structure or improvement of any kind, including but not limited to landscaping, sprinkler pipes, Living Units, decks, porches, awnings, windows, doors, fences, garages, carports, accessory buildings, driveways, storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.12 *“Include,” “includes,” or “including”* means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

1.13 "Limited Common Area" means all of the real property identified as limited common area herein or on the Plat, except as otherwise stated herein. Limited Common Areas are Common Areas, but to which certain different rights and limitations apply as more fully set forth herein, including that they are limited to the use of certain Lots to the exclusion of other Lot Owners.

1.14 "Lot" means any residential lot or parcel of land upon which a Living Unit could be constructed in accordance with applicable ordinances and laws, or is already constructed, shown upon the Plat as existing for private use and ownership, including any Improvements thereon.

1.15 "Manager" or "Managing Agent" shall mean and refer to the person or entity retained by the Association to manage the Property according to the direction of the Board of Directors.

1.16 "Mortgage" means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.17 "Mortgagee" means the person or entity secured by a Mortgage.

1.18 "Owner" means the record owner of fee simple title to any Lot, as shown in the records of the County Recorder, but does not include a tenant, contract purchaser, or holder of a leasehold interest or person holding only a security interest in a Lot.

1.19 "Period of Administrative Control" means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove members of the Board and is the time between the date of recordation of this Declaration and the date on which administrative control of the Association is turned over to the Owners pursuant to Section 6.1 below.

1.20 "Plat" or "Plat Map" or "Record of Survey Map" (these terms may be used interchangeably herein) means the Record of Survey Map entitled "Millcreek Townhomes by Segos Homes" recorded, or to be recorded, at the Recorder's Office of Salt Lake County, state of Utah, as the same may be amended or substituted.

1.21 "Property" or "Project" means all of the real property and interests within the boundaries of the project described in the Plat(s), including all Lots, Common Area, easements, and open space.

1.22 "Rules and Regulations" means those rules, regulations, resolutions, policies, procedures, and design guidelines adopted by the Board from time to time as deemed necessary or prudent for the enjoyment, operation or governance of the Community.

1.23 "Screened from View" means behind or within an Improvement so as to not be visible at any time: (1) from a height of six feet above ground level from any part of a street or a contiguous Lot, or (2) from any part of a Living Unit on a contiguous Lot. Such structure or screening shall require the pre-approval of the Architectural Review Committee pursuant to this Declaration. In no event shall tarps, tents, or other temporary structures or covering constitute appropriate screening.

1.24 "Turnover Meeting" means the first meeting of the Association whereat the Board is elected by the Owners pursuant to this Declaration.

1.25 "Unit" or "Living Unit" or "Residence" shall mean a single-family residential attached dwelling unit constructed upon a Lot.

ARTICLE II - PROPERTY DESCRIPTION

2.1 Property Subject the Declaration and Bylaws. The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is described on Exhibit A attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

2.2 Description and Legal Status of Lots. Except as otherwise stated herein, the Plat shows the Lots and building designations, the Limited Common Areas, and the Common Areas, and their locations and dimensions from which, together with the Definitions above, those areas may be determined. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed.

2.3 Form of Lot Conveyance - Legal Description of Lot. Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Plat with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the County Recorder and in substantially the following form: Lot ____ shown on the plat map for the subdivision, appearing in the records of the Salt Lake County Recorder and as subjected to the Declaration of Covenants, Conditions and Restrictions appearing in the official records of the Salt Lake County Recorder, as may be amended. This conveyance is subject to the provisions of the aforementioned Declaration, including any amendments thereto.

2.4 Use and Occupancy. Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner(s) of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot. Each Lot, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

2.5 Easements and Rights Reserved. In addition to the easements and rights shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements, rights and powers are hereby reserved for the benefit of the Owners, the Declarant and the Association:

(a) **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of: (1) determining whether or not the Lot is in compliance with the Governing Documents, (2) determining whether the use of the Lot is causing damage or harm to the Common Areas, (3) for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration, or (4) performing maintenance referred to herein. Requests for entry under numbers (1), (2) and (3) shall be made in advance and at a time that is convenient to the Owner within 30 days of the request, or at a time designated by the Association if such time is more than 30 days from the request, , except in the case of an emergency, when such right shall be immediate. No such entry or actions by the Association shall be deemed to constitute a trespass or otherwise create any right of action for damage or otherwise in the Owner of such Lot.

(b) **Utility Easements.** Declarant hereby reserves non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as drainage, utility and sewer easements, open space, or otherwise designated as an easement area over any road or on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat. An easement shall exist for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located. The Association and any public or private utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the person or entity responsible for maintenance of such Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

(c) **Common Areas.** All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas, excluding the Limited Common Area, subject to the provisions of the Governing Documents and to the right of the Association to limit the number of residents, guests and invitees using the Common Area at one time, and which right shall include (without limitation) the right of ingress and egress to such Owner's Lot.

2.6 Transfer, Material Alteration of Common Area. The approval of a majority of all Owners shall be required before the Association may (i) dedicate or transfer any part of the Common Area, (ii) make any material, discretionary addition to the Common Area, other than as to landscaping, or (iii) make any discretionary, material alterations to the appearance of the Community, other than as to landscaping. However, anything to the contrary notwithstanding, Until the Declarant has sold all of its Lots or seven years from the date of recording of this

Declaration, whichever first occurs, the Association shall not, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant. Additionally, during the Period of Administrative Control, the Declarant may make changes of any nature whatsoever to the Common Area in its sole discretion and without the consent of any other person or entity, including any Owner or the Association.

2.7 No Encroachment. No Unit or Lot shall encroach upon an adjoining Lot or Common Area. If, however, any part of a Unit encroaches or shall hereafter encroach upon the Common Area or an adjoining Lot due to or caused by error in the original construction of any building or improvements constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Lot. If any part of the Common Areas encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist.

ARTICLE III - ASSESSMENTS

3.1 Covenant for Assessments.

3.1.1. Covenant for Assessments. Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments.

3.1.2. Installments of Annual Assessments. The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such Owner.

3.1.3. Equal Share. Except as provided in Section 3.1.4, each Lot Owner shall pay an equal share of the Annual Assessments and Special Assessments.

3.1.4. Declarant Assessment Exemption; Subsidy. Notwithstanding anything herein to the contrary, the Declarant, and any Lot to which the Declarant holds record title, and any Builder, shall be exempt from the payment of any Assessment whatsoever, unless a Unit constructed on a Lot is occupied for a residence on a permanent or part-time basis, provided that during the Period of Administrative Control, Declarant shall subsidize the Association for the amount by which the cost of operating and administering the Association and maintaining reasonable reserves for the maintenance and replacement of common property exceeds the total

amount of Assessments levied against Lots. The subsidy required of Declarant under this paragraph may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or contributions in respect of its subsidy obligations under this paragraph at such times as the Board may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly). At the end of each fiscal year of the Association, either: (1) Declarant shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this paragraph for such fiscal year; or (2) the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this paragraph.

3.2. Annual Budget and Assessment.

3.2.1. Adoption of Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

3.2.2. Determination of Annual Assessment.

(a) The Board shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

(b) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(c) Equitable Changes. If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual

Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

3.3. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of fulfilling the purposes of the Association and carrying out this Declaration, and including, but not limited to: (a) The improvement and maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (e) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below; and (f) Any item properly chargeable as a Common Expense of the Association.

3.4. Special Assessments. In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time ("Special Assessment") for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Owner may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum representing 30% of the Association's voting rights cast a vote.

3.5. Individual Assessments. Any expenses which are not properly expenses common to all Owners and which benefit or are attributable to fewer than all of the Lots may be assessed exclusively against the Lot or Lots affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs or fees incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses relating to the cost of maintenance, repair and replacement of a Lot to the extent incurred by the Association, other than expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents.

3.6. Reserve Funds.

3.6.1. The Association shall establish and maintain a reserve fund for repairs and replacement of the Common Areas, for any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose determined from time to time by the Board by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board in its sole discretion and best business judgment or of an amount and in the manner as may be required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are

insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

3.6.2. The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary or appropriate.

3.6.3. The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board members shall not be held liable for any potential or alleged under funding of the reserve account.

3.7. *Fee Due on Transfer of Unit.* Each time legal title to a Lot passes from one person to another, except a conveyance to any Declarant or Builder, within thirty (30) days after the effective date of such title transaction, the new Lot Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in the amount of \$250, or such other amount determined by the Board from time to time. The following are not subject to the fee: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of a Lot owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed \$250.

3.8. *Nonpayment of Assessments.* The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 15th of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution or document authorizing or levying the Assessment.

3.8.1. Interest, Late Charge. Delinquent Assessments shall bear interest and be subject to a late charge at the rate and amount determined by the Association from time to time.

3.8.2. Acceleration. If the delinquent installments of any Assessment, including an Annual Assessment, and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

3.8.3. Rent Payments by Tenant to Association. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner,

beginning with the next monthly other periodic payment, until all amount dues to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

3.8.4. Termination of Common Services and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Board. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Lot.

3.8.5. Other Remedies. All membership rights, including the right of a Member to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

3.9. ***Lien.*** All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. The Declarant hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-302 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of Assessments under the terms of the Declaration.

3.10. ***Enforcement of Lien.*** The lien is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the Governing Documents. The lien maybe foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The

Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

3.11. Appointment of Trustee. The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time.

3.12. Subordination of Lien to Mortgages. The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from the lien of any future assessment, nor shall it relieve any personal obligation arising herein or elsewhere.

3.13. Personal Obligation and Costs of Collection. Assessments imposed under this Declaration, together with interest and late charges, not to exceed the maximum permitted by law, and costs and reasonable attorney fees incurred or expended in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of any Owner holding title to any Lot at the time when the assessment became due, and, regardless of the terms of any agreement to the contrary, the liability of the Owners of a Lot for the payment of such amounts shall be joint and several, and any remedy for the collection of such amounts may be enforced against any or all Owners of the Lot concerned. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

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

3.15. Statement of Unpaid Assessment & Payoff Information. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in

connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot up the maximum amount allowed by law.

3.16. Application of Payments. Payments shall be applied first to costs and attorney fees, then to late charges, then interest, then to delinquent Assessments in the order of their coming due.

ARTICLE IV - RESTRICTIONS ON USE

4.1 Residential Use. Lots shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No trade, craft, business, profession, commercial, or similar activities shall be conducted on any Lot or in any other portion of the Community if the same causes pedestrian or vehicular traffic which is in excess of a normal level for residential occupancy; creates a sight or noise nuisance; is not merely incidental to the use thereof as a dwelling; or has external visible, audible or other indications of use of the dwelling as anything but as a dwelling, all as determined by the Board. Owners engaging in any business activities from their Lots hereby agree to indemnify, defend, and hold harmless the Association and its officers, directors, agents, and other Owners from all claims which may arise from such business activities.

4.2 Lease Restrictions. All leases shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. All lease agreements shall contain as an attachment to the lease agreement, a copy of the current Rules and Regulations of the Association. Within 10 days of a Unit being rented, the Owner must provide the Association with a copy of the signed lease agreement and the name(s) of all persons who will occupy the Unit, and the Owner must keep such information updated with the Association within 15 days of any change. The Board may regulate rentals within the Project in a manner consistent with the purposes of the Project. Lot Owners shall not be permitted to lease their Lots for an initial term of less than six (6) months.

4.3 Offensive Activities; Nuisance. No unsanitary, offensive, unsightly, or noxious conditions or activities, including noise, odor, clutter or other nuisance, shall be permitted on any Lot or Common Area, nor shall anything be placed upon any Lot or Common Area, which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents. Noise disturbances shall subject the Owner of the Lot from which the noise originates to a fine, as levied by the Board in its sole discretion. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

4.4 Animals. No more than two (2) dogs and two (2) cats shall be kept within any Lot. Additionally, no animals of any kind may be kept or permitted within any Lot, except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog must keep such dog on a leash

when outside of the Lot or keep it confined within the Lot. Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community, including barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof and owners shall be responsible for immediate removal of wastes of their animals from the Property. Each provision of the applicable county or city code regarding animals shall be deemed a part of this Declaration as if fully set forth herein and the Association shall have the right, but not the obligation, to enforce the all such provisions. An owner may be required to remove a pet upon receipt of a written notice from the Association given pursuant to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection. The Board may promulgate rules, beyond those stated herein, restricting the keeping of pets and may charge a pet deposit and/or a registration fee..

4.5 Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure Screened from View. All such waste and garbage must be promptly and periodically removed.

4.6 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an extreme state of disrepair when the Board determines that its presence offends the occupants of other Lots. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Property (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

4.7 Vehicles; Parking.

(1) Parking of boats; trailers; oversized or commercial vehicles (vehicles more than 8 1/2' wide (including mirrors) by 19 1/2' long, any vehicle that has more than two axles, or vehicles weighing more than 6,000 pounds); vehicles displaying commercial advertising, logos, or business names exceeding three square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle; truck campers; motor homes; RVs; and like vehicles and equipment is prohibited within the Community, except within a garage.

(2) Parking on any street within the Community is prohibited. Only currently registered and operational vehicles shall be permitted on the Property. Except for emergency repairs, no vehicle shall be repaired, constructed or reconstructed on the Property.

(3) No garage may be used or altered so that it parks less than the number of motor vehicles for which it was originally designed.

(4) The Association may adopt further rules and restrictions regarding parking and vehicles within the Property and to govern the enforcement of parking and vehicle restrictions. Vehicles in violation of the Governing Documents may be towed at the cost (including the cost of any storage thereof) of the owner. The Association shall be indemnified and held harmless by the owner of a vehicle from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a vehicle pursuant hereto.

4.8 Appearance of Exterior Items, Materials. The Board may adopt reasonable Rules and Regulations to regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Project, including by way of illustration but not limitation a regulation limiting items on the patio to patio furniture; prohibiting hanging of items over the railings; planters and plants; and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view. No rugs, rags, laundry, clothing or other materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless the same are Screened from View.

4.9 Signs. Unless written approval is first obtained from the Board, no sign, advertisement, poster, flag or banner of any kind may be displayed to the public view on or from any Unit or Lot or the Common Area, except as allowed by law and except: (1) Not more than one "for sale" or "for rent" sign, not exceeding 24 inches in height and 24 inches long, may be temporarily placed on a Lot; (2) the display of a U.S. flag inside a Unit, Lot or Limited Common Area is permitted, if the care of the flag and display is consistent with federal law (the Association may control and restrict the display of a flag in the Common Area); (3) Signs may be placed on the Property by Declarant or a Builder.

4.10 Antenna and Dish Policy. All outside television or radio aerials or antennas, satellite dishes or other similar devices, except satellite dishes, such as Direct Broadcast Satellite (DBS) dishes one meter in diameter or less, designed to receive direct broadcast satellite service or receive or transmit fixed wireless signals via satellite, are prohibited. Such allowed dishes may be installed, provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association within three (3) business days before installing any dish. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the dish. Location of an allowed dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner is responsible for, and shall indemnify and hold the Association harmless from, all damage caused by or connected with a dish servicing the Owner's Unit, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such dish, and including personal injury and any other property damage. The Owner shall keep the dish in good repair so that it does not violate any portion of this

Declaration. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The term "dish" shall include antenna in the interpretation of the above policy.

4.11 Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.

4.12 Windows and Window Coverings. All windows in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction. Appropriate window coverings must be installed on windows at all times. The color of such window coverings shall be in harmony with surroundings and the exterior of the structure. Appropriateness and harmony shall be determined by the Board and a window covering shall be promptly removed by an Owner upon the determination by the Board that it is not appropriate or in harmony with surroundings. No window may be covered by paint, aluminum foil, newspapers, bed sheets, cardboard, blankets, or other similar items.

4.13 Increase in Insurance Cost. Nothing shall be done or kept within any Lot or on the Common Areas, including Limited Common Areas, which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Lot or Common Areas which will result in cancellation of insurance on any Lot.

4.14 Architectural Control. No Improvement shall be commenced, constructed, erected, added or maintained upon the Properties, nor shall any exterior addition, change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. Such approval shall be solely at the discretion of the Board as it deems appropriate from time to time. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied. This subsection 4.13 shall not apply to Declarant's building or construction activities during the building and development of the Project.

Design and construction of the Lots and Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Board is hereby empowered to adopt (referred to as "**Design Guidelines**") to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Project. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All original construction by Declarant shall be and is hereby approved. All Builders and Owners, including individual Builders of one or more lots obtained from the Declarant, shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted.

4.15 Drainage System. There shall be no interference with the established drainage patterns or systems, if any, over or through any Lot so as to affect any other Lot or any real property outside the Property unless adequate alternative provision is made for proper drainage and is approved by the Board.

4.16 Association Rules and Regulations.

In addition to the restrictions and requirements above, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots and Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines may be adopted by the Board of Directors specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

ARTICLE V - MAINTENANCE OBLIGATIONS

5.1 Owner's Responsibility.

5.1.1 Lots. Except to the extent that the Association is responsible for such maintenance under Section 5.2, maintenance of the Lots and the Living Units shall be the responsibility of the Owners thereof, who shall maintain such Lots and Living Units in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the interior of the Living Units, including floors and each and every structural element beneath the Unit, exterior windows, window frames, and exterior doors and door frames, driveways, sidewalks, entries, landings, patios, balconies, and decks that exclusively serve an Owner's Unit even if these facilities are in the Common Areas. The Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, heating equipment, air conditioners, or other appliances or like fixtures that may be in, or connected solely with, his or her Lot. Any pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit or Lot, all as determined by the Association. The painting or repainting, remodeling, rebuilding or modification of any Unit exterior, or parts thereof, must first be submitted to and approved by the Board pursuant to procedures in Section 4.15 above.

5.1.2 Limited Common Area. Each Lot Owner shall, at its own cost, maintain, repair, replace, and keep in a clean, sanitary, uncluttered and attractive condition at all times, the Limited Common Areas appurtenant to his or her Lot

5.1.3 Fences and Fenced-in Areas.

(a) In any case where a fence encloses an area, the enclosed portion shall remain freely accessible at all times to the Association for lawn care purposes. If such enclosed portion is not freely accessible, the Owner whose Lot directly enjoys the benefit of the fenced

enclosure shall be responsible for all lawn care and maintenance within the area enclosed by such fence.

(b) No Separate Property Right Created. Any area enclosed by a fence shall retain its original status as Common Area, Limited Common Area, or a Lot, as the case may be, and shall not be deemed to be part of a Lot or an interest in real property only by virtue of its being enclosed by a fence. The applicable Owner shall merely enjoy a temporary revocable license to enjoy such enclosed area for his or her exclusive use but no further property right is or shall be created and no guarantee, covenant or promise that such a license shall continue to exist for any period of time is created hereby.

(c) Additional Requirements. The Board may adopt rules from time to time further regulating fences and clarifying or otherwise expanding the provisions of this Section 5.1.3 and may impose additional requirements for an Owner to continue to keep a fence or obtain approval to install a fence.

5.2 Maintenance by Association.

6.2.1. The Association shall provide for, as a common expense, such care, maintenance, repair and replacement of the following as deemed necessary or desirable by the Board to keep them attractive and generally in good condition and repair:

- (a) The Common Area (unless otherwise stated in this Declaration);
- (b) Exterior surfaces of the Units and the roofs, gutters and downspouts on a Unit (but not including glass surfaces or the maintenance, repair, or replacement of glass, doors, door frames, windows, window frames, columns, girders, beams, supports and walls, and also not including sealing, maintaining, repairing, replacing or otherwise fixing foundations);
- (c) All landscaping, trees, bushes, shrubs, planting beds, flower beds, grass and other plant life on Lots;
- (d) All fencing, whether or not located on a Lot;
- (e) All installations of common utility services, such as power, gas, sewer and water mains and distribution lines serving two or more Lots, whether they run inside or outside a Lot, building or Unit; and
- (f) All heat tape or similar product.

5.2.2. Snow Removal. The Association shall provide for snow removal from the Common Areas, (including the roads and sidewalks in the Common Area), but not from the Limited Common Area benefitting or servicing only one Lot.

5.2.3 To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

5.2.4 Additionally, the Association, by and through the Board, may assume the Owner's general maintenance responsibility over a Lot and Limited Common Area if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with fifteen (15) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall be levied and collected in the same manner as assessments pursuant to this Declaration. If a dispute arises as to the condition of a Lot or Unit, the decision of the Board shall be final and conclusive.

ARTICLE VI - DECLARANT RIGHTS AND CONTROL

6.1 Administrative Control of Association. Declarant shall assume full administrative control of the Association through a Declarant-appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held no later than upon expiration of the Period of Administrative Control.

The Period of Administrative Control shall expire upon the earlier of:

- (1) seven years from the recording of this Declaration,
- (2) Three years after Declarant has ceased to offer Lots for sale in the ordinary course of business, or
- (3) Declarant voluntarily terminating the Period of Administrative Control. The Declarant may elect to voluntarily terminate the Period of Administrative Control by written notice to Owners and by calling and holding the Turnover Meeting.

6.2 Other Rights. In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one (1) Lot within the Property, Declarant:

(a) Sales Office and Model. Shall have the right to maintain a sales office and model in one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) For Sale Signs. May maintain a reasonable number of for sale or other advertising signs, the size of which may be determined by Declarant, at reasonable locations on the Property.

(c) The Act. The Declarant, the Declarant-appointed Board and the Association is exempt from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The Declarant and the Declarant-appointed Board are exempt from association rules and the

rulemaking procedure under Utah Code Ann. § 57-8a-217 and all rights under that section are hereby reserved by Declarant.

(d) Voting Rights. Declarant shall have such voting rights as established in Section 7.3 below.

6.3 Easements Reserved to Declarant.

(a) **Construction Easement.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over, to, from, under, across and through the Property for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project. The Owners by acceptance of a deed or other document of conveyance do hereby acknowledge and agree that there shall be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots until all improvements are complete, and do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

(b) **Locations of Facilities Easement.** Declarant hereby reserves for itself and its affiliates and assignees a non-exclusive easement over, to, from, under, across and through the Property to construct, operate, maintain, repair and replace all types of fire system controls, telecommunication facilities and so forth, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and the Property in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of the Association or any Owner or mortgagee. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

(c) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area and grade a portion of such Common Area adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

ARTICLE VII – THE ASSOCIATION

7.1. Organization. The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Board may re-incorporate the Association without a vote of

the Owners. The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws. Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Meeting.

7.2. *Membership.* Each Owner shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

7.3. *Voting Rights.* The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

- (a) Lots. Except Declarant, each Owner shall have one (1) vote for each Lot owned.
- (b) Declarant. For each Lot owned, the Declarant shall have five (5) votes.

7.4 *Powers, Duties and Obligations.* The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers, 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 provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

(b) The Association may borrow money, provided the assent of a majority of all Owners is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

(c) Provision of Services; Telecommunications and Related Contracts. The Association may provide services and facilities for the Lots, Owners, their guests, lessees and invitees. A facility is space designated, or equipment built and installed, to serve a specific function. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities, including contracts with telecommunication service providers and facilities owners pursuant to which the provider serves as the exclusive or nonexclusive provider of telecommunication services and/or facilities to each Lot, as well as the power to enter into, on behalf of the Association, similar bulk rate service contracts of any nature deemed in the Association's best interests. The costs of services and facilities provided by the Association may be funded by the Association as a common expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service,

telecommunication service, security, fire protection, caretaker, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities, except that after the Period of Declarant Control, the prior approval of the Owners shall be obtained, by a vote where a majority of the votes cast are cast in favor of the proposal, in order to cancel any existing service or facility or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, shall be provided by the Association.

ARTICLE VIII - PARTY WALLS

8.1 General Rules of Law Apply. Each wall to be built as a part of the original construction of any Living Unit and placed substantially on a dividing line between any two (2) Living Units shall constitute a party wall. In the event the Owner, or its tenant, guest or invitee, causes damage to the party wall, then the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Wall shall be an "Owner" of the wall for purposes of this Article.

8.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners in proportion to their ownership thereto.

8.3 Destruction by Fire or Other Casualty. If a Party Fence or a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership 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.

8.4 Arbitration. In the event any dispute arises concerning a Party Fence or a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

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

ARTICLE IX - COMPLIANCE AND ENFORCEMENT

9.1 Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

9.2 Remedies. Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right,

but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

9.2.1 Subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

9.2.2 To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

9.2.3 To levy fines and any violation of any express rule, regulation, covenant, restriction, or term of any Governing Document of the Association shall be subject to a fine in the amount determined by the Board from time to time. A subsequent violation of the same specific type occurring within 12 months of a prior violation shall be deemed the same violation for all purposes, including the purpose of notice, and shall be subject to an immediate fine;

9.2.4 To terminate the right to receive utility services paid for by assessments, if any, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred;

9.2.5 The right of the Association to suspend the voting rights after notice and an opportunity to request a hearing for any period not to exceed sixty (60) days for any infraction of any of the Governing Documents, including failure to timely pay an assessment;

9.2.6 Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its attorneys' fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action; or

9.2.7 To record, in the records of the County Recorder, against a Lot as to which a violation exists relating to the land or improvements on the land and the noncompliance of such land or improvements with the Governing Documents, a notice of noncompliance setting forth the thing, condition or violation that exists and thereby providing notice to prospective purchasers and all others of the violation and of the requirement that the violation be remedied by the Owner or future Owner of the Lot.

9.3 *Action by Owners.* Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

9.4 Injunctive Relief. Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

ARTICLE X - INSURANCE

10.1 Types of Insurance Maintained by the Association. The Association shall obtain the following types of insurance:

(a) **Liability.** A public general liability insurance policy covering the Association, its officers, Board members and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas;

(b) **Property.** Blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all attached dwellings, Limited Common Areas appurtenant to a dwelling on a Lot, and Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and including coverage for any fixture, improvement, or betterment installed at any time to an attached dwelling or to a Limited Common Area appurtenant to a dwelling on a Lot, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a Limited Common Area;

(c) **Fidelity Insurance or Bond.** The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Lots plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

(d) **Directors and Officers (D&O) Insurance.** The Association shall purchase and maintain insurance on behalf of any person who was or is a Board member or officer of the Association,

and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the state of Utah, as the same may hereafter be amended or modified.

(e) Other Insurance. The Association shall obtain such other insurance if and to the extent required by law or as the Board deems necessary from time to time, such as workers' compensation insurance.

10.2 Acceptable Insurance Providers. The Association shall use generally acceptable insurance carriers.

10.3 Lot Owner Insurance Responsibility.

10.3.1. Master Policy Deductible. For covered losses to Lots, the Association's policy is primary but the Lot Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner 30 days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the limited common area appurtenant to the Lot) as follows:

(a) If a loss occurs that is covered by the Association's policy and by a Lot Owner's policy, the Association's policy provides primary insurance coverage and the Lot Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

(b) If a Lot, or Limited Common Area or facility appurtenant to a Lot, suffers damage as part of a covered loss, the Lot Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Lot damage for that Lot to the amount of the deductible under the Association's policy. The amount of the deductible under the Association's policy shall be determined by the Board from time to time. The Association shall provide notice to the Lot Owners of the amount of, and any change in the amount of, the deductible.

10.3.2. Contents of Lot/Unit. The Association's policy does not cover the contents of a Lot or Unit or a Lot Owner's personal property. Each Lot Owner is strongly encouraged to obtain insurance coverage for contents of their Lot or Unit, as well as for coverage in the event the Owner has to pay the Association policy deductible as provided above

10.3.3. Loss Due to Fault of Another. This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (a) any person residing with the unit owner, if the unit owner resides in the unit, and (b) the unit owner.

10.3.4. Acceptable Contractors. No work on any part of the Property, including Lots and Units, shall be performed for repair or replacement due to a covered loss except by a

licensed contractor carrying adequate liability and workers compensation insurance, whether such person is hired by an Owner or the Association.

10.4 Power of Attorney

10.4.1. Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Lot, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

10.4.2. By purchasing a Lot, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

ARTICLE XI - AMENDMENT AND DURATION

11.1 Amendments.

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board or by Owners holding thirty percent (30%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) Approval Required. This Declaration may be amended if such amendment is approved by sixty-seven percent (67%) of the total voting rights of the Association.

(c) Declarant Amendments. Notwithstanding anything else herein, the Declarant may unilaterally amend this Declaration or the Plat at any time until the Turnover Meeting without any additional or other consent or approval required.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the appropriate County Recorder's Office. An amendment by Declarant shall be effective when executed by Declarant and recorded with the County Recorder.

11.2 Duration. The provisions, covenants, conditions and restrictions contained in this Declaration, as amended in whole or in part from time to time as provided above, shall continue and remain in full force and effect until there is recorded an instrument directing the permanent termination of this Declaration and the Association after the vote and approval of seventy-five percent (75%) of the total voting rights of the Association. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office not less than six (6) months prior to the intended termination date.

ARTICLE XII - MISCELLANEOUS PROVISIONS

12.1 Dispute Resolution and Limitation on Litigation/Covenant Not to Sue.

12.1.1 Litigation. The Declarant, Association and all Persons subject to this Declaration ("Bound Party(ies)") agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees by acceptance of a deed or other document of conveyance to a Lot that any and all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including by way of illustration but not limitation any and all claims, grievances or disputes arising out of or relating to the construction or design of Improvements within the Property by Declarant or any director, officer, manager, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant or any other person or entity involved in the original construction of the Units (a "Declarant Party"), or arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, Articles of Incorporation or Rules (collectively "Claim"), except for those Claims authorized in Section 12.1.5 below, shall be resolved by negotiation, and if negotiations fail, then (upon compliance with subsections 12.1.2 – 12.1.4 below as to Claims against Declarant or a Declarant Party), by mediation, and if mediation fails, then by binding arbitration in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim. The Bound Parties waive their rights to a jury trial.

12.1.2 Notice and Opportunity to Cure. Anything to the contrary notwithstanding, each Bound Party hereby covenants and agrees that no mediation, arbitration or litigation of a Claim may be commenced by a Bound Party against the Declarant or a Declarant Party until the following has been complied with: the Bound Party shall give Declarant written notice which shall include a detailed description of any and all claims of the Bound Party, the date upon which each such claim was first discovered, and dates and times when the Association, Owner, or their agent, as applicable, will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. In its sole discretion, Declarant shall be entitled to inspect the applicable property and cure the circumstances giving rise to such claim(s). Nothing contained in this Section shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase or alter in any way Declarant's legal obligations to the Association or any Owner. Written notice delivered to Declarant shall be a condition precedent to any Bound Party's right to pursue any other remedies available to it at law or otherwise,

including without limitation, mediation, arbitration or litigation of a Claim, until Declarant has had the reasonable opportunity to inspect and cure any claimed defect. During the term of any written warranty provided to the original Owner of the Lot by Declarant, any conflict between the provisions of this Section and the warranty shall be resolved in favor of the warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which the Association or any Owner may suffer as a result of any claimed defect in a Lot or Common Area which reasonably might have been avoided had Association or Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the claimed defect. Nothing contained herein shall establish any contractual duty or obligation on the part of Declarant or Declarant Parties to repair, replace or cure any claimed defect. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns. The Association and all Owners shall accept the Declarant's reasonable measures to cure any claimed defect.

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

12.1.3 Approval of Owners. A copy of the opinion letter described in subsection 12.1.2 above shall be provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action must be approved by Owners (excluding Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

12.1.4 Collection of Funds. The Association must collect funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection 12.1.2 above.

If any claims or actions falling within the scope of this Section 12.1 are filed without satisfying all of the requirements set forth above, such claims or action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section 12.1, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section 12.1 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any type of assessment or other amounts required to be paid by Owners to the Association under this Declaration.

12.1.5 Exempt Claims. The following Claims shall be exempt from the provisions of Section 12.1 above ("Exempt Claims"): (1) Any and all suits by the Association against any Bound Party to obtain a personal judgment for unpaid assessments, fines and related costs or to foreclose a lien securing such obligations. Non-judicial foreclosures shall also be considered Exempt Claims; (2) Any and all suits by the Association to obtain a temporary restraining order,

temporary injunction, permanent injunction or other equivalent equitable relief and such other ancillary relief as the court may deem necessary or appropriate to maintain the status quo at the Property and preserve the Association's ability to enforce the use restrictions and architectural standards; (3) Any and all suits between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the state of Utah in the absence of a claim based on this Declaration, the Bylaws, Articles of Incorporation or Rules, if the amount in controversy exceeds the jurisdictional limit of the small claims courts for the state of Utah; and (4) Any and all suits involving two or more persons where all of the persons are not Bound Parties.

12.2 Priority of Governing Documents. In the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

12.3 Recovery of Costs and Attorney Fees. The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Lot. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

12.4 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

12.5 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

12.6 Lessees and Other Invitees. No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the

Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

12.7 Waiver, Precedent and Estoppel. No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association, the Board of Directors or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant, Association, Board of Directors or Owner as to any similar matter.

12.8 Interpretation. All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. Words and phrases used in the Governing Documents are to be construed according to the context and the ordinary usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined herein, are to be construed according to such peculiar and appropriate meaning or definition. Local zoning or other ordinances or statutes may define certain words or phrases which are used herein and such definitions, unless otherwise required by law, are not authoritative or binding unless the Board specifically determines, as to a particular word or phrase, that such definition applies, and such determination shall be final and conclusive as to all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted. The Board may from time to time issue written policies, procedures and resolutions interpreting and implementing the provisions of this Declaration, including, by way of example and not limitation, policies, procedures and resolutions that interpret or clarify any provision of the Governing Documents deemed vague or ambiguous by the Board.

12.9 Liability; Duties. From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, the Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities, and an Owner shall defend, indemnify and hold harmless the Association against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe

conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril. Nothing contained in this Declaration shall be construed so as to impose any liability upon the Association for personal injuries or property damages to guests, invitees, trespassers, or other third parties arising out of the Association's failure to perform any duty or obligation imposed upon the Association by this Declaration. Nothing contained in this Declaration shall be construed so as to impose any contractual liability upon the Association for failing to take any of the following actions, except to the extent funds shall be available and the action shall be deemed necessary and appropriate by the Association: (a) maintain the Common Areas; or (b) take any corrective or enforcement action, including an action against any Owner for non-compliance with any provision in the Governing Documents or any federal, state or local statute or regulation. Nothing contained in this Declaration shall be construed so as to impose any duty upon the Association to inspect the Common Areas, Limited Common Areas or Lots for dangerous, unsafe or unsanitary conditions or compliance with the Governing Documents or any municipal, county, state or federal law, regulation or order.

12.10 Environmental Issues. Each Owner understands and acknowledges that the buildings, Limited Common Areas and Common Areas have been constructed on natural soil and that Declarant has taken steps to construct the buildings, Limited Common Areas and Common Areas in accordance with engineering requirements based on soil reports provided to Declarant. Each Owner understands and acknowledges that (1) due to the nature of natural soil; movement, shifting, and cracking may occur in sidewalks, driveways, patios, garage floors, foundations, walls, stucco, ceilings, etc., and (2) Declarant shall not be responsible for remedial efforts or costs related thereto necessary to remedy, repair or replace damage caused by the movement, shifting, and cracking in sidewalks, driveways, patios, garage floors, foundations, walls, stucco, ceilings. Each Owner further understands and acknowledges that mold is a type of fungus that occurs naturally in the environment and is spread by means of microscopic spores in the air. Residential home construction is not, and cannot be designed to exclude mold spores from a home or Unit. Mold spores may enter a Unit through open doorways, windows, and air conditioning systems. Spores in the air also attach themselves to people and animals. Although the vast majority of mold spores are not known to cause health problems, some molds have the potential to cause health effects to individuals whose susceptibility is affected by existing sensitivities to allergies, underlying lung disease, and suppressed immune systems. Since mold spores exist everywhere naturally in the environment, mold cannot be prevented or removed entirely. Owners must take positive steps to eliminate excessive moisture in the Unit through: (a) regular vacuuming and cleaning; (b) reducing humidity in the home by adequate venting; (c) promptly repairing water leaks; (d) regularly maintaining the Units; and (e) performing routine visual inspections for mold growth and signs of leaks, moisture or water damage. The Declarant shall not be liable for any actual or special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect the presence and/or existence of molds, mildew and/or microscopic spores at the Project or any Unit. For purposes of this section, the term "Declarant" shall include, but not be limited to Declarant and its owners, managers, members, representatives, agents or employees.


12.11 Changes in Price, Size, Design or View Impairment. Declarant has made no promises, representations or assurances to any Owner regarding the pricing, size, design or configuration of any Unit and each Owner acknowledges that as market conditions or other facts change, such matters may be subject to change, including reduction in prices of Units and changes in size, design or product type. Each Owner further acknowledges that Declarant has made no representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a Unit and that views from a Unit may change or be obstructed by construction, placement of other structures or landscaping. No right shall be conferred upon any Owner by the recording of any plat relating to the development of the Property described herein to require the development of said Property in accordance with such plat. Declarant expressly reserves unto itself the right to make such amendments to any such plat or plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof. For purposes of this section, the term "Declarant" shall include, but not be limited to Declarant and its owners, managers, members, representatives, agents or employees.

12.12 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Project, may be assigned without the consent of any Owner or Owners.

12.13 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

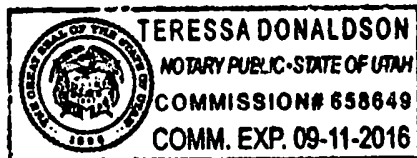
IN WITNESS WHEREOF, Sego Ventures #2, LC, has executed this Declaration this 30th day of August, 2016.

SEGO VENTURES #2, LC


 By: Wayne H. Corbridge
 Its: Managing Member

STATE OF UTAH)
)ss:
 County of UTAH)

The foregoing instrument was acknowledged before me on this 30th day of August, 2016 by Wayne H. Corbridge, of Sego Ventures #2, LC.





 Notary Public for Utah

EXHIBIT A

(LEGAL DESCRIPTION)

Lots 1 - 22 and common area, MILLCREEK TOWNHOMES BY SEGO HOMES, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, Utah.

EXHIBIT B

BYLAWS

OF

MILLCREEK TOWNHOMES BY SEGO HOMES ASSOCIATION

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ARTICLE 1 - DEFINITIONS

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE 2 – NOTICE, AFFAIRS, ELECTRONIC MEANS

2.1 Notices.

2.1.1 Association. All notices to the Association or the Board shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Owners, the Association may provide notice by electronic means, including text

message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section from time to time, including a requirement that Owners furnish the Association with a current email address.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board, or if no address has been designated, then to the Owner's Lot.

(c) If a Lot is jointly owned, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Lot shall be sufficient.

2.2 Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the Owner if the Board does so in good faith and has no reason to believe it is not the act of the Owner. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by an Owner or by the Association.

ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM

3.1 Annual Meetings. The Association shall hold an annual meeting each year on the day and at a time and place within the state of Utah stated in the notice of such meeting.

3.2 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its Members: (1) on call of the President or any two members of the Board, or (2) if the Association receives one or more written demands for the meeting that state the purposes for which the meeting is to be held, and are signed and dated by Owners in Good Standing holding at least 25% of the voting rights of the Association. When a special meeting is requested by the Owners, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the request and if notice of the meeting is not given by the Board within 30 days after the date the written request is delivered to an Association officer, a person signing the request may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

3.3 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person designated by the Board, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Board. Notice shall always

be deemed fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

3.4 Voting. Each Lot shall be allocated the votes as stated in the Declaration.

3.5 Proxies and Absentee Ballots. A vote may be cast in person, by proxy or by absentee ballot. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Lot.

3.6 Quorum of Owners.

3.6.1 "Quorum" means the minimum number of Owners (when duly assembled or represented at a meeting, casting a written ballot in an action by written ballot or consenting to an action without a meeting) necessary to make the proceedings valid.

3.6.2 At an annual meeting of the Association, the Owners that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, Owners holding one-third (1/3) of the voting rights, represented in person, by proxy, or by written ballot or written consent, shall constitute a quorum.

3.6.3 If any meeting of Owners cannot be organized because of a lack of quorum, the Owners who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and Owners holding twenty percent (20%) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting.

3.6.4 When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

3.7 Binding Vote. Action on a matter other than the election of directors is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by law or the Governing Documents.

3.8 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of the preceding meeting; (d) Reports of officers; (e) Reports of

committees, if any; (f) Election of Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

3.9 Meeting Procedure. Rules of order may be adopted by resolution of the Board, otherwise, the President shall conduct meetings according to the procedure he or she deems fit and shall have absolute authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

3.10 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Owners and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.11 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Owners may be taken without a meeting and without prior notice if one or more written consents, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association electronically. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

3.12 Voting by Fiduciaries and Joint Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator,

guardian, or trustee holding the Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners, in the absence of protest by a co-owner prior to the tallying of votes, so long as only one vote for such Lot is cast. In the event of a protest prior to the vote tally, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners prior to the vote tally, or the casting of more than one ballot or vote for the Lot and such ballots or vote conflict, the vote of the Lot shall be disregarded completely with respect to the matter.

ARTICLE 4 – BOARD: SELECTION, ELECTION, TERM OF OFFICE

4.1 Number, Term and Qualifications.

4.1.1 The affairs of the Association shall be governed by a Board of Directors composed of three Board members. Notwithstanding anything else herein, during the Period of Administrative Control, the Declarant shall appoint the members of the Board.

4.1.2 After the Period of Administrative Control, members of the Board shall serve for a term of two (2) years. Elections shall be staggered so all Board members are never elected in the same year.

4.1.3 After the Period of Administrative Control, a Board member must be an Owner or the spouse of an Owner of a Lot, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Lot, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot.

4.2 Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) for positions on the Board be made by petition filed with the secretary of the Association at least thirty days prior to the annual meeting of the Association, which petition shall be signed by the nominee named therein indicating his or her willingness to serve as a member of the Board, if elected. The Board may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Board. The Board or, if established, the nominating committee, shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies. Self-nomination of candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination stated herein or promulgated by the Association at least 30 days before the applicable meeting.

4.3 Election. At the election, the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in an election shall be by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority

of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

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

4.6 Removal of Board members.

4.6.1 Except during the Period of Administrative Control, at any annual or special meeting, any one or more of the Board members may be removed, with or without cause, by a majority of the total voting interests of all Owners of the Association. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Board member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

4.6.2 A Board member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular meetings of the Board, or is absent from more than 25% of the regular Board meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the Board his or her position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS

5.1 Organizational Meeting.

5.1.1 Location, Date and Time. The first meeting of a newly-elected Board shall be at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

5.1.2 Procedure and Business. Until the election of new officers, those existing officers that continue to serve on the Board shall remain in their positions, and the organizational meeting shall be chaired by the president, or in the absence of such person, the vice president, or in the absence of such person, the secretary. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the Board, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

5.3 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three (3) days' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.8 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Formal rules of order shall only apply to any Board or Association meeting inasmuch as one or more such rules of order are adopted by the Board by resolution. Meetings of the Board shall be conducted by the President. In any event, a decision of the Board may not be challenged because appropriate rules of order were not used. A decision of the Board is deemed valid without regard to any procedural errors related to rules of order unless the error appears on the face of a written instrument memorializing the decision.

5.5 Open Meetings; Executive Sessions.

5.5.1 Open Meetings. Except as provided in subsection 5.5.3, all meetings of the Board shall be open to Owners. At each meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting. The Board may adopt policies governing meetings of the Board from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Board shall also supersede these Bylaws to the extent the policy restates then current Utah law. "Meeting" means a gathering of a Board, whether in person or by means of electronic communication in real time under Section 5.6, at which the Board can take binding action.

5.5.2 Notice of Board Meeting. At least 48 hours before a Board meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Board meeting ("Meeting Notice"), unless notice of the meeting is included in a meeting schedule that was previously provided to the Owner, or the meeting is to address an emergency, and each Board member receives notice of the meeting less than 48 hours before the meeting. A Meeting Notice shall: (i) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (ii) state the time and date of the meeting; (iii) state the location of the meeting; and (iv) if a Board member may participate by means of electronic communication under Section 5.6 below, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

5.5.3 Executive Sessions. In the discretion of the Board, the Board may close a Board meeting and adjourn to executive session to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent assessment or fine.

5.5.4 Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.5.5 The provisions of this section 5.5 do not apply during the Period of Administrative

Control.

5.6 Meetings by Electronic Communication in Real Time. In the event of an emergency, or by decision of the Board, and to the fullest extent allowed by law, meetings of the Board may be conducted by means of electronic communication that allows all members of the Board participating to be able to communicate orally in real time.

5.7 Action Taken by Board without a Meeting.

5.7.1 Notice, Response. The Board shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing to each member of the Board and each member of the Board, by the time stated in the notice:

- (a) (1) signs a writing for such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
- (b) fails to demand in writing that action not be taken without a meeting.

5.7.2 Content of Notice. The notice required by Subsection 5.7.1 (the "Notice") shall state: (a) the action to be taken; (b) the time by which a Board member must respond to the Notice; (c) that failure to respond by the time stated in the Notice will have the same effect as abstaining in writing by the time stated in the Notice, and failing to demand in writing by the time stated in the Notice that action not be taken without a meeting; and (d) any other matters the Association determines to include.

5.7.3 Approval of Action/Decision. Action is taken under this Section 5.7 only if, at the end of the time stated in the Notice:

- (a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted; and
- (b) the Association has not received a written demand by a Board member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

5.7.4 Waiver of Meeting. A Board member's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Board member in writing by the time stated in the Notice.

5.7.5 Revocation. A Board member who in writing has voted, abstained, or demanded action not be taken without a meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

5.7.6 Electronic Transmission. A communication under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or

revocation is signed. For purposes of this Section 5.7, communications to the Association are not effective until received.

5.8 Waiver of Notice. Any Board member may, at any time, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by the Board member, except where the Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Board members are present at any meeting of the Board, no notice to Board members shall be required and any business may be transacted at the meeting.

5.9 Quorum and Acts. At all meetings of the Board, a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a meeting and to vote if the Board member has granted a signed written proxy: (i) to another Board member, or other person, who is present at the meeting; and (ii) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or the Governing Documents specifically directed to be exercised and done by, or upon the vote of, the Owners.

6.2 Best Interest of Association and Reliance on Information. A Board member or officer shall discharge the Board member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Board member or officer reasonably believes to be in the best interests of the Association. The Board members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

ARTICLE 7 - OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) **Designation.** The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

(b) **Qualifications.** The principal officers must be Board members (and shall cease to be an officer upon ceasing to be on the Board). Any Board member may be an officer of the Association.

(c) **Multiple Offices.** A person may simultaneously hold more than one office.

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

7.2 Election and Vacancies. The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) **President.** The president shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. He or she shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and

duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

ARTICLE 8 – LIABILITY; INDEMNIFICATION OF OFFICERS AND DIRECTORS

Each officer and Board member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Board member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise. No member of the Board or any committee of the Association, and no officer of the Association shall be personally liable to the Association or its Members or to any Owner for damages for breach of fiduciary duty, mistake of judgment, negligence, tortious acts or other conduct but this Article shall not eliminate or limit the liability of such for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law. No member of the Board or any committee of the Association, and no officer of the Association shall be personal liable in contract under any agreement, instrument or transaction entered into by them on behalf of the Association. Further, no member of the Board or any committee of the Association, and no officer of the Association shall have any personal liability arising out of the use, misuse or condition of the Project or any part thereof that might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as Directors, officers or committee members. When a member of the Board is sued for liability for actions undertaken in his or her role as a member of the Board, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense,

and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

ARTICLE 9 - RECORDS AND AUDITS

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act.

9.1 General Records.

9.1.1 Permanent Records. The Association shall keep (or cause to be kept) as permanent records: (1) The Declaration, Bylaws, Articles of Incorporation, (2) minutes of all meetings of the Association and of the Board; (3) a record of all actions taken by the Association members or the Board without a meeting; (4) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association; and (5) a record of all waivers of notices of meetings of members and of the Board or any committee of the Board.

9.1.2 Resolutions and Rules. The Association shall maintain (1) a book of resolutions containing the rules, regulations, and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, and showing the number of votes each member is entitled to vote.

9.1.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. The account shall designate the Lot number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.1.4 Records at Principal Office. The Association shall keep a copy of each of the following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (a) its articles of incorporation; (b) its bylaws; (c) resolutions adopted by the board relating to the characteristics, qualifications, rights, limitations, and obligations of members; (d) the minutes of all members' meetings for a period of three years; (e) records of all action taken by members without a meeting, for a period of three years; (f) all written communications to members generally as members for a period of three years; (g) a list of the names and business or home addresses of its current directors and officers; (h) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code Section 16-6a-1607; and (i) all financial statements prepared for periods ending during the last three years that show in reasonable detail the assets and liabilities and results of the operations of the Association.

9.1.5 Form of Records. The Association shall maintain its records in written form or in

another form capable of conversion into written form within a reasonable time. "Written form" does not mean paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (i) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and (ii) remains accessible for later reference.

9.2 Financial Reports and Audits. Upon written request by an Owner or mortgagee of a Lot, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person(s) making the request within ninety (90) days after the end of each fiscal year. From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and mortgagees of Lots.

9.3 Inspection of Records by Owners.

9.3.1 Inspection of Records Kept at Principal Office. If an Owner gives the Association written request at least five business days before the date on which the Owner wishes to inspect and copy, or electronically receive, the records, an Owner is entitled to either (1) inspect and copy during regular business hours at the Association's principal office, or (2) receive electronically any of the records in Section 9.1.4 above.

9.3.2 Inspection of Other Records - Proper Purpose Required. An Owner may inspect and copy any of the other records of the Association during regular business hours at a reasonable location specified by the Association only if a written request is made 5 days before the date of inspection and: (a) the request is made in good faith and for a proper purpose; (b) the Owner describes with reasonable particularity the purpose and the records the Owner desires to inspect; and (c) the records are directly connected with the described purpose.

9.3.3 The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Article, consistent with the Act. The fee may include reasonable personnel costs incurred to furnish the information, consistent with the Act, except the Association may not require an Owner to pay a fee for production of the records in Section 9.1.4, except for copying costs.

9.4 Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client privilege from any document the Association produces for inspection or copying. The Board may withhold from inspection or copying any records: (i) considered by the Board in executive session and the minutes of any executive session, or (ii) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the Board, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

ARTICLE 10 - AMENDMENTS

Approval of a majority of the total voting rights of the Association is required for approval of any amendment to these Bylaws. An amendment shall not be effective until certified by the president of

the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office.

ARTICLE 11 - MISCELLANEOUS

11.1 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

11.2 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

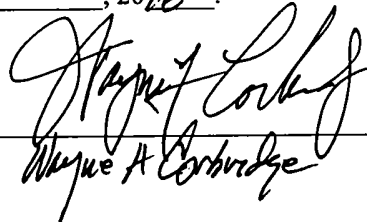
11.3 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

11.4 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 32nd day of August, 2016.

(Sign):

(Print Name):



, President