

AFTER RECORDING PLEASE RETURN TO:

Whisper Rock, L.L.C.  
1013 South Orem Blvd.  
Orem, Utah 84058

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

**(Including Owner Association Bylaws)**

**Whisper Rock Planned Residential Development  
an Expandable PRD Project  
Mapleton City, Utah County, Utah**

**THIS DECLARATION OF DECLARANT** is made this \_\_\_\_\_ day of May, 2009, by  
Whisper Rock, L.L.C. ("Declarant")

**RECITALS:**

- A. Declarant is the record owner of that certain Property, more particularly described in **Exhibit A**, attached hereto and by this reference made a part hereof.
- B. Declarant has constructed, or is in the process of constructing, the Project upon the Property, including Units and other improvements, in accordance with the plans and drawings reflected on the Plat.
- C. Declarant desires, by concurrently recording this Declaration and the Plat in the Public Records, to submit the Property and all improvements to be constructed as a project known as "**Whisper Rock PRD**" and to establish for its own benefit and for the mutual benefit of all future Owners, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon the Property.
- D. Declarant intends to sell to various purchasers' fee title to the individual Units contained in the Project, together with an undivided percentage interest in and to the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, reservations, and easements herein set forth.
- E. Declarant intends that the Owners, occupants, lenders and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in the furtherance of establishing a general plan of ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and the quality of life therein.

NOW, THEREFORE, pursuant to the foregoing, Declarant hereby sets forth the following Declaration of the Project:

## ARTICLE I DEFINITIONS

When used in this Declaration (including that portion above captioned "**RECITALS**") each of the following terms used shall have the meaning indicated. **Additional Land** shall mean and refer collectively to those parcels of real property in Mapleton City, Utah County set forth and described in **Exhibit B**, attached hereto and by this reference made a part hereof.

**Articles** shall mean and refer to the Articles of Incorporation of the Association filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as said Articles may be amended from time to time.

**Assessment** shall mean the amount levied and assessed against an Owner and the Owner's Unit (whether an Annual, Special or Specific Assessment, as described in the Bylaws in ARTICLE XII of the Declaration) and paid to the Association for common or other expenses.

**Association of Unit Owners** or **Association** shall mean and refer to Whisper Rock Home Owners Association, a Utah nonprofit corporation, its successors and assigns.

**Board of Directors** or **Board** shall mean the Board of Directors of the Association, charged with the responsibility and authority to administer the Project on behalf of the Association and to make and enforce reasonable Rules and Regulations covering the operation and maintenance thereof.

**Building** or **Buildings** shall mean and refer to a structure or structures containing Units and comprising part of the Project.

**Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES X, XI and XII.

**Common Areas** or **Common Areas and Facilities** shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the project, including the Property and any landscaping, open areas, drains, retention basins, recreation amenities/parks, retaining walls, sidewalks, trails, walkways, stairs and landings, fencing, parking areas, private drives or roadways, and exterior Building surfaces, including roofs, but excluding all Units, as herein defined;

(b) Those Common Areas and Facilities and Limited Common Areas and Facilities specifically set forth and designated as such on the Plat;

(c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as power, water, gas and light; and

(d) All Common Areas and Facilities, and all Limited Common Areas and Facilities, as defined in the project, whether or not expressly listed herein or on the Plat.

**Common Expenses** shall mean and refer to all items and sums described in the project which are lawfully assessed against the Unit Owners for payment of Association expenses in accordance with the provisions of the project, this Declaration, and such Rules and Regulations and other determinations and agreements pertaining to the Project as the Board, or the Association, may from time to time adopt.

**Declarant** shall mean Whisper Rock, L.L.C., its successors and assigns, if any, as owner and developer of the Project.

**Declaration** shall mean and refer to this Declaration of development pertaining to the Project, as such Declaration may hereafter be supplemented or amended in accordance with the project and the provisions hereof. Any ambiguities, omissions, or conflicts herein shall be construed to comply with the provisions of the project. **Supplemental Declaration** shall mean and refer to an instrument which supplements and amends the Declaration and which is to be recorded in the Public Records concurrently with a Plat for a subsequent expansion phase of the Project pursuant to the provisions of ARTICLE II of the Declaration.

**Limited Common Areas and Facilities** or **Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration, or the project, or shown on the Plat as reserved for the exclusive use of a certain Unit or Units, to the exclusion of other Units.

**Manager** shall mean any person or entity appointed or employed by the Board as a Manager of the Project.

**Mortgage** shall mean any recorded first mortgage or first deed of trust encumbering a Unit which has priority over all other mortgages and deeds of trust encumbering the same Unit; and **Mortgagee** shall mean the mortgagee or beneficiary named in a Mortgage.

**Owner** or **Unit Owner** shall mean and refer to the person, persons or entity owning record title as reflected in the Public Records to a Project Unit. The Declarant shall be deemed to be the Owner of all mapped but unsold Units. In the event a Unit is the subject of an executed contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Board in writing of such agreement, also be considered the Unit Owner for all purposes.

**Property** shall mean and refer to the real property described in **Exhibit A**, which ARTICLE II of the Declaration submits to the provisions of the project.

**Public Records** shall mean and refer to the Office of the Utah County Recorder, Provo, Utah.

**Rules and Regulations** shall mean and refer to those Rules and Regulations authorized, adopted, and promulgated to Unit Owners from time to time by the Board pursuant to Section 10.10 of the Declaration.

**Unit** shall mean and refer to any one of the separately numbered and individually described residential living units in the Project, as designated and described on the Plat, intended for independent use as defined in the project, together with the undivided interest in and to the

Common Areas and Facilities appertaining to that Unit, and shall include anything located within or without said Unit, but designated and designed to serve only that Unit, such as a designated garage, built-ins, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding the exterior walls and surfaces of Buildings and Units, interior common or party walls, floor joists, foundations and roofs. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated, shall be considered part of the Unit.

**Unit Number** shall mean and refer to the number, letter or combination thereof which designates a Unit on the Plat.

## ARTICLE II

### SUBMISSION OF THE PROJECT AND EXPANSION

**2.01 Submission, Description, and Reservations.** Declarant hereby submits to the provisions of the Protective Easements, Covenants, Conditions and Restrictions, that certain real property situated in Mapleton City, Utah County, Utah, described in **Exhibit A** hereto:

**TOGETHER WITH** all easements, rights-of-way, and other appurtenances and rights or obligations incident to, appurtenant to, or accompanying the said real property, whether or not the same are reflected on the Plat.

**RESERVING UNTO DECLARANT**, however, such easements and rights of ingress and egress over, across, through, and under said real property, and any improvements (excluding Buildings) now or hereafter constructed thereon, as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete the Building and Units and all of the other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land, or any portion thereof, such improvements as Declarant in its sole discretion shall determine to build; and (iii) to improve portions of such property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners, as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, such real property, or any improvement thereon, is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire 10 years after the date on which this Declaration is recorded in the Public Records.

**ALL OF THE FOREGOING IS SUBJECT TO** all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property, or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; **AND TO EACH OF THE PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

**2.02 Division into Units, Minimum and Maximum Ownership Interests.** The Project is hereby divided into 5 Units as set forth on the Plat, each such Unit consisting of a Unit and an appurtenant undivided, but equal, interest in and to the Common Areas and Facilities. Such Units comprise the minimum number of Units in the Project and give each Owner a maximum 1/5th (or approximately 20.%) undivided interest in the Common Areas and Facilities. If all of the Additional Land is added into the Project pursuant Sections 2.03 and 2.04, the maximum number of Units in the Project will be 58 and each Unit Owner will have a 1/58th (or approximately 0.01724%) undivided interest in the Common Areas and Facilities.

**2.03 Expansion of Project.** Declarant reserves the right at Declarant's option, exercisable without the consent of any Unit Owner, to expand the Project by adding to it, without limitation, all or any portion of the Additional Land, from time to time at Declarant's choosing, but within the seven year period of limitation referred to in Section 2.04 (f), and without regard to any order of addition of such Additional Land, or of any Buildings or Units to be constructed thereon. Declarant knows of no circumstance which will terminate Declarant's option to expand the Project prior to the expiration of such seven year time limit. No assurances are made as to the location of any improvements to be constructed upon the Additional Land.

**2.04 Limitation on Expansion.** Declarant's right to annex the Additional Land into the Project shall be subject to the following limitations:

- (a) Any land added to the Project must be part or all of the Additional Land set forth and described in **Exhibit B** hereto;
- (b) The maximum number of Units that may be created on the Additional Land is 53 Units.
- (c) No expansion of the Project shall cause the total aggregate number of Units existing in the Project to exceed 58;

(d) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Project shall, through appropriate instruments recorded in the Public Records, consent to the recordation of (or subordinate the encumbrance held by such holder to) the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(e) The Additional Land added to the Project shall be subdivided into Units, Common Areas and Limited Common Areas designed to be used for purposes similar to those contemplated by this Declaration; provided, however, that in each succeeding phase of the Project, Buildings and Units shall be substantially identical to, and the architectural style, quality of construction and principal materials used within such phase shall be compatible and in harmony with, that of prior phases; and

(f) The right to expand the Project shall expire seven years after this Declaration is filed for record in the Public Records.

**2.05 Expansion Procedure.** Subject to compliance with the provisions of Section 2.04, the addition of any such land shall become effective upon the concurrent recordation in the Public Records of a Plat of such Additional Land, or portion thereof, signed by the owner thereof, and of a Supplemental Declaration which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be added; (c) declares that the added land is to be held, transferred, sold, conveyed, and occupied subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the added land, including any adjustments in the appurtenant undivided interests pertaining to new Units resulting from the addition of such Additional Land into the Project. When any such expansion becomes effective, the added land shall become part of the Property and the Project and subject to the provisions of this Declaration and any amendment or supplement thereto.

**2.06 No Obligation to Expand or Develop.** Declarant has no obligation hereunder to add any Additional Land to the Project or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land added thereto in accordance with the terms of this Declaration, shall be deemed to be subject to this Declaration, whether or not shown on any Plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant, including **Exhibit B** to this Declaration.

### ARTICLE III IMPROVEMENTS

**3.01 Improvements.** The improvements included in the Project are now or will be located on the Property and all of such improvements are described on the Plat, including the number of Units which are to be contained in the Buildings which comprise a part of such improvements, the dimensions of the Units, and other significant facts relating to such Buildings, Units and Common Areas and Facilities.

**3.02 Description of Buildings, Parking and Units.** There will initially be 5 Buildings containing 5 Units each. Each Unit has access to its designated ground level garage (either two or three car capacity, depending on the Building style and Unit model). All Units have one

bedrooms and two baths and unfinished basements. Each Unit has a Limited Common Area patio or balcony, depending upon its location in the project. The construction is stucco and artificial stone over wood frame with concrete tile roof. Unit sizes and configuration vary slightly depending upon its location within the Building.

**3.03 Description and Legal Status of Units.** The Plat shows the Unit Number of each Unit, its location and dimensions from which its areas may be determined, the Limited Common Areas, if any, which are reserved for its use, and the Common Areas of the Project. Each Unit shall be legally designated and described by a Unit Number.

**3.04 Common and Limited Common Areas.** The Common and Limited Common Areas contained in the Project are defined in Article I hereof and described and identified on the Plat. The Common Areas will consist of, but not be limited to, a clubhouse and swimming pool, any private streets or driveways, parking areas, any sidewalks, fencing, or trails, and landscaped areas throughout the Project. Neither the ownership of undivided interests in and to the Common Areas nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which they appertain, and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate at the time of such conveyance.

**3.05 Conveyance Description of a Unit.** Each conveyance or contract for the sale of a Unit, and every other instrument affecting title to a Unit, may describe that Unit by the Unit Number shown on the Plat, with the appropriate reference to the Plat and to this Declaration, as each shall appear in the Public Records in substantially the following form:

Unit \_\_\_\_\_ contained within **Phase** \_\_\_\_\_, Whisper Rock, as the same is identified on the Plat therefore recorded in Utah County, Utah as Entry No. \_\_\_\_\_ (as said Plat may have heretofore been amended) and in the **Declaration of Protective Easements, Covenants, Conditions and Restrictions (Including Owner Association Bylaws), Whisper Rock** recorded in Utah County, Utah as Entry \_\_\_\_\_ (as said Declaration may have heretofore been amended), **TOGETHER WITH** the undivided ownership interest in and to the Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Such description will be construed to describe the Unit, together with an equal undivided ownership interest in and to the Common Areas and Facilities, as the same are established and identified in the Declaration and on the Plat, and to incorporate all the rights and all the limitations incident to ownership of such Unit as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this Declaration.

## ARTICLE IV

### NATURE AND INCIDENTS OF OWNERSHIP

**4.01 Holding Title.** Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

An Owner's right to sell or otherwise convey title to such Owner's Unit shall not be subject to any right of first refusal or similar restrictions in favor of Declarant or the Association.

**4.02 No Separation.** No part of a Unit, nor any part of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy the Limited Common Areas appurtenant to each Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together, and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

**4.03 Membership in Association.** Each Unit Owner shall be a member of the Association of Unit Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it appertains.

**4.04 Undivided Interest in Common Areas.** Each Unit Owner shall have, for each Unit owned, an equal, undivided ownership interest in and to the Common Areas and Facilities as set forth in Section 2.02.

**4.05 No Partition.** The Common Areas and Facilities shall be owned in common by all the Owners of Units and no Unit Owner may bring action for partition thereof.

**4.06 Use of Common Areas, Limited Common Areas; and Designation of Appurtenancy.** Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas, and shall have the exclusive right to use and enjoy the Limited Common Areas which appertain to his Unit, as designated herein, or on the Plat.

**4.07 Duty of Owner to Pay Taxes on Unit Owned.** Pursuant to the provisions of the Project, each Unit (and its percentage of undivided interest in and to the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority or special district which has jurisdiction over the Project for all types of taxes and assessments authorized by law. As a result, no taxes will be assessed or levied against the Project as such. Accordingly, each Unit Owner agrees to pay and discharge any and all property taxes and assessments which may be assessed against such Owner.

**4.08 Assessments and Rules Observance.** Each Unit Owner is responsible for the prompt payment of any Assessments and charges levied by the Association as set forth in this Declaration, and for the observance of the Rules and Regulations promulgated by the Board. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all interest in his Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

**4.09 Unit Maintenance.** Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit, and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary



condition, he shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit.

**4.10 Maintenance of Limited Common Areas.** Each Owner shall keep the Limited Common Areas designated as being appurtenant to, and for use in connection with, his Unit in a clean, sanitary and attractive condition at all times, notwithstanding any duty or obligation of the Board, acting for the Association, to maintain and repair Common and Limited Common Areas pursuant to the provisions of ARTICLE X of the Declaration.

## ARTICLE V

### EASEMENTS

**5.01 Encroachment.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same, shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for its maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are limited to, encroachments caused by error in the original construction of the Buildings on the Property, by error in the Plat, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**5.02 Repair of Common Areas.** If any of the Common Areas are or may be located within any of the Units or may be conveniently accessible only through the Units, the Owners of the other Units shall have the irrevocable right, to be exercised by the Board as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible there from or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Board shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas, or as a result of emergency repairs within another Unit at the insistence of the Board or of Unit Owners, shall be an expense of all the Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, members of his family, his or their guests or invitees, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Board by Specific Assessment pursuant to the provisions of this Declaration.

**5.03 Board of Directors.** The Board shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to the provisions of this Declaration.

**5.04 Municipal/Governmental Services.** Mapleton City and any other government or quasi-governmental body having jurisdiction over the Property and Project shall enjoy access

and rights of ingress and egress over and across any Common Areas for the purpose of providing police and fire protection or any other governmental or municipal services.

**5.05 Utility Services.** There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all public utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

**5.06 Right of Ingress, Egress, and Support.** Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to any Limited Common Area designated for use in connection with his Unit, and each Owner shall have the right to the horizontal, vertical and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

## ARTICLE VI RESTRICTIONS

**6.01 Restrictions Concerning Common Areas.** There shall be no obstructions of Common Areas by the Owners, their tenants, guests or invitees. The Board may, by its Rules and Regulations, prohibit or limit the use of Common Areas and Facilities as may be reasonably necessary to protect the interests of all the Owners, the Units, or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as may be specifically provided herein. There shall be no alteration or construction upon any Common Area as contemplated on the Plat, except as authorized by Mapleton City and the Board. **The provisions of this Section 6.01 are non-amendable.**

**6.02 Residential Use.** The Property is zoned residential and is restricted to single family residential use pursuant to applicable provisions of Mapleton City's zoning ordinances. Each Unit and each Owner is subject to the uses and restrictions imposed by such zoning, including any parking restrictions. The term "residential" as used herein shall be held and construed to exclude individual room letting or boarding, and any commercial and professional uses which are not the subject of a permit granted by Mapleton City pursuant to its then current home occupation ordinance.

**6.03 Leasing Restrictions.** No lease of any Unit shall be for less than the whole thereof. No lease signage of any nature, including, but not limited to "For Rent" signs or any other lease solicitation notice or advertisement shall be permitted to be displayed. **All leases shall be subject to the provisions of this Declaration whether or not stated therein.**

**6.04 Prohibited Uses, Nuisances and General Restrictions.** The following uses and practices are specifically prohibited, in addition to any additional restrictions which may, from time to time, be adopted by the Board of Directors pursuant to Section 10.10 of this Declaration:

- (a) No animals, livestock, or poultry of any kind shall be permitted on Common Areas or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash laws, adopted by the Board of Directors pursuant to Section 10.10 of this Declaration.

(b) No parking of vehicles of any kind, including recreational vehicles and boats, shall be permitted on the streets within the Project. Parking in designated guest parking within the Project shall be subject to the Rules and Regulations adopted by the Board of Directors pursuant to Section 10.10 of this Declaration. **The provisions of this Section 6.04(b) shall be non-amendable.**

(c) No outside television or radio aerial or antenna, or other similar device for reception or transmission, shall be permitted on any Common Area or the exterior of any Unit except pursuant to written approval of the Board of Directors which approval shall be site specific and non-precedent setting.

(d) No Unit within the Project shall contain any fireplace or any window-mount evaporative coolers or air conditioners.

(e) Residents' business vehicles in excess of 3/4 ton trucks shall not be parked in front of Units overnight, nor shall any vehicle be repaired, disassembled, or reassembled on any Common Area, garage apron, public street, or designated guest parking in the Project.

(f) Unit garages are to be used for the parking of automobiles and not for general storage of miscellaneous items.

(g) Except for trash collection days, trash receptacles are not to be left outside within view of the public streets. Empty trash receptacles should be returned to an inside or screened area as soon as possible.

(h) Unit interior windows shall be covered within 30 days of occupancy with permanent window coverings, white or off white in color (as seen from the exterior).

(i) Unit patios and balconies shall not be used as general storage areas, for the hanging and drying of laundry, nor for decorative items visible from adjoining Units or public streets.

**6.05 Declarant's Right to Sell Units.** Until Declarant has completed and sold all of the Units within the Project, the Unit Owners who have purchased Units from Declarant shall not interfere with the completion of the contemplated improvements and the sale of all remaining Units. Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office and models, the showing of the Units, and the display of signs.

**6.06 Signs.** No signs or other advertising shall be displayed which are visible from the exterior of any Unit, or on the Common Areas, including "For Sale" signs, except in conformity with the Rules and Regulations promulgated by the Board of Directors.

## ARTICLE VII

### INSURANCE

**7.01 Insurance and Bonds.** The Board of Directors shall secure or cause to be secured and maintained at all times the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement for the full insurable replacement value of the entire Project, **including Units but not the contents thereof.** Such policy or policies shall be made payable to the Association and all persons holding an interest in the Project or any of the Units, as their interests may appear.

(b) An appropriate fidelity bond coverage for any person or entity handling funds of the Board of Directors, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Board of Directors, but in no event less than a sum equal to three months' aggregate Annual Assessments on all Units, plus any reserve funds.

(c) A policy or policies insuring the Association, the Manager, and the Unit Owners against any liability incident to the ownership, use or operation of the Project, or of any Unit, which may arise among themselves, to the public, and to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall not be less than \$300,000 for any person injured, \$1,000,000 for all persons injured in any one accident, and \$1,000,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insured, as between themselves, are not prejudiced.

**7.02 Additional Insurance Provisions.** The following additional provisions shall apply with respect to such insurance:

(a) In addition to the insurance described above in Section 7.01, the Association shall secure and at all times maintain insurance against such risks as are, or hereafter may be, customarily insured against in connection with the projects similar to the Project in construction, nature and use.

(b) The Board shall have the authority to adjust losses.

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

(d) Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Board, the Manager, the Unit Owners, and their respective employees, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or

employee of the Association or of the Manager without prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(e) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Unit Owner who individually obtains insurance covering any portion of the Project (other than for Unit contents) shall supply the Association with a copy of his policy within 30 days after he acquires such insurance.

(f) All insurance required to be maintained hereunder by the Association shall be procured from a company or companies authorized to do business in the State of Utah and which hold a financial rating of Class A or better from Best's Key Rating Guide.

(g) Notwithstanding anything herein contained to the contrary, insurance coverages must be in such amounts and meet other requirements of the Federal National Mortgage Association and the Department of Veterans Affairs if Units in the Project are sold and qualified through FHA or VA mortgage loan guaranties.

**7.03 Unit Owners Contents Policies.** Each Unit Owner shall be responsible to purchase and maintain in force a owners content policy (State Farm H06 or equivalent) (the "contents policy"). All claims for damage to a Unit must first be submitted by the Owner to his insurer under his contents policy. The Association will not be required to file claims under its Project policies for any damage that either should or would have been covered under an Owner's contents policy.

## ARTICLE VIII

### DAMAGE, DESTRUCTION AND RESTORATION

In the event of damage to or destruction of part or all of the improvements in the Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as quickly as possible.

(b) If less than seventy-five percent (75 %) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out, and, upon approval of at least 50 percent of the affected Unit Owners, all affected Owners shall be assessed equally for any deficiency through Special Assessments.

(c) If seventy-five percent (75 %) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Unit Owners within one hundred (100) days after the destruction or damage, by a vote of at least seventy-five

percent (75 %), elect to repair or reconstruct the affected improvements, restoration and assessment therefore shall be accomplished in the manner directed under subsection (b), above.

(d) If seventy-five percent (75 %) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage, and by a vote of at least seventy-five percent (75%), elect to repair or reconstruct the affected improvements, the Association shall promptly record in the Public Records a notice setting forth such facts. Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Association. Any determination which is required to be made by this ARTICLE VIII regarding the extent of the damage to or destruction of Project improvements shall be made by three qualified appraisers selected by the Association. The decision of any two such appraisers shall be conclusive.

## ARTICLE IX

### MORTGAGES AND MORTGAGEE PROTECTION

**9.01 Notice of Mortgage.** Any Owner who mortgages his Unit shall furnish the Association the name and address for such Mortgagee, and the Association shall maintain such information in a book entitled "Mortgages of Units." The Association shall report to such Mortgagee any unpaid Assessments due from the Owner of such Unit at the same time as the Association makes demand on the Owner thereof for payment of such unpaid Assessments. Each Mortgagee shall also be entitled to written notification from the Association of any other default by its Owner-Mortgagor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within 30 days after written notice to such Owner-Mortgagor by the Association specifying such default.

**9.02 Right to Examine.** A Mortgagee shall have the right to examine the books and records of the Association upon request and to require annual reports of the financial status of the Association.

**9.03 Notice of Damage.** In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the Mortgagee of any Unit shall be entitled to timely written notice of any such damage or destruction. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

**9.04 Notice of Owner Default.** Any Mortgagee is entitled to written notification from the Association of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within 30 days.

**9.05 Effect of Foreclosure on Liens.** Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of the Mortgage thereon, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or Assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit.

**9.06 General Mortgagee Protection.** Unless at least seventy-five percent (75%) of the Mortgagees (based on one vote for each Mortgage owned) of Units have given their prior written approval, neither the Board nor the Association shall:

(a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by the Project in the case of substantial destruction by fire or other casualty as set forth in ARTICLE VIII, or in the case of a taking by condemnation or eminent domain;

(b) Except as required upon expansion of the Project pursuant to ARTICLE II, change the pro-rata interests or obligations of any Unit for purposes of (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds, or condemnation awards; or (ii) determining the pro-rata share of ownership of each Unit in the Common Areas;

(c) Except as required upon expansion of the Project pursuant to ARTICLE II, make any material amendment to the Declaration or to the Bylaws of the Association including, but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Areas;

(d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this sub-Section; or

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by the project in cases of substantial loss to the Units and/or the Common Areas of the Project.

## ASSOCIATION BYLAWS

### ARTICLE X

#### BYLAWS - THE BOARD OF DIRECTORS

**10.01 Status and General Authority.** Except as otherwise herein provided, the Project shall be managed, operated, and maintained by the Board on behalf of the Association. The Board shall, in connection with its exercise of any of the powers hereinafter provided, constitute an entity capable of dealing in the Association's name, and shall have, and is hereby granted, the following authority and powers:

(a) Without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;

- (b) To execute and record, on behalf of the Association, any amendments to the Declaration or the Plat which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments, as set forth in Section 14.04 of the Declaration;
- (c) To sue and be sued;
- (d) To enter into contracts pertaining to the Association's duties and obligations to maintain and repair the Common Areas, or pertaining to other matters over which it has jurisdiction; provided that any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;
- (e) To convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage;
- (f) To purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances;
- (g) To promulgate such reasonable Rules and Regulations pursuant to Section 10.10, as may be necessary or desirable, to aid the Board in carrying out its functions, or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners;
- (h) To engage the services of a Manager pursuant to Section 10.07; and
- (i) To perform any other acts and to enter into any other transactions, subject to the rights of the Board, which may be reasonably necessary to perform its functions as agent for the Association. Any instrument executed by the Board relating to the Common Areas of the Project that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith, and for value, relies upon such instrument.

**10.02 Indemnification of Board of Directors.** Each member of the Board of Directors shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Board.

**10.03 Declarant Control Period.** Until the happening of the first of the following two events, the Declarant may appoint and remove some or all of the members of the Board (who need not be Owners) or some or all of the officers of the Association, or may exercise the powers and responsibilities otherwise assigned by the Declaration and the project to the Association, its officers, or Board of Directors:

- (a) the expiration of six years after conveyance of title to the first Unit purchaser; or



(b) the expiration of 90 days following (i) the conveyance of Units to which at least seventy-five percent (75%) of the undivided ownership interest in the Common Areas and Facilities appertain, or (ii) after all Additional Land has been added to the Project, whichever of (i) or (ii) last occurs.

Provided, however, that Declarant may waive such rights, in whole or in part at any time prior to the occurrence of either or both of the aforesaid events by (i) giving notice to Unit Owners of such waiver in written recordable form and (ii) recording said written notice of waiver in the Public Records, whereupon Unit Owners shall promptly hold a meeting to elect a new Board of Directors pursuant to Section 10.04, it being established hereby that the control of the Association by the Unit Owners shall automatically vest 30 days following the date such waiver is recorded.

**10.04 Board of Directors: Owner Control, Composition, Election, Vacancies.**

Subject to the provisions of Section 10.03, the Board shall be composed of five members, two to be elected to a three-year term, two to a two-year term and one to a one-year term. As members' terms expire, new members shall be elected for three-year terms. Members shall serve on the Board until their successors are elected. Board members must be Owners or officers, directors, agents or employees of non-individual Owners. Vacancies in the Board membership may be filled by appointment by the remaining members or member of the Board and said appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the member they were appointed to replace. The Association, upon approval by the Owners, may increase the number of members on the Board to seven.

**10.05 Rights and Duties.** On behalf of the Association, the Board of Directors, subject to the rights and duties of the Unit Owners, the provisions of the Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project, including the obligation to maintain all Common Areas (including any recreation amenities/parks containing non-hydraulic features). Members of the Board shall serve without remuneration unless agreed to by Owners holding at least sixty percent (60%) of the outstanding voting power of the Owners.

**10.06 Interior and Exterior Maintenance.** In connection with its duty to maintain Common Areas, the Board will provide maintenance upon the interior and exterior of Buildings, clubhouse and recreational amenities as follows: Paint, repair, replace, or otherwise care for, as needed, roofs, gutters, downspouts, exterior surfaces, trees, shrubs, grass, walks, driveways, parking areas, and other exterior improvements, except glass surfaces, unless such surfaces are part of Common Areas. Costs of such maintenance items shall be Common Expenses.

**10.07 Right of Delegation to Manager.** The Board of Directors may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the Manager's agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself.

**10.08 Third Party Services.** The Board may obtain and pay for the services of such professional or nonprofessional personnel as it shall determine to be necessary or desirable for the proper operation and function of the Project, including the enforcement of this Declaration,

and persons to furnish snow removal, ground maintenance and other common services to the Project.

**10.09 Personal Property Ownership and Use.** The Board may acquire and hold for the use and the benefit of all of the Unit Owners tangible or intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in undivided interests in the same proportion as their respective interests in and to the Common Areas, and shall be transferable only with the transfer of a Unit.

**10.10 Rules and Regulations.** The Board of Directors may make reasonable Rules and Regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. The Board may suspend any Owner's voting rights at any meeting of Unit Owners or for periods during which such Owner fails to comply with such Rules and Regulations, or with any other obligations under this Declaration, including failure to pay Assessments. The Board may assess fines against Unit Owners. The Board may also take judicial action against any Owner to enforce compliance with such Rules and Regulations, or other obligations, or to obtain damages for noncompliance, all to the extent permitted by law.

**10.11 Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements upon Buildings or the Common Areas by the Board without the prior approval of the Unit Owners holding at least sixty percent (60% of the total votes of the Association.)

**10.12 Extended Rights.** The Board of Directors may exercise any other right or privilege given to it expressly by this Declaration, or by the Project, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein, or reasonably necessary to effectuate any such right or privilege.

**10.13 Architectural or Design Control.** Except for original construction, the Board shall act in all matters pertaining to architectural or design review, and shall establish rules and procedures for submitting plans for approval of any proposed construction, alteration, remodeling, etc., involving the exterior of any Unit. The Board may establish a committee of Owners to act pursuant to the provisions of this Section 10.13.

**10.14 Board Meetings, Quorum, Consent.** The Board shall establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum and the action of a majority of those attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent shall require the unanimous consent of all current Board members.

## ARTICLE XI

### BYLAWS - ASSOCIATION VOTING, MEETINGS AND OFFICERS

**11.01 Voting.** There shall one vote for each Unit as reflected on the recorded Map (initially 44 in number). Upon the annexation of Additional Land into the Project for

development of additional Units, the total of Association votes shall increase to provide one vote for each additional Unit, up to an aggregate maximum of 58, including any Units owned by Declarant.

**11.02 Multiple Ownership.** If a Unit has more than one Owner, the vote relating to such Unit shall be exercised as such Owners may determine among themselves, but in no event shall more than the total vote attributable to such Unit be cast with respect to any issue. A vote cast at any Association meeting, or by written consent, by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Unit unless an objection is made at the meeting or in writing by another co-owner of the same unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

**11.03 Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Board in its notice therefore.

**11.04 Annual Meetings.** Annual meetings of the Members of the Association shall be held each year beginning in the year 2009, on such month, day and time as is set forth in the notice therefore; provided, that after the first such annual meeting, a month other than the month of the initial meeting may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected members of the Board of Directors, as and if needed, pursuant to the provisions of Section 10.04 of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before such meeting.

**11.05 Special Meetings.** The President shall call a special meeting of the Association as directed by a resolution of the Board of Directors, or upon the request of Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Board. No business shall be transacted at a special meeting except as stated in the notice therefore unless consented to by a majority of Unit Owners present, either in person or by proxy.

**11.06 Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

**11.07 Quorum.** Except as required by Section 12.10, Owners present, in person or by proxy, at any meeting of Members duly called pursuant to notice, shall constitute a quorum at all meetings, both annual and special; provided, however, that such Members collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

**11.08 Adjourned Meetings.** If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 45 days from the time the original, or previously adjourned, meeting was called, at which time the requirements for a quorum shall be one-half (1/2) that required for the previously called, or adjourned, meeting.

**11.09 Officers.** The Association shall have a President, a Vice President and a Secretary/Treasurer, all of whom shall be elected by and from the Board of Directors. The

Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers, subject to the powers of Declarant as set forth in Section 10.03, shall be elected by the Board of Directors in an organizational meeting of the Board as soon as possible following each annual meeting of Members at which the new Board of Directors, or any of its members, has been elected.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association. The Secretary shall have charge of such books and records as the Board of Directors may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all money and any 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 of Directors.

## ARTICLE XII

### BYLAWS - ASSESSMENTS

**12.01 Agreement to Pay Assessments.** Each Unit Owner, by the acceptance of a deed to his Unit, or execution of a contract therefore, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with the Association, all other Unit Owners, and with the Board of Directors, to pay to the Association the Annual Assessments and any Special Assessments and Specific Assessments described in this ARTICLE XII, together with late payment fees, interest, and costs of collection if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the Assessment falls due. No Unit Owner may exempt himself or his Unit from liability for payment of Assessments by waiver of his rights in the Common Areas, or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall

be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

**12.02 Purpose of Assessments.** Assessments levied by the Board of Directors for the Association shall be used exclusively for the purpose of promoting the Project, the collective interests of the Owners therein, paying Common Expenses properly incurred by the Association or Board of Directors in the maintenance, operation, and carrying of the Common Areas. The use made of funds obtained from Assessments may include, but shall not be limited to, payment of the costs of: insurance premiums on policies required of the Association hereunder; maintenance, repair, and improvement of the Common Areas; taxes or special assessments, if any, levied by governmental authorities; payment of any basic coverage cable TV, or internet, providing coverage availability to each Unit in the Project; establishment and funding of a reserve to cover major repair or replacement of improvements within, or deemed to be, Common Areas; and any expense necessary or desirable to enable the Board of Directors to perform or fulfill its obligations, functions or purposes pursuant to this Declaration, the Project, the Bylaws, or the Rules and Regulations.

**12.03 Annual Assessments.** Annual Assessments shall be computed and assessed against all Units in the Project, based upon advance estimates of the Board's cash requirements, to provide for payment of Common Expenses as set forth in Section 12.02, which costs shall be apportioned among the Units in proportion to their respective undivided interests in and to the Common Areas. However, for purposes of such apportionment, Declarant shall be deemed to own the undivided interest in the Common Areas based only upon Units which have been completed and used by Declarant for residential purposes or as models for marketing purposes, or fully completed (carpeted and painted) but not yet conveyed by Declarant to third party grantees. During the Declarant Control Period, if Annual Assessments fail to adequately meet the Common Expenses, Declarant shall pay any shortfall.

**12.04 Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided, however that the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year in which there are Owners other than Declarant, the Board shall prepare and furnish to each Owner, if any, an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. Each budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, any reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

**12.05 Notice and Payment of Annual Assessments.** Except with respect to the first fiscal period ending December 31, the Association shall notify each Owner as to the amount of the Annual Assessment against his Unit on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the Assessment relates; provided, however, the Annual Assessments for the first fiscal period ending December 31, shall be based upon such portion of the calendar year as follows the date of recordation of the Declaration in the Public Records and shall be payable in such installments and at such

times as the Board of Directors, in its sole discretion may determine. The failure of the Board to give timely notice of any Annual Assessment, as provided herein, shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment, or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 13.01.

**12.06 Initial and Transfer Fees.** Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Unit, **whether as a first time or subsequent Owner**, a sum equal to two times the then monthly installment of the Annual Assessment, which sum shall be in addition to any prorating of Assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary.

**12.07 Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment shall not exceed the amount per Unit that is determined by the Board pursuant to Section 12.04. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum Annual Assessment for the previous year, without the vote of Owners entitled to cast a majority of the Association votes.

**12.08 Special Assessments.** The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of amenities, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Units in the same manner as Annual Assessments. As provided in Section 12.10, Special Assessments must be assented to by at least sixty percent (60%) of the total Association votes which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10, but not more than 30, days prior to the meeting date.

**12.09 Uniform Rate of Assessment.** Except as provided in Section 12.03, all Annual and Special Assessments authorized by this ARTICLE XII shall be fixed at a uniform rate for all Units.

**12.10 Quorum Requirements.** The quorum at any Member meeting required for any action authorized by Section 12.08 shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting, or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 12.08) at which the requirements for a quorum shall be one-half (1/2) of that which was required for the previously called, or adjourned meeting.

**12.11 Specific Assessment.** In addition to the Annual Assessment and any Special Assessment authorized pursuant to ARTICLE XII, the Board may levy at any time Specific Assessments (a) on every Unit especially benefited by any

improvement made by the Board on the written request of the Owner of the Unit to be charged; (b) on every Unit the Owner or occupant of which shall cause and damage to the Common Areas necessitating repairs; and (c) on every Unit to which the Board shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorneys fees and costs, and shall be allocated among the affected Units according to the magnitude of special benefit, or cause of damage, or maintenance or repair work, or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work when applicable. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Board, it shall not give rise to a Specific Assessment against the Units benefited.

**12.12 Certificate Regarding Payment.** Upon the request of any Owner, or prospective purchaser, or encumbrances of a Unit, and upon the payment of a reasonable fee to the Board to cover administrative costs, the Board shall issue a certificate stating whether or not payments of all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

**12.13 Effect of Nonpayment; Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it, or any installment thereof, becomes due shall be subject to a late charge not to exceed 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one percent (1 %) per month; and the Board, on behalf of the Association, may bring an action against the Owner who is personally liable therefore, or may prepare and record in the Public Records its lien against the Owner's Unit and thereafter foreclose the same pursuant to the provisions of the Utah Code, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust by foreclosure as a mortgage, or in any other manner permitted by law. Any judgment obtained in connection with the collection of delinquent Assessments and related charges shall include reasonable attorneys' fees, court costs and every other expense incurred by the Board in enforcing the Association's rights. Failure of the Board to promptly enforce any remedy granted pursuant to this Section 12.13 shall not be deemed a waiver of any such rights.

**12.14 Subordination of Lien to Mortgages.** The lien of the Association provided for herein shall be subordinate to the lien of any Mortgage given to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of, or becomes the Owner of, a Unit by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit; provided, that to the extent there are any proceeds of sale upon foreclosure of such Mortgage, or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such

Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a Mortgage shall relieve any Unit from the lien of any Assessment installment thereafter becoming due.

**12.15 No Abatement.** No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of, any Common Areas of the Project, or any part thereof; or (c) any action taken to comply with the provisions of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

**13.01 Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Board of Directors at the time of delivery or mailing. Any notice required or permitted to be given to the Association or the Board may be given by delivering or mailing the same to the Manager, or any member of the Board.

**13.02 Agent for Service of Process.** Bruce R. Dickerson is designated initially as the person to receive service of process in cases provided, however, that the Board of Directors shall have the right to appoint a successor agent for service of process who shall be a resident of Utah. The name and address of such successor shall be specified by an appropriate notice filed in the Public Records.

**13.03 Amendment.** Prior to the conveyance of the first Unit to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution by Declarant of an instrument amending or revoking the same. Except as provided elsewhere in the Declaration, Declarant (without obtaining the approval of Owners or the Association) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration. This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records, which is executed either (a) by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association, or (b) by the Association's President and Secretary, who shall certify that the required sixty percent (60%) vote was obtained in a meeting of members, or by written consent, and is so documented in the permanent records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

**13.04 Party Walls.** Each wall which is built as a part of the original construction of the Units within the Project and placed on the dividing line between Units shall constitute a party wall, and the following provisions regarding such party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto:



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

(b) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Unit thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use. The foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right of any Owner to contribution from any other Owner under this Section 13.04 shall be appurtenant to the land and Unit and shall pass to such Owner's successors in title.

**13.05 Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage, or number of votes outstanding in the Association, or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 13.05:

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

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;

(c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and

(d) Unless the consent of all Owners whose ownership rights are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

**13.06 Changes in Price, Size, Design or View Impairment.** The Declarant has made no promises, representations or assurances to Owner regarding the pricing, size, design or configuration of any Unit and all Owners acknowledge 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. All Owners further acknowledge 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. For purposes of this section, the term "Declarant" shall include, but not limited to: Whisper Rock, L.L.C., and its owners, representatives, agents or employees.

**13.07 Environmental Issues.** Each Owner understands and acknowledges that the Buildings, Limited Common Areas and Common Areas have been constructed on "expansive 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 expansive 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) regular maintaining the Unit; 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 to 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 limited to: Whisper Rock, L.L.C., and its owners, representatives, agents or employees.

**13.08 Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Property or Project, may be assigned.

**13.09 Interpretation.** The captions pertaining to the ARTICLE and Section numbers of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction, and enforcement of this Declaration.

**13.10 Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units and Common Areas shall be subject to, the provisions of this Declaration and of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**13.11 Enforcement.** The Association, any Owner, or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of this Declaration. The prevailing

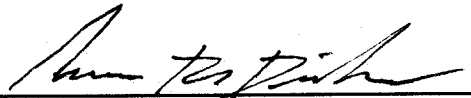
party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of this Declaration, shall be entitled to collect court costs and reasonable attorneys' fees.

13.12 **Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches which may occur.

13.13 **Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following approval of the appropriate governmental authority authorizing such actions.

13.13 **Effective Date.** This Declaration, and any amendment or Supplemental Declaration hereto, shall take effect upon its being filed for record in the Public Records.

**EXECUTED** by Declarant on the day and year first above written.

By:   
Bruce R. Dickerson, Manager

State of Utah, County of Utah

The within instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Bruce R. Dickerson in the capacity indicated.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT "A"**  
**PHASE 1 PLAT BOUNDARY**

Commencing at a point located North  $88^{\circ}58'42''$  East along the Section line 1395.22 feet from the Southwest corner of Section 10, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence North 251.12 feet; thence North  $68^{\circ}02'32''$  East 172.88 feet; thence South  $88^{\circ}50'18''$  East 106.61 feet; thence South  $01^{\circ}09'42''$  West 970.78 feet to the section line; thence South  $88^{\circ}58'42''$  West along the section line 260.91 feet to the point of beginning.

Area: 182,258 SF 4.18 Ac.

**EXHIBIT "B"**  
**REMAINING PROPERTY**

Commencing at a point located North 88°58'42" East along the Section line 1395.22 feet and North 251.12 feet from the Southwest corner of Section 10, Township 8 South, Range 3 East, Salt Lake Base and Meridian; thence West 451.87 feet; thence North 01°13'51" East 240.00 feet; thence West 288.29 feet; thence North 473.27 feet; thence North 88°50'32" East along a fence line 326.54 feet; thence North 89°43'12" East along a fence line 333.29 feet; thence North 89°34'17" East along a fence line 355.80 feet; thence South 01°09'42" West partially along a fence line and along the Westerly boundary line of Hales Subdivision Plats, A, B and C, 661.76 feet thence North 88°50'18" West 106.81 feet; thence South 68°02'32" West 172.88 feet to the point of beginning.

Area: 645,451 sq. ft. 14.82 acres