

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

**TRAILHEAD TOWNHOMES SUBDIVISION  
RESIDENTIAL DISTRICT**

**TRAILHEAD TOWNHOMES  
TRAILHEAD "A"  
PLANNED UNIT DEVELOPMENT**

**Eagle Mountain City, Utah**

January 25, 2017

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR TRAILHEAD TOWNHOMES SUBDIVISION RESIDENTIAL DISTRICT

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR TRAILHEAD TOWNHOMES SUBDIVISION RESIDENTIAL DISTRICT (the "District Declaration") is made this 25 day of JANUARY, 2017 (the "Effective Date"), by TRAIL HEAD EAGLE MOUNTIAN, LLC, a Utah limited liability company (the "District Declarant") and joined by MONTE VISTA RANCH, L.C., a Utah Limited Liability Company (hereinafter referred to as the "Master Declarant"), and EAGLE MOUNTAIN PROPERTIES COMMUNITIES MASTER ASSOCIATION, INC. (hereinafter referred to as the "Master Association").

WITNESSETH:

WHEREAS, the District Declarant is the owner of that certain real property located in Utah County, State of Utah, being all of the property described in "Exhibit A", attached hereto and made a part hereof (hereinafter referred to as the "Trailhead Townhomes Subdivision" or the "District Property"), together with adjacent property comprising future phases of Trailhead Townhomes Subdivision;

WHEREAS, the District Property is a portion of the real property identified in the Declaration of Covenants, Conditions, Easements, Reservations, and Restrictions for Monte Vista Ranch which is or may be recorded in the Recorders Office of Utah County, Public Records of Utah County, State of Utah, as such document is restated and amended from time to time (hereinafter referred to as the "Master Declaration");

WHEREAS, the Master Declaration anticipates the formation of various Districts (as defined in the Master Declaration) within the Properties (as defined herein below) to be separately denominated as residential, commercial, industrial, office, governmental, educational, recreational, airport and airpark, institutional or other use areas subject to the Master Declaration as provided therein;

WHEREAS, the District Declarant desires to designate the District Property as a separately denominated residential District subject to the District Declaration as provided therein;

WHEREAS, the District Declarant intends that this District Declaration shall designate the Properties: (i) mutually beneficial restrictions under a general plan of improvements for the benefit of all owners of real property with the Properties, (ii) a flexible and reasonable procedure for the maintenance of the Properties, and, (iii) a method for the administration, preservation, use and enjoyment of the Properties;

**WHEREAS**, MONTE VISTA RANCH, L.C., a Utah Limited Liability Company as Declarant under the Master Declaration (the “Master Declarant”), and Eagle Mountain Properties Communities Master Association, Inc., (the “Master Association”) jointly desire to consent to the imposition of this District Declaration upon the District Property as required under the terms of the Master Declaration;

**WHEREAS**, the District Property (including those future subdivisions to be annexed hereto), is an area of unique natural beauty, featuring distinctive terrain and features;

**WHEREAS**, by subjecting the District Property (including those adjacent areas of future annexation known as the proposed subdivision of Park Place at Trailhead Subdivision) and such other and additional properties to this District Declaration (the “Additional Properties”), it is the desire, intent and purpose of the District Declarant to create a community in which such attractiveness, quality and value shall be substantially preserved, which will enhance the desirability of living on those portions of the District Property, subject to this District Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein; and

**WHEREAS**, the District Declarant intends to impose on the District Property and the Additional Properties mutually beneficial restrictions under a general plan of improvement.

**WHEREAS**, the Original Declaration authorizes and empowers the successors, successors-in-title or assigns to Amend and restate the Original Declaration;

**WHEREAS**, Trail Head Eagle Mountain, LLC is the current title holder of all membership and Voting Rights as defined in the Original Declaration;

**WHEREAS**, the Master Declarant has provided its consent and approval to this Amended and Restated District Declaration;

**NOW, THEREFORE**, the District Declarant and Master Declarant hereby declare that the above recitals are true and correct, and that the District Property and the Additional Properties as is hereinafter annexed and subjected to this District Declaration in accordance with its terms, and shall be held, sold and conveyed subject to the following covenants, conditions, easement, reservations and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this District Declaration and which shall be binding on all parties having any right, title or interest in the real property subjected to this District Declaration or any part thereof, their heirs, successors, successors in title and assigns. Additionally, the District Property is subject to and subordinate to the covenants, conditions, and restrictions set forth in the Master Declaration.

**ARTICLE I.**  
Definitions

Unless the context otherwise specifies or requires, the following words and phrases when

used in the District Declaration shall have the meanings hereinafter specified. Such words, terms and phrases shall be applied and interpreted in a uniform and consistent manner. If a particular defined term is stated in the singular or plural, masculine, feminine, or neuter, the defined term shall be inclusive of all the foregoing if the particular usage or context so requires. Capitalized terms not otherwise defined in the District Declaration, but defined in the Master Declaration, shall be deemed to be defined terms herein and shall have the same meaning set forth in the Master Declaration unless the context shall otherwise require. Other words and terms shall have their usual and customary definitions and interpretations. Such defined terms shall be applied and interpreted in a uniform and consistent manner.

Section 1.1. "Annexation Agreement" shall mean an amendment or supplement to this District Declaration which subjects additional property to this District Declaration in accordance with the terms of this District Declaration, and when so annexed shall be referred to as Additional Property. The Additional Properties to be annexed include the proposed residential subdivision of Park Place at Trailhead Subdivision. Upon the recording of a subdivision plat, an annexation agreement, and Declaration of Covenants, Conditions, Easements, Reservations and Restrictions in form and content similar to these Declarations, for each of the proposed areas of Additional Properties, such Additional Property and subdivision phase shall be deemed to be annexed and incorporated herein. Nothing contained herein shall require the Declarant to dedicate or improve such future and anticipated phases.

Section 1.2. "Area of Common Responsibility" and "Common Area" shall both mean and refer to the following:

- (a) The common areas contained in Trailhead Townhomes Subdivision and Park Place at Trailhead Subdivision together with those parcels, tracts, or areas, if any, which by the terms of this District Declaration or by contract or agreement become the responsibility of the District Association to maintain, administer or operate, including any additional parcels, tracts, or areas contained in the Additional Properties (including those Common Areas and Areas of Common Responsibility contained therein) which are subsequently annexed herein; and
- (b) All real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, if any, which the District Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners and related improvements, including any additional areas contained in and Additional Properties which are subsequently annexed herein (including those common areas therein). The District Association may or may not own any Common Area in fee simple; provided however, before the U.S. Department of Housing and Urban Development insures the first mortgage on a Unit in the District Property, District Declarant (or the Master Declarant) shall convey by deed, license or easement the Common Area, if any, to the District Association in fee simple released from any encumbrance securing the repayment of monetary obligations incurred by District Declarant (or the Master Declarant), and from all other encumbrances then of record, but subject however to all other matters of record, including without limitation easements, the District Declaration, the Master Declaration, the Master Development

District and ad valorem real property taxes for the year of conveyance. The Common Area shall not be mortgaged or conveyed (except to the District Association) without the consent of at least two-thirds (2/3) of the Owners, excluding the District Declarant. The District Association shall accept title to any real estate or personal property offered to the District Association by District Declarant or Master Declarant, conditioned and subject to the same being free and clear of all liens and encumbrances. If ingress or egress to any Unit is through the Common Area, any conveyance or encumbrance of such Common Area shall be subject to the Unit Owner's reasonable and non-exclusive easement for ingress and egress.

- (c) The roofs, siding, and exterior cladding of the townhome buildings.
- (d) For the purposes of determining assessments and maintenance fees charged to Unit Owners, if any, pursuant to the terms of this District Declaration, in the event that any portion of the District Property is or has been dedicated to the City as public areas, such dedicated property (including any and all applicable public streets, roadways, sidewalks, public alleys, paths, public parks, tree lawns, curbs, light fixtures, signage, landscaping, points of sewage and utility access, and all other forms of construction located thereon specifically constructed, installed, and/or maintained by the City) shall specifically be excluded from the definition of a Common Area or Area of Common Responsibility, as used herein.

Section 1.3. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the District Association attached hereto as "Exhibit B" and incorporated herein by reference, which have been filed or which simultaneously herewith are being filed with the Division of Corporations of the State of Utah, as same may be amended from time to time.

Section 1.4. "Assessment" shall be an inclusive term referring to both Regular Assessments and Special Assessments, and may include an additional reasonable flat-fee for use of any recreation facilities approved by the Board of the District Association.

Section 1.5. "Board of Directors" shall mean and refer to the Board of Directors of the District Association.

Section 1.6. "Bylaws" shall mean and refer to the Bylaws of the District Association attached hereto as "Exhibit B" and incorporated herein by reference, which have been adopted or which simultaneously herewith will be adopted, as amended from time to time.

Section 1.7. "City" shall mean and refer to Eagle Mountain City, Utah, a Utah municipal corporation in which the property is located, or its successor, including all boards, departments, and officers thereof. The City is an additional Declarant for the purpose only of enforcing the architectural guidelines under the provisions of this Declaration.

Section 1.8. "Class B Control Period" shall mean and refer to that period which shall continuously exist until the first of the following events occur:

- (a) When eighty percent (80%) of the Units permitted by the Development Order and other Development Approvals for the District Property (including the Additional Property) and the property which is subject to annexation under the provisions of this Declaration, have certificates of occupancy issued thereon and have been conveyed to persons other than the District Declarant and Owners holding title solely for the purpose of development and sale;
- (b) When, in its discretion, the District Declarant elects to terminate the Class B Control Period.

Section 1.9. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the District Association for the maintenance, repair and operation of the Area of Common Responsibility and Common Areas or for the general benefit of all Owners or for the benefit of Owners within a specific phase or portion of the District Property, including reasonable reserves for the maintenance, repair and replacement of replaceable assets or for such other purposes as the Board of Directors may determine, as may be found to be necessary and appropriate by the District Association pursuant to this District Declaration, the Bylaws and the Articles of Incorporation. Common Expenses shall also mean and include the actual and estimated expenses incurred by the District Association for the maintenance, repair and operation of the Areas of Common Responsibility and Common Areas located in Trailhead Townhomes Subdivision including and Additional Properties and those areas of future development known as the proposed subdivision of Park Place at Trailhead Subdivision, including reasonable reserves for the maintenance, repair and replacement of replaceable assets or for such other purposes as the Board of Directors may determine, all as may be found to be necessary and appropriate by the District Association pursuant to this District Declaration, the Bylaws and the Articles of Incorporation. In the event the Principal Association determines the District Association has failed to perform its responsibilities under the District Declaration, then the expense of those responsibilities of the District Association performed by the Principal Association shall be deemed Common Expenses of the District. The Common Expenses shall also include, if the Principal Association so elects, any amounts that are assessed by the Principal Association pursuant to the Master Declaration.

Section 1.10. "Development Approvals" shall mean and refer to the Development Order and any and all subdivision and other governmental permits and approvals obtained with respect to the District Property or any part thereof, and the relevant zoning and comprehensive plan designation for the District Property.

Section 1.11. "Development Order" shall mean and refer to that certain Amended and Restated Development Order pertaining to the District Property and other property as set forth therein, as same may be amended from time to time.

Section 1.12. "District" shall mean and refer to Trailhead Townhomes Subdivision, a Residential District, together with the Additional Properties as the same are subjected to this District Declaration, including those areas of future development known as the proposed subdivision of Park Place at Trailhead Subdivision when so annexed herein.

Section 1.13. "District Association" shall mean and refer to the TRAILHEAD

TOWNHOMES OWNERS ASSOCIATION, INC., a Utah not-for-profit corporation, its successors or assigns, which has been established or is being simultaneously established herewith, which shall manage the District Property, including any additional common areas contained in any Additional Properties and additional phases which are subsequently annexed herein, including those common areas contained in the future development known as the proposed subdivision of Park Place at Trailhead Subdivision.

Section 1.14. "District Declarant" shall mean and refer to TRAIL HEAD EAGLE MOUNTAIN, LLC, a Utah limited liability company, or its successors, successors-in-title or assigns who are designated as the District Declarant hereunder in a recorded instrument executed by the immediately preceding District Declarant, provided, however, in no event shall there be more than one District Declarant for the District Property at any given time.

Section 1.15. "District Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Trailhead Townhomes Subdivision, a Residential District, as supplemented and amended from time to time.

Section 1.16. "District Drainage System" shall mean and refer to all land, easements, structures and other facilities and appurtenances which together constitute and comprise the surface and sub-surface storm water management and drainage system of the District Property (or portions thereof) and which serve more than one Unit or Unplatted Parcel. The drainage system may be owned by the District or may be dedicated to the City as a public system to be maintained by the City.

Section 1.17. "Master Architectural Review Committee" or "ARC" or "Master ARC" shall mean and refer to the Master Architectural Review Committee established pursuant to the Master Declaration.

Section 1.18. "Master Association" shall mean and refer to EAGLE MOUNTAIN PROPERTIES COMMUNITIES MASTER ASSOCIATION, INC., a Utah not-for-profit corporation, and its successors and assigns.

Section 1.19. "Master Declarant" shall mean and refer to MONTE VISTA RANCH, L.C., a Utah limited liability company, or its successors, successors in title or assigns who are designated as the Master Declarant under the terms and provisions of the Master Declaration.

Section 1.20. "Master Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Easements, Reservations, and Restrictions for Monte Vista Ranch which is or may be recorded in the Records Office of Utah County, Public Records of Utah County, State of Utah, as such document is restated and amended from time to time.

Section 1.21. "Master Development District" shall mean and refer to the Eagle Mountain Properties Master Development District, comprising all the lands currently or in the future owned or acquired by Master Declarant, any Additional Properties annexed into the Master Development District and all portions of the District Property.



Section 1.22. “Master Drainage System” shall mean and refer to all land, easements, structures and other facilities and appurtenances which together constitute and comprise the master surface and sub-surface storm water management and drainage system of the Properties (or portions thereof) and adjacent property as reflected on plans therefore now or hereafter on file with and approved by City.

Section 1.23. “Mortgage” shall mean and refer to a mortgage, deed of trust, deed to secure debt, or other form of security deed duly and properly recorded in the public records of Utah County, Utah.

Section 1.24. “Mortgagee” shall mean and refer to a beneficiary or holder of a Mortgage, or a Deed of Trust duly recorded in the Public Records of Utah County, Utah.

Section 1.25. “Neighborhood” shall mean and refer to a portion or phase of the District Property which may be identified as such by Declarant when, in Declarant's sole discretion, such portion or phase may be comprised of or contain Units, Common Areas, facilities or properties which are adjacent, contiguous, similar, compatible in character, size, scope, number, Common Expenses, appearance, intended use or maintenance requirements.

Section 1.26. “Neighborhood Restriction” shall mean and refer to a covenant, restriction or provision of this District Declaration which specifically applies only to one or more Neighborhoods in the District Property, and which does not apply uniformly throughout the entire District Property.

Section 1.27. “Owner” shall mean and refer to one (I) or more Persons who hold the record title to any Unit or Unplatted Parcel which is part of the District Property, and the District Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit or Unplatted Parcel is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be deemed the Owner.

Section 1.28. “Person” shall mean and refer to a natural person, a corporation, a partnership, an estate, a trust, a trustee or other legal entity.

Section 1.29. “Plat” shall mean and refer to the plat of Trailhead Townhomes Subdivision, originally filed in the Recorder's Office of Utah County, State of Utah, on June 3, 2008, as Entry Number 64747:2008, and amended on June 16, 2016 and filed as entry number 54897:2016; and the plat of any portion of the District Property.

Section 1.30. “Principal Association” shall mean and refer to EAGLE MOUNTAIN TRAILHEAD TOWNHOMES PRINCIPAL ASSOCIATION, INC., a Utah not-for-profit corporation, and its successors and assigns.

Section 1.31. “Properties” or “District Property” shall mean and refer to the real property described in “Exhibit A,” and such other Additional Properties as from time to time may be subjected to the covenants, conditions and restrictions of the District Declaration by annexation as more fully set forth herein, including any Additional Properties and Common Areas contained in additional phases which are subsequently annexed herein.

Section 1.32. “Regular Assessment” shall mean and refer to the Assessments levied against all Units and Unplatted Parcels in the District Property to fund Common Expenses in accordance with Section I of Article VII of this District Declaration.

Section 1.33. “Special Assessments” shall mean and refer to the Assessments levied in accordance with Section 3 of Article VII of this District Declaration.

Section 1.34. “Supplemental Declaration” shall mean and refer to an amendment or supplement to this District Declaration which imposes expressly or by reference, additional restrictions and obligations on the land described therein.

Section 1.35. “Unit” shall mean and refer to a lot shown on the Plat, and any structure thereon, intended for development, use and occupancy as an attached or detached residence for a single family. Those areas shown on the recorded plat designated as “lots” and intended to be used for the construction of residences are deemed to be Units immediately upon the recording of the subdivision plat containing such lot. Areas on the Plat designated as tracts, roads, alleys, parks, open spaces, shall not constitute Units. The District Declarant may in its sole discretion amend this District Declaration for the purpose of more specifically designating Units in the District without the necessity of joinder of any other Person to said amendment.

Section 1.36. “Unplatted Parcel” shall mean a portion of the District Property which is not platted, but is intended and reserved for future development of more than one Unit. Once an Unplatted Parcel or portion thereof is platted into Units or submitted to condominium or cooperative ownership, the Unplatted Parcel or portion thereof so platted or submitted shall no longer be deemed an Unplatted Parcel but shall thereafter be deemed a Unit.

Section 1.37. “Voting Member” shall mean and refer to the representative (or such representative's alternate if he is unable to attend a meeting of the Principal Association) to the Principal Association selected by the District Association to be responsible for casting all votes of the membership of the District Association attributable to Units or Unplatted Parcels in the District for all matters requiring the vote of the membership of the Principal Association, unless otherwise expressly specified in the Master Declaration or bylaws of the Principal Association. The Voting Member of the District shall be the president of the District Association unless a majority of the Board of Directors shall determine to appoint another representative as the Voting Member for the District. The alternate Voting Member shall be secretary of the District Association, unless a majority of the Board of Directors shall determine to appoint another representative as the alternate Voting Member for the District.

## **ARTICLE II.**

### Property Rights

Section 2.1. Rights of Owners. Every owner shall have a non-exclusive right and easement of access, use and enjoyment in and to the public areas maintained by the City, if any, and the Common Area (including any additional common areas contained in prior or Additional Properties which are subsequently annexed herein, but excluding any Limited Common Area or

Limited Common Element) for the purpose for which it is intended, subject to this District Declaration as it may be amended from time to time, any easements reserved therein or granted by District Declarant or Master Declarant, any terms and conditions of the Master Declaration as it may be amended from time to time, and to any restrictions or limitations contained in any plat and in any deed conveying such property to the District Association or subjecting such property as Common Area to the District Declaration. Each Unit has assigned to it certain areas designated on the Plat as Limited Common Areas, which such areas are affixed and appurtenant to the Units as shown and are for the exclusive use of such Unit. Such non-exclusive right or easement is subject to: (i) the right of the District Association to limit the number of guests of Owners or Owners who may use the Common Area from time to time; (ii) the right of the District Association to promulgate, establish and enforce reasonable rules and regulations pertaining to the use of the Common Area; (iii) the exclusive rights associated with Limited Common Areas and Limited Common Elements granted or assigned to particular Units, and (iv) the right of the District Association to take such steps as are reasonably necessary to maintain, preserve and protect the Common Area. Any owner may delegate his or her right of enjoyment in and to the Common Area to the members his family, his tenants, guests or invitees, as applicable, subject to reasonable regulation by the Board of Directors of the District Association and in accordance with procedures that it may adopt. An Owner of a Unit who leases his Unit shall not be deemed to have delegated such rights to the Unit's lessee, except to the extent provided in the lease. No Owner may exempt himself from personal liability for or exempt his Unit or Unplatted Parcel from any Assessments duly levied by the District Association, or release the Unit or Unplatted Parcel owned by the Owner from liens, charges, encumbrances and other regulations of this District Declaration or the rules and regulations of the District Association by: (a) the voluntary waiver of the right, privilege and easement for the use and enjoyment of the Common Area; or (b) the abandonment of his Unit or Unplatted Parcel. The owners of lots or units within all phases of the Trailhead Townhomes Subdivision and Park Place at Trailhead Subdivisions shall have mutual and cross non-exclusive easements of use, enjoyment and access over and across the common areas contained in each such subdivision.

Section 2.2. Leasing. An Owner shall be allowed to lease his Unit or Unplatted Parcel, provided that any such lease shall require the tenant thereunder to comply with the terms and conditions of the District Declaration, Bylaws, Articles of Incorporation, Master Declaration, bylaws and articles of incorporation of the Principal Association, and provided further that such lease and tenancy is otherwise in compliance with any rules and regulations promulgated by the District Association or the Principal Association. No lease of a Unit or Unplatted Parcel shall be for a term of less than twelve (12) months unless otherwise approved by the Board of the District Association, and any such lease will be in writing and compliance by the Owner and tenant of the provisions of this Declaration and the Master Declaration shall be enforceable by the District Association or Principal Association, whether or not so stated in its terms. No Owner may lease his Unit or Unplatted Parcel more than twice during any calendar year unless approved by the District Association. During the term of the lease, the Owner shall not be relieved of any obligations under the terms of the District Declaration and the Master Declaration, and the Owner and tenant shall be jointly and severally liable for the actions of the Owner and the tenant which may be in violation of the terms and conditions of this District Declaration, Master Declaration, and any rules and regulations thereunder and any other documents set forth above, notwithstanding the fact that the tenants are also fully liable for any violation of the documents and regulations. In the event that a tenant, occupant, or person living with the tenant violates the District Declaration, Articles of

Incorporation, Master Declaration, Bylaws, the bylaws or articles of incorporation of the Principal Association, or the rules and regulations of the District Association or Principal Association, the District Association or Principal Association, as appropriate, shall have the power to bring an action or suit against the tenant or occupant and the Owner jointly and severally, or any combination of the foregoing, to recover sums due for damages or injunctive relief, or for any other remedy available at law or in equity. The restrictions contained in this section shall not apply to Units or Unplatted Parcels owned by or leased to District Declarant, or by any Mortgage of a first mortgage acquiring title by foreclosure or deed in lieu of foreclosure.

Section 2.3. Time-share Prohibition. No time sharing plan as the term is defined in all applicable Utah Statutes, as amended, or any similar plan of fragmented or interval ownership of property of Units or Unplatted Parcels shall be permitted on the District Property, and no attempt to create same by lease or otherwise shall be permitted.

Section 2.4. Board of Director's Rights. The Board of Directors, in its sole discretion and by its written consent, may extend permission to selected non-owners of any interest in the District Property, to use portions of the Common Area subject to such terms and conditions as the Board of Directors may impose.

Section 2.5. Withdrawal. District Declarant reserves the right to amend this District Declaration unilaterally at any time so long as the District Declarant owns any real property which is subject to this District Declaration, for the purpose of removing certain portions of the District Property then owned by the District Declarant from the purview, operation and effect of this District Declaration. For such an amendment to have effect, the Master Declarant and Master Association must consent thereto, and such amendment setting forth the withdrawal must be filed in the public Records of Utah County, State of Utah, with the consent of the Master Declarant and Master Association attached.

Section 2.6. Amendment. No amendment shall be made to this District Declaration that affects the rights of the Master Declarant or the Master Association without the prior written consent of the Master Declarant or the Master Association. This District Declaration shall not be amended without the prior written consent of the District Declarant, to and until the District Declarant no longer owns any land which is subject to the District Declaration or subject to annexation to the District Declaration. After the District Declarant no longer owns any real property which is subject to the District Declaration or subject to annexation to the District Declaration, this District Declaration may be amended as provided for herein.

Section 2.7. Common or Party Walls. The rights and duties of Owners with respect to common walls, party walls, or common fences shall be as follows:

- 2.7.1. Each wall, structural element, fence, foundation, roof, or utility line which is constructed as a part of the original construction of the Dwelling Unit, or any portion of such element which is subsequently constructed as part of a repair or restoration, any part of which is placed on, adjacent to, contiguous, or over the dividing line between separate Dwelling Units, shall constitute a common wall or party wall. Each Owner consents to the use, repair, maintenance, restoration, and construction

of such party wall and acknowledges that portions of the Properties may contain party walls. With respect to any such party wall each adjoining Unit Owner shall assume the burden of and be entitled to the benefits recited in this Section and to the extent not inconsistent herewith, the general rules of law regarding common or party walls shall be applied herein.

- 2.7.2. The Owners of contiguous Units who have a party wall shall have reciprocal easements for encroachment, support and an equal right to use such party wall provided that such use by one Owner does not interfere with the use and enjoyment of the same by the other adjoining Owner.
- 2.7.3. Unless other provisions of this Section are applicable, the costs of reasonable repair, maintenance, and restoration of a party wall shall be shared equally by the Owners of the adjoining Units in proportion to the use of such party wall by each respective Owner. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title. An Owner may make emergency repairs to a party wall without the prior consent of the adjoining Owner, without waiving any rights herein for recovery or contribution from the other Owner.
- 2.7.4. In the event any party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, members of his family, agents, employees, or contractors so as to deprive the other Owner of the required use and enjoyment of such party wall, then the first of such Owners, shall be liable for the full costs of repairing and restoring such party wall and shall promptly rebuild, repair and restore such party wall to its original condition with cost or expense to the other Owner.
- 2.7.5. In the event any party wall is damaged or destroyed by some cause other than as described in Section 2.7.4 above, including ordinary wear, tear and deterioration from the passage of time and the effect of environmental causes, then in such event, both adjoining Owners shall be jointly and mutually responsible and liable to promptly rebuild, repair and restore such party wall to its original condition at their joint and equal expense.
- 2.7.6. Notwithstanding anything to contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior written consent of both adjoining Unit Owners and the District Board, which such consent maybe withheld. In addition to meeting the other requirements of this Declarations and of any applicable building codes and standards, any Owner proposing to modify, make additions to or rebuild his Dwelling in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of adjoining Owner and the District Board shall consider, in its decision, the adjoining Owner's preferences concerning the proposed modification, extension or alteration of the party wall.
- 2.7.7. In the event of a dispute between Owners with respect to the maintenance, repair,

or restoration of a party wall or with respect to the allocation and sharing of costs thereof, then the provisions of this Declaration concerning Dispute Resolutions shall apply.

### **ARTICLE III.**

#### District Association

Section 3.1. Objects, Purposes, and Function. The District Association has been created and established for the objects and purposes of and shall have exclusive jurisdiction over and the sole responsibility for the administration, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Area (including those areas of common responsibility and common areas included in the Additional Properties annexed hereto), and to the extent provided by agreement or otherwise of that portion of the Area of Common Responsibility which is not a part of the Common Area; the establishment, levy, imposition, enforcement and collection of all fines, charges and assessments for which provision is made in this declaration; the payment of all Common Expenses; and the promotion and advancement of the general welfare of the members of the District Association; subject in all cases to the right of the Principal Association to act in place and stead of the District Association, in the event the District Association fails to carry out its rights and responsibilities as provided under the District Declaration, the Articles of Incorporation, and Bylaws; all as more particularly provided in this District Declaration and in the Articles of incorporation, Bylaws and rules and regulations of the District Association.

Notwithstanding the provisions set forth in this District Declaration, in the event that the Principal Association should fail to perform its duties and responsibilities as required herein, the Master Association may act in the place of the Principal Association for the limited purpose of performing or correcting those duties and responsibilities which were not acted on or performed by the Principal Association. The foregoing sentence shall not serve to limit, restrict, or otherwise permanently remove duties or powers of the Principal Association, but shall only serve to provide an avenue to preserve and continue the normal day-to-day operations and functionality of the District Property and to further promote and advance the general welfare of the members of the District Association.

Section 3.2. Duties and Powers. In addition to those duties and powers conferred by law and those specified and enumerated in the Articles of Incorporation and the Bylaws, the District Association shall have such duties and powers as are, respectively, imposed and conferred upon it pursuant to this District Declaration, including, without limitation, such duties and powers as may reasonably be implied from, necessary for or incidental to the accomplishment of the objects and purposes for which the District Association has been created and established. All duties and powers of the District Association shall be exercised by the Board of Directors unless otherwise provided in this District Declaration, the Articles of Incorporation and the Bylaws.

Section 3.3. Membership. Every Owner of a Unit or Unplatted Parcel contained in Trailhead Townhomes Subdivision (including those Owners of Units or Unplatted Parcels in the Additional Properties, effective when recorded and annexed herein), shall be deemed to have a membership in the District Association. No Owner, whether one (1) or more Persons, shall have

more than one (1) membership per Unit or Unplatted Parcel owned. The membership shall not be refused, waived or surrendered, but voting rights and use and enjoyment of the Common Area may be regulated or suspended as provided in this District Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations adopted by the District Association.

Section 3.4. Transfer of Membership. Membership in the District Association shall be appurtenant to and may not be separated from the ownership interest of an Owner in a Unit or Unplatted Parcel. The membership of an Owner in the District Association shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred and assigned upon the transfer of the ownership interest required of the Unit or Unplatted Parcel to a third party. Every Owner agrees to immediately notify the District Association upon such transfer and to deliver to the District Association the address of the new owner, and a copy of the deed conveying the Unit or Unplatted Parcel to the new owner.

Section 3.5. Voting Rights. The District Association shall have two (2) classes of membership, "Class A" and "Class B," as follows:

- 3.5.1. "Class A" members shall be all Owners with the exception of the Class B member, if any. Voting Rights shall be allocated among Class A members as follows: (i) One (1) vote per acre or portion thereof shall be allocated to an Unplatted Parcel; and (ii) for those portions of the District which are subject to a Plat or are otherwise designated by the District Declarant as a Unit, each Unit shall be allocated one (1) vote. Each Class A member shall have one (1) vote per Unit or Unplatted Parcel owned.
- 3.5.2. The Class "B" Member shall be the District Declarant. The Class B member shall have (i) five (5) votes per acre or portion thereof shall be allocated to an Unplatted Parcel; and (ii) for those portions of the District which are subject to a Plat or are otherwise designated by the District Declarant as a Unit, each Unit shall be allocated five (5) votes, until the Class B membership terminates and becomes a Class A membership. The rights of the Class B member, including the right to approve actions taken under this District Declaration and the Bylaws, are specified elsewhere in this District Declaration and the Bylaws. The Class B member shall be entitled to appoint the members of the Board of Directors during the Class B Control Period, as provided in the Bylaws. The Class B membership shall terminate and proportionately be converted to the Class A membership upon the earlier of:
  - (a) Upon the expiration of the Class "B" Control Period; or
  - (b) When, in its discretion, the District Declarant so determines; or,
  - (c) As each Unit is sold to an owner other than the Declarant.

Section 3.6. Cumulative Voting. No cumulative voting shall be permitted.

Section 3.7. District. The District of which the District Property forms a part, includes all

the phases of Trailhead Townhomes Subdivision and Additional Properties annexed therein, including, without limitation, the property described generally in Article VI of this District Declaration and further may be modified subject to the terms and conditions of the Master Declaration pertaining to designation of Districts (as defined therein) and their reconfiguration. Those portions of the District not subjected to the terms and conditions of this District Declaration may, but shall not be obligated to, become a part of the District property, in the sole discretion of the District Declarant. Such annexation of Additional Properties into the District Property, if any, may be accomplished in accordance with the terms and provisions of Article VI hereof, and may or may not include if so determined in the sole discretion of the District Declarant and Master Declarant, real property located outside the District, all as further provided in Article VI hereof and as provided in the Master Declaration.

## ARTICLE IV.

### Maintenance

Section 4.1. District Association's Responsibility. The District Association shall maintain and keep in good repair the Area of Common Responsibility (including those Areas of Common Responsibility located in any Additional Properties which are subsequently annexed herein), such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, restoration, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon or under the Common Area and the Area of Common Responsibility, including, but not limited to, recreational amenities, if any, drainage and irrigation systems, recreation and open space, utilities, private streets, medians, street lights, entry features and signage, traffic control devices and pedestrian systems, and such other actions as may be required pursuant to the terms and conditions of any agreement of the District Association, the District Declaration, and the Master Declaration. The Area of Common Responsibility shall also include roofs, exterior cladding, siding, flashing, and exterior weatherproofing components of the townhome buildings. The District Association shall also maintain and keep in good repair such portions of any additional property not included within the Common Areas and the Area of Common Responsibility as may be dictated by this District Declaration, or by a contract or agreement for maintenance thereof by the District Association or by a governmental entity or agency. In the discharge of its responsibilities, the District Association shall comply fully with the Development Order and other Development Approvals to the extent relevant and applicable to the Common Area or the District Association's duties and responsibilities. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area or the Area of Common Responsibility and Additional Properties (as provided above) shall be a Common Expense to be allocated among all Units and Unplatted Parcels as part of the Assessments.

The District Association may elect to maintain property which it does not own, or contribute financially to the maintenance of property which it does not own (including a portion of applicable insurance policies, if any), in addition to those portions of the Common Area or the Area of Common Responsibility which it does not own, including, without limitation: (1) Property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Master Standards (as defined in the Master Declaration); and (2) recreational facilities which may be used and accessed by Unit Owners or other individuals (such use subject to approval



by the Board of Directors).

Section 4.2. Owner's Responsibility. Each Owner of a Unit (and any owner of a portion of the District Property not within a Unit or Unplatted Parcel) shall maintain those portions of his or her Unit or Unplatted Parcel (or portion of the District Property) that are not considered to be Common Areas, and all structures, parking areas, landscaping, retention and other storm water control areas not a part of the Master Drainage System or the District Drainage System, and other improvements comprising the Unit or Unplatted Parcel (or portion of the District Property) in good repair and in a manner consistent with this District Declaration and any standard established by the Board of Directors, and in any District planning and design criteria, as well as the Master Standards, and all applicable covenants, including those contained within the Master Declaration and the District Declaration, unless such maintenance responsibility is otherwise assumed by or assigned to the District Association. Each Owner of a Unit which has an adjoining Unit sharing a common wall or a party wall shall have joint and mutual cross easements of access and support from such common wall or party wall and shall joint and mutual obligations to insure, maintain, repair and restore such common wall or party wall. If any Owner fails properly to perform his or her maintenance responsibility, the District Association, in its sole discretion, shall have a right of entry upon such Unit or Unplatted Parcel (or portion of the District Property) and may perform such maintenance and assess all costs incurred by the District Association (together with an overhead expense to the District Association of fifteen percent (15%) of the total amount thereof) against the Unit or Unplatted Parcel (or portion of the District Property) and the Owner (or owner) thereof in accordance with Section 7.3 of Article VII of this District Declaration; provided, however, except when entry is required due to an emergency situation, the District Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. The District Association shall have no obligation to perform any such maintenance, unless required to do so under the District Declaration or Master Declaration. The determination as to whether a Unit or Unplatted Parcel (or portion of the District Property) and all structures, parking areas, landscaping and other improvements are being maintained in good repair and in a manner consistent with the foregoing shall be made by the Board of Directors, except to the extent the District ARC may otherwise determine as to the Master Standards.

It shall be the obligation of each Owner of a Unit to maintain, repair, and replace his or her Unit including all interior surfaces and components. Owners shall be responsible for the maintenance, repair and replacement of the following components and facilities appurtenant to their Unit: rain gutters, steps, porches, decks, patios, sidewalks, driveways, columns, girders, beams, structural components, exterior and interior doors, windows, fenestration, HVAC, plumbing and sprinkling systems and components, irrigation systems serving the Unit, appliances, fixtures, garage doors, and any other component, improvement, or structure upon a Unit within the project. Additionally, all lines, pipes, wiring, equipment, and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, Internet, television, telephone, and any other utility service, wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively shall be the responsibility of the Owner. The District Association shall have no obligation to maintain, repair, or replace any of the foregoing items listed in this section.

Section 4.3. Approval of Alterations and Repairs. Without the prior approval of the Board

of Directors, an Owner shall not replace or make alterations, repairs, or modifications to any part of the exterior of a building including any door, window or other component that the Owner is obligated to maintain. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, or that they comply with particular materials or aesthetics requirements or other standards. The Board of Directors may adopt reasonable Rules related to the oversight and approval of any and all repairs made to Units and exterior building components.

Section 4.4. Principal Association. If the District Association fails to perform its maintenance responsibility as required herein and in the Master Declaration, the Principal Association shall have a right of entry and may perform the same and assess the cost thereof against the District Association or the Units and Unit owners within the District, all as provided in the Master Declaration.

Section 4.5. Determination of District Standard. The District Declarant or District Association may establish a standard for the District (including any additional areas contained in prior or additional phases which are subsequently annexed herein) as to conduct, maintenance or other activity generally prevailing throughout the District, which standard, if established, shall at least meet that of the Standards adapted by the Master Declarant. In the event such a standard is established, it may be amended by the District Declarant or District Association and may be enforced by the District Declarant, District Association or Principal Association. Notwithstanding the foregoing, the District ARC shall determine whether the District or any portion thereof, and all structures, parking areas, landscaping and other improvements located thereon are being maintained in a manner consistent with the District Standards. It is intended that the District Standards shall be uniform and consistent for the existing District Properties and any Additional Properties annexed herein.

Section 4.6. Association Insurance. The District Association shall obtain insurance as required in this Declaration, the Utah Community Association Act (“Act”) or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense. Further, The Association, shall obtain and maintain in effect insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage which is reasonably available, as follows:

- 4.5.1. Blanket property insurance covering “all risks of direct physical loss” on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on:
  - (a) The entire Project, including the Common Area and all buildings including all Units, fixtures, and building services equipment as provided in the Act.
  - (b) The Common Area (including Limited Common Area);
  - (c) Property within any Service Area, to the extent specified in any applicable Supplement; and

- (d) Other portions of the Areas of Common Responsibility, to the extent that the District Association has responsibility for repair or replacement in the event of a casualty.

If such coverage is not generally at reasonable cost, then "broad form" coverage may be substituted. The limits of District Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances, costs and codes.

- 4.5.2. Commercial general liability insurance on the Area of Common Responsibility, insuring the District Association and its Members (and guests of Members or those individuals approved by the Board of Directors) for property damage or personal injury caused by the negligence of the District Association or any its Members, employees, agents, officers, directors, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least Two Million and 00/100 dollars (\$2,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonable prudent person would obtain, the District Association shall obtain such additional coverage or limits;
- 4.5.3. Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- 4.5.4. Directors and officers liability coverage with a limit of at least one million and 00/100 dollars (\$1,000,000.00); and
- 4.5.5. Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling District Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The District Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the City of Eagle Mountain, Utah area. In the exercise of its business judgment, the District Board may obtain additional coverage and higher limits than this Section requires.

- 4.5.6. Deductibles. The District Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 4.5 hereof. If a loss occurs that is covered by a property insurance policy in the name of the

Association and another property insurance policy in the name of an Owner:

- (a) The Association's policy provides primary insurance coverage, and:
  - i) the Owner is responsible for the Association's policy deductible; and
  - ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (b) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and

If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

- (c) **Association's Obligation to Segregate Property Insurance Deductible.** The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
  - (d) **Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.
  - (e) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- 4.5.7. Policy Requirements. All District Association policies shall provide for a certificate of insurance to be furnished to the District Association and, upon request, to each

Owner. To the extent available at reasonable cost and terms, all District Association insurance shall:

- (a) Be written with a company authorized to do business in the State of Utah that satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the District Board deems appropriate;
- (b) Be written in the name of the District Association as trustee for the benefited parties. All policies shall be for the benefit of the District Association and its members, except that policies on Limited Common Areas shall be for the benefit of the Owners of Units with the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interest may appear;
- (c) Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (d) Contain an inflation guard endorsement;
- (e) Include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;
- (f) Provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the District Association;
- (g) Provide a waiver of subrogation against any Owner or household member of an Owner; and
- (h) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the District Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the District Association and allowance of a reasonable time to cure the defect or violation.

In addition, the District Board shall use reasonable efforts but shall not be required, to secure insurance policies that provide:

- (a) A waiver of subrogation as to any claims against the District Association's directors, officers, employees and manager;
- (b) A waiver of the insurer's right to repair and reconstruct instead of paying cash;
- (c) An endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;
- (d) An endorsement requiring at least 30 days' prior written notice to the District Association of any proposed cancellation, substantial modification, reduction of coverage, increase in premiums, or non-renewal;

- (e) A cross liability provision; and
- (f) A provision vesting in the District Board exclusive authority to adjust losses and claims. However, Mortgagees having an interest in such losses and claims may not be precluded from participating in the settlement negotiations, if any, related to the loss and claim.

4.5.8. Insurance Premiums. Premiums for all District Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to a particular Service Area shall be a Service Area Expense, unless the District Board reasonably determines that other treatment of the premiums is more appropriate.

Section 4.7. Restoring Damaged Improvements. In the event of damage to or destruction of portions of the Common Area, Limited Common Area and Area of Common Responsibility for which the Association has the responsibility to maintain, the Association shall repair or reconstruct the damaged Common Area improvements.

- 4.6.1. The Association shall not be required to repair or reconstruct such damaged improvements if: (1) this Declaration is terminated or the property has been withdrawn from the District Property pursuant to Section 2.5; (2) the repair or restoration would be illegal under any applicable state or local statute or ordinance, or (3) the District Declarant and at least seventy percent (70%) of the Unit Owners entitled to cast votes affirmative vote not to repair or restore the damaged improvements within sixty (60) days after the loss, and in the case of any Limited Common Areas, at least one hundred percent (100%) of the Unit Owners of the damaged Limited Common Area.
- 4.6.2. The Board or its duly authorized agent shall have the sole and exclusive authority, standing responsibility to file and adjust all insurance claims and obtain all settlements therefrom.
- 4.6.3. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.
- 4.6.4. If a decision is made not to repair to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community Wide Standard.
- 4.6.5. The insurance proceeds attributable to any common walls, party walls, Units or Limited Common Areas that are not repaired or restored shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas

were assigned, or to their respective Mortgagee, as their interests may appear, in proportion to their respective liability for Association expenses. The Association shall retain and place in a capital improvement account for the benefit of all Owners, the Owners within the affected Service Area, or the Owners or Units to which such Limited Common Areas were assigned, as appropriate, any insurance proceeds remaining after paying the costs of the repair or restoration of after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

- 4.6.6. If insurance proceeds are insufficient to cover the costs of repair or restoration, the Board may, without a vote of the Unit Owners, levy Special Assessments to cover the shortfall against those Owners and Units responsible for the premiums for the applicable insurance coverage under Section 4.5.

## **ARTICLE V.**

### Use Restrictions

#### Section 5.1. General Provisions.

- 5.1.1. The District Property (including any existing or Additional Properties contained in existing or additional phases of Trailhead Townhomes Subdivision which are subsequently annexed herein or into which this Trailhead Townhomes Subdivision is annexed into) shall be used only for such purposes as are permitted in this District Declaration, any Supplemental Declaration or Annexation Agreement, and the Master Declaration or other covenants or deed restrictions pertaining thereto, subject to such further restrictions as may be set forth in any Development Order or applicable Development Approvals. No changes in the uses and intensities of uses permitted in the District Declaration or any Development Order (and other applicable Development Approvals) pertaining to the District Property may be made, nor may any application for approval therefore be made to any governmental authority, without the prior written approval of the District Declarant, as long as District Declarant owns any land within the District Property or which may be annexed thereto.
- 5.1.2. The District Property (including any existing or additional areas contained in existing or additional phases which are subsequently annexed herein or into which this Trailhead Townhomes Subdivision is annexed into) shall also be subject to such further restrictions as District Declarant may impose under and by virtue of deeds to Owners. Restrictions identified in any such deed as being enforceable by the District Association shall be enforceable by the District Association, acting through the Board of Directors, in the same manner as if such restrictions were set forth in this District Declaration. In addition, the Principal Association, acting through its board of directors, shall have standing and power to enforce restrictions and standards imposed under the District Declaration and to enforce deed restrictions on the District Property which may be enforced by the District Association.

- 5.1.3. The District Association, acting through its Board of Directors, shall have the authority to make, enforce, grant exceptions, amend and delete standards and restrictions governing use of the District Property (including any existing or additional areas contained in existing or additional phases which are subsequently annexed herein or into which this Trailhead Townhomes Subdivision is annexed into) in addition to those contained herein, and to impose reasonable user fees and assessments for use of the Common Areas (including any existing or additional areas contained in existing or additional phases which are subsequently annexed herein or into which this Trailhead Townhomes Subdivision is annexed into), provided however, should such standards and restrictions be in conflict with or less stringent than those contained in the Master Declaration, then the terms and conditions of the Master Declaration shall control. Sanctions may include reasonable monetary fines which may be secured by a lien upon an Owner's Unit or Unplatted Parcel in the same manner as delinquent Assessments, all as more particularly set forth in the Bylaws. During such time as District Declarant owns any land which is subject to the District Declaration, any standards and restrictions governing the use of the District Property made, amended or deleted, shall not apply to the District Declarant and that portion of the District Property owned by it unless District Declarant consents in writing thereto.
- 5.1.4. The Board of Directors may delegate its power and authority to enforce restrictions pursuant to this Article V to a Covenants Committee or third party as provided in the Bylaws.

Section 5.2. Use of Property. Each Unit or Unplatted Parcel in the District shall be used solely for one single-family detached residential dwelling, or one single-family attached dwelling unit in those areas of the Plat designated for such attached housing uses, and any approved out-buildings. Building are designed and allowed to be attached to the adjoining building on the adjoining lot by use of a common wall or party wall with zero (0) side-yard setbacks between adjoining units and buildings.

Section 5.3. Architectural Review Committee Approval. The Plans and Specifications, including the location of all improvements must be approved in writing by the District Architectural Review Committee (the "ARC" or "District ARC") prior to the commencement of any construction in accordance with and subject to the provisions of Article V hereof. No person commencing construction prior to receipt of such written approval shall acquire any vested rights in any such improvement.

Section 5.4. Design and Development Guidelines. The District ARC shall prepare and promulgate of behalf of the Board of Directors, design and development guidelines, and application and review procedures, which shall include provisions of the Planning and Design Criteria applicable to the Properties or any portion thereof. The guidelines and procedures shall be those of the District Association, and the District ARC shall have the sole and full authority to prepare and to amend the same, subject to approval of the City (if applicable), the Master Declarant and Master Association. The District Association shall make copies of the guidelines and procedures available, upon request, to Owners, builders and developers who seek to engage in development of or



construction upon any portion of the Properties, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. Until the date the design and development guidelines are adopted and approved by the District ARC and the City (if applicable), the architectural guidelines set forth herein shall be the architectural guidelines and requirements for property improvement within the District. It is intended that the District Standards shall be uniform and consistent for the existing and future areas including Park Place at Trailhead Subdivision.

Section 5.5. Appointment of District Review Committee. Until Declarant no longer owns any portion of the Properties or any land which may become part of the Properties by virtue of annexation, Declarant retains the right to appoint and replace from time to time all members of the District ARC. The District ARC shall consist of at least three (3), but no more than five (5), persons who need not be Owners or members of the District Association. There shall be no surrender of such right of appointment prior to that time except in the Declarant's sole discretion, in and by a written instrument in recordable form executed by Declarant. Upon the expiration of such right of appointment, the Board of Directors shall appoint the members of the District ARC. The term of office for a member of the District ARC shall be as determined by Declarant until it no longer has the power to appoint members to the District ARC, at which time the Board of Directors may determine the term of office for members of the District ARC.

Section 5.6. Property Line Setbacks. Any structure to be constructed on a Lot or a Unit shall comply with the following property line minimum setbacks:

For all single family lots the following minimum lot designs and configurations will apply:

- Front Yard: Fifteen (15) feet from front property line to the front of house foundation containing the living space.
- Side Yard: Zero (0) feet between adjoining lots or units, with common or party walls required between buildings.
- Side Yard on Corner Lots: Five (5) feet on the side yard adjacent to public street.
- Rear Yard: Ten (10) feet from rear of property line to rear foundation of house.
- Minimum Front Lot Width: The Front lot width shall be a minimum of twenty (20) feet.
- Rear Alleyways: Rear access and service alleyways are not required.
- Garage Door Setback: Garage doors shall be set back from the front of the lot a minimum of twenty (20) feet.
- Garage Door Orientation: Side entry garages allowed but not required.
- Building Walls: Side and rear exterior building walls may be extended for greater than forty (40) feet without any break or offset in either the horizontal or vertical plane.

Porches: Minimum mandatory size front porches are not required.

Section 5.7. Building Sizes. The minimum size of each single story dwelling unit shall be eight hundred (800) square feet of interior floor space. The minimum size of each two-story or split-level dwelling unit shall be one thousand (1,000) square feet of interior floor space. Interior floor space does not include unfinished basements, garages, porches, patios, decks, balconies, overhangs, or other unfinished living areas. Service structures, club and pool houses shall have no minimum required setbacks or building sizes.

Section 5.8. Exterior Surfaces. The exterior surfaces of any building may be vinyl siding, stucco or and such other materials and of colors approved by the District ARC. All exterior materials shall be fire retardant. Aluminum soffits and fascia are acceptable. On exterior front surface elevations, which have decorative facing, such as brick or rock, the decorative facing is not required to wrap around the sides of the building.

Section 5.9. Roofing Materials. All roofs shall be shingled with a minimum of 3-tab 30 year (300 lb. minimum) architectural grade asphalt shingles, tile, or metal quality, with a pitch or slope of a minimum of 3:12 for all main dwelling units. The actual material is subject to prior approval of color and texture by the District ARC, but shall meet the preceding minimum specifications. The roofing material shall be fire retardant.

Section 5.10. Height. No building shall exceed thirty-five (35) feet in height measured from the highest natural ground elevation adjacent to such building to the highest point of the ridge line of such building.

Section 5.11. Parking and Garages. Each Unit shall have an enclosed garage space capable of parking at least one (1) automobile with no mandatory minimum interior square footage. Said garage may be detached from or attached to the main residential structure. All commercial vehicles, recreational vehicles, buses, trucks, pick-up trucks, vans, tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and other water craft, and boat trailers must be parked entirely within a garage or behind a fence unless otherwise permitted by the District Association. Storage of any of the foregoing in the yard of a Unit or Unplatted Parcel shall not be permitted unless otherwise permitted by the District Association. No garage may be altered in such a manner that the number of automobiles that could have reasonably been parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed. Garage doors shall be closed except when reasonably necessary for use of garage. (This section shall not apply to construction or similar vehicles or construction trailers which may be parked on an Unplatted Parcel or a Unit, but only during such reasonable period of time within which construction of improvements thereon is occurring.)

Section 5.12. New Construction. All dwelling units shall be of new construction. No used or existing buildings shall be moved onto or maintained on any Lot. No other building (including but not limited to playhouses and storage sheds) may be moved onto or maintained on a Lot without the prior written approval of the District ARC. No off-site built dwelling units, of whatever nomenclature or design, including but not limited to any mobile homes, manufactured homes, or

modular homes, shall be allowed to be brought onto, installed or maintained on any portion of the District Property or any Lot or Unit. No geodesic domes or A-frame structures may be constructed or maintained on any lot. All outbuildings, sheds and accessory structures shall comply in all respects to the architectural guidelines and setbacks contained herein.

Section 5.13. Outbuildings. Each Lot or Unit shall be permitted to have one detached outbuilding or storage building, such as a utility shed. All such detached structures shall comply with all set back requirements, shall be constructed and painted in a style and color similar to the main residence, and shall not be used for human habitation. A lot Owner must obtain written permission and consent from the Homeowners Association, and any required City building permit, prior to construction of any outbuilding. Animal pens, stalls, and shelters, barns, stables, or similar structures are all prohibited.

Section 5.14. Storage of Building Material. No building material shall be stored on any Lot or Unit except temporarily during construction of an improvement on that Lot or Unit, or during its alteration, renovation, repair, remodeling, and then only during such time as an active and valid building permit is in force.

Section 5.15. Occupancy During Construction. No improvement structure shall be occupied in the course of the original construction until all required certificates of occupancy or completion have been issued by the appropriate governmental authorities. All work of construction shall be prosecuted diligently and continuously from the time of commencement until completed, which period shall not exceed twenty-four (24) months from the date the site excavation was commenced.

Section 5.16. Temporary Structures. No temporary building, improvement or structure, including but not limited to any trailer, mobile home, RV, tent, or shack, shall be placed or maintained upon any individual lot or unit except that temporary structures necessary for storage of tools and equipment or sales personnel, during actual construction may be maintained with the prior written approval of the District ARC, such approval to include the nature, size, location and duration of such temporary structure.

Section 5.17. Construction Activity. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction of improvements by any Owner, provided that when completed such improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that such construction is pursued to completion with reasonable diligence is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including by not limited to any provision prohibiting temporary structures, may be granted by the District ARC, provided that such waiver shall be only for the reasonable period of such initial construction. Notwithstanding the above, construction activities shall not be conducted at such hours as to constitute an unreasonable nuisance. All lots shall be kept clean of construction debris, waste and trash during construction and be placed in approved containers until off-site disposal. All construction debris,

trash, and waste shall be regularly removed from each site. During construction, the builder shall have on site an approved trash and construction container. All building material, building trash or debris shall be placed in such container at least daily, and the container shall be emptied off site when full. No trash or construction debris shall be buried on site nor allowed on any adjoining property.

Section 5.18. Driveways. All driveways shall be constructed of hard surfaced materials such as concrete, asphalt, paving stones, brick or similar material. All driveways shall be properly maintained, replaced, restored and promptly repaired by the Owner of the lot. All driveways shall be constructed, installed, repaired and replaced to extend from the edge of that portion of the dwelling foundation serving the garage to the edge of the street pavement.

Section 5.19. Mail Boxes. There shall be standard and uniform style and design of mailboxes for the subdivision. All owners shall be responsible to install, maintain, repair, and promptly restore or replace, the approved mail box. All mail boxes shall be constructed and maintained in accordance with the rules and regulations of the Postmaster.

Section 5.20. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any portion of the District Property, with the exception of dogs, cats, or other usual and common household pets, which may be kept or permitted in a reasonable number so as not to create a nuisance as determined by the District Association, provided same are not bred for commercial use; and provided, however, those pets which are permitted shall be sheltered inside approved structures. All dogs, cats and other household pets allowed hereunder must be leashed when outside and shall not be permitted to run loose. Those pets which, in the sole discretion of the District Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of the District Property may be removed by the Board of Directors and handed over to the appropriate state or county authority. No farm or exotic animals, including but not limited to horses, cows, pigs, donkeys, mules, emus, game animals, buffalo, sheep, goats, and llama, shall be allowed to be kept, maintained or bred on any Lot or Unit. No animal shall be allowed to create any objectionable odor, pests, disease, or insects. Each Owner of any pet or animal shall be financially responsible and liable for any damage cause by such pet or animal. Each Owner shall be responsible for the pickup and proper disposal of any excrement deposited by his pet or animal.

Section 5.21. Nuisance. No portion of the District Property shall be used, in whole or in part, for the storage of any property or thing that will cause such portion of the District Property to appear to be in an unclean, unsightly, unhealthy, or unkempt condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon, nor shall any use or practice be allowed upon any portion of the District Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the District Property or the Properties, or which shall be a source of material and unreasonable annoyance or discomfort to Owners or their tenants or invitees, or which materially and unreasonably interferes with the peaceful possession and enjoyment of the District Property. No illegal, noxious, or offensive activity shall be carried on or conducted upon any portion of the District Property. The pursuit or hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other

mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall occur only within a garage or other similar walled interior area of the District Property and shall not be visible to view from the street curb.

Section 5.22. Water and Sewage Facilities. No individual water supply system or individual sewage disposal system shall be permitted for any portion of the District Property. All residential units in the District are required to be connected to Eagle Mountain City's municipal utility systems, including, but not limited to, potable water, waste water, storm water drainage, gas, and electricity.

Section 5.23. Landscaping. Landscaping on any portion of the District Property and storm water drainage and retention features located on and serving only a Unit or Unplatted Parcel (and not a part of the Master Drainage System or District Drainage System) shall be continuously maintained in good, aesthetically pleasing condition by the Owner thereof consistent with the Landscape Design Criteria for the District as may be promulgated and amended by the District ARC from time to time. Each individual Lot or Unit shall comply, at a minimum, with the following:

- 5.23.1. No lot shall be allowed to accumulate any growth of weeds, underbrush, collection of tumbleweeds, or other plant growth greater than 12 inches high (other than trees, flowers, hedges, or similar ornamental plants). Upon the violation of this provision, the District ARC shall notify the Owner in writing of the violation either by mail, personal delivery or posting of the notice on the property. If the violation is not corrected within thirty (30) days from the date of the notice, the District ARC shall have the right to enter onto any lot in violation of this provision to correct the violation. Such lot shall be assessed the costs incurred by the District ARC to correct the violation, which shall be deemed a special assessment against the individual lot.
- 5.23.2. No Owner shall disturb, damage or alter the sidewalk or street curb. No Owner shall alter or damage any drainage structures. Each Owner shall be liable for any violation of this provision.
- 5.23.3. All front and side yards shall be landscaped (installed grass and an underground permanent irrigation system), as described hereinafter, from the top-back edge of the curb of the road adjoining the lot (or from the edge of the pavement if no curb), extending back to a horizontal line created by extending the plane of the rear of the house to the side lot lines plus fifteen (15) feet. Such yard landscaping shall be installed and completed no later than: (a) within one hundred twenty (120) days after issuance of a building permit for the construction of a residence on a lot; or, (b) if the building permit for the construction of a residence on a lot was issued after September 1 and winter weather prevented the installation of the required landscaping within the time specified in preceding provision, the required landscaping shall be installed no later than April 1 of following year. In addition to the landscaping required for all lots, corner lots shall have landscaping (installed grass and underground permanent irrigation system) in the entire outside side yard area, which is defined as that area between the side of the house and the side street by extending the foundation line of the side of the house facing the side street from

the front of the lot to the rear of the lot, which yard landscaping shall be installed at the same time as the front yard landscaping is installed. Within one (1) year after issuance of the certification of occupancy, the improved irrigated lawn areas shall be installed and extended to the rear line of the house.

- 5.23.4. Such initial and future lot landscaping shall include, at a minimum, sod and underground irrigation, two (2) evergreen or leaf-bearing trees in the front yard with a minimum caliper diameter of one and one-half (1 1/2) inches.
- 5.23.5. Each lot Owner shall maintain the landscaping to the original boundaries set forth above. A lot Owner shall maintain the area in the front of each lot lying between the sidewalk and the edge of the street pavement. Such area shall be kept and maintained in the same condition and material as the main front lawn of the lot.
- 5.23.6. All exterior utility lines and services shall be installed and maintained underground.
- 5.23.7. All areas designated as private parks or owned by the Homeowners Association shall be maintained in a safe, clean and tidy manner.

Section 5.24. Vehicles and Repair. No inoperative cars, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any portion of the District Property for a continuous period in excess of forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in an enclosure and not visible from the street or any portion of the District Property or Properties. All vehicles within the District Property must have current state issued motor vehicle registration tags displayed on the vehicle.

Section 5.25. Storage. Unless specially approved by the District ARC, no materials, supplies, or equipment (except during the construction of improvements) shall be stored on any portion of the District Property, except inside a residence and the garage. The foregoing provisions shall not apply to the Master Declarant or the District Declarant.

Section 5.26. Wells. Without the prior written consent of the District ARC, no well for the production of water, whether potable or for irrigation or other limited purposes, shall be dug, used or otherwise permitted on the District Property.

Section 5.27. Mining and Excavation. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any portion of the District Property, nor shall any oil, natural gas, petroleum, rock, gravel or other minerals or substances of any kind be produced or extracted therefrom. No clearing or excavation of any portion of the District Property shall occur except in connection with the construction approved by the District ARC, or maintenance or repair of improvements on the District Property.

Section 5.28. Signs. With the exception of one (!) "For Sale" sign per Unit or Unplatted Parcel not to exceed the size established by the District ARC, no sign of any kind shall be erected on any portion of the District Property without the prior written consent of the District ARC. Such restriction on signage shall not apply to the District Declarant as long as the District Declarant owns

property within the District Property.

Section 5.29. Antennas; Satellite Dishes. No exterior television or radio antennas, aerials or satellite dishes of any kind shall be placed, allowed, or maintained upon any portion of the District Property, including any Unit or Unplatted Parcel, unless permitted by the District ARC and the District Association. Provided, however, that each dwelling Unit shall be permitted to install and maintain one (1) exterior mounted dish satellite receiver dish not exceeding twenty (20) inches in diameter. As far as practical, each exterior antenna shall be placed on the rear or side wall of the house. No external antenna shall cause the total height of the dwelling Unit to exceed thirty-five (35) feet in height.

Section 5.30. Clotheslines, Garbage Cans and Tanks, and External Equipment. All clotheslines, garbage cans, above-ground tanks, air-conditioning compressors, pool pumps and other similar items of external equipment shall be located or screened, by vegetation or shadow-box enclosures approved by the District ARC, so as to be concealed from view from neighboring Units, Unplatted Parcels or portions of the District Property or Properties.

Section 5.31. Swimming Pools. No above ground swimming pools shall be erected, constructed or installed on any portion of the District Property. All swimming pools and spas shall be maintained within either the structure, a screened enclosure, or within a fence, each of which shall have a self-locking gate or door.

Section 5.32. Tents, Trailers and Temporary Structures. Owners or occupants shall not place upon any portion of the District Property, any tent or trailer or any structure of a temporary nature, without obtaining the prior written approval from the District Association and the District ARC.

Section 5.33. Drainage. All storm water from any portion of the District Property shall only drain into or onto contiguous or adjacent street rights-of-way, drainage easements, retention areas, Common Areas or Areas of Common Responsibility in the manner approved by the District ARC and the owner and operator of the Master Drainage System or the District Drainage System, as the case may be, if such drainage is part of the Master Drainage System or the District Drainage System, respectively. If such drainage is not part of the Master Drainage System or the District Drainage System and is not required to be part of the Master Drainage System or the District Drainage System, then the manner of its drainage shall be approved by the District ARC and the District Declarant (and at such time as District Declarant owns no portion of the District Property, or property which can be annexed to the District Property, or at such earlier time as District Declarant in its sole discretion may determine, the approval of the District Declarant will not be required, and the District Association and the District ARC shall approve the manner of drainage). No Owner (other than the District Declarant) shall be permitted to alter the grade of or original drainage plan for any portion of the District Property, or change the direction of, obstruct, alter or retard the flow of surface water drainage, nor to erect, place or maintain any structure which shall in any way obstruct drainage devices or facilities or impede their efficient operation unless approved by the District ARC and the owner and operator of the Master Drainage System or the District Drainage System, as the case may be, if such drainage is part of the Master Drainage System or the District Drainage System, respectively, or unless approved by the District ARC and the District Declarant (and at such time as

the District Declarant owns no portion of the District Property or property which can be annexed to the District Property, or at such earlier time as District Declarant in its sole discretion may determine, the approval of the District Declarant will not be required, and the District Association and the District ARC shall approve the manner of drainage), if such drainage is not part of the Master Drainage System or the District Drainage System. The Subdivision and each lot within the subdivision shall have a specific drainage plan and site elevation established to collect and channel the storm water to the front of the lot and into the drainage collection system. No Owner shall change the lot elevations or drainage swale elevations and shall at all times, and under all circumstances, maintain, protect, preserve, repair and restore the drainage swale elevations and surface treatments. On those lots which have a basement and which receive storm water drain runoff from an adjacent lot into the back yard, such lots shall have additional storm water swales established and improved to channel the surface water away from the rear of the lots to the side yards and to the public streets.

Section 5.34. Stormwater Retention Areas. All stormwater collection infrastructure facilities and elements contained, shown and included on the Plat of Subdivision which are dedicated to Public shall be exclusively owned, maintained, and managed by the City. Neither the Owners nor the District shall have any rights or obligations pertaining to any areas or facilities dedicated to the City.

Section 5.35. Walls and Fences. No fences or walls are permitted anywhere in the district property unless approved in advance in writing by the District ARC. Any fence permitted in the District Property may not exceed the maximum height of six (6) feet, except for any fencing along alleyways which are restricted to a maximum height of four (4) feet, and must be constructed with a material approved by the District ARC. All fencing material in the District (including any additional areas contained in additional phases which are subsequently annexed herein) shall be of a uniform material, design, and construction, consisting of tan vinyl material, except as allowed by the District ARC. No chain link or barbed wire fencing shall be allowed. All fences and walls shall be constructed and maintained to allow clear angles of vision from adjoining streets, alleys, and walking areas. The height, material, color, design, and configuration of all fencing, including side yard connecting fencing, shall be uniform within and throughout the entire District and shall be constructed of tan vinyl material. All fencing shall be constructed and maintained in accordance with the architectural standards for fencing established by the District ARC, and no fence may be erected or maintained without the prior written approval of the District ARC. Additional perimeter fencing shall be constructed and uniformly maintained to provide a continuous fence surrounding and enclosing all common parks. Fencing shall not be permitted extending beyond the front of the house, except decorative fencing not exceeding twenty-four (24) inches above ground shall be allowed around flower beds, planters, and as decoration. Such decorative fencing shall not be solid, and shall only be permitted if constructed with slats with gaps between the slats.

Section 5.36. Motorized Vehicles. Motorized vehicles shall not be used on sidewalks, pathways, the alleyways, or Common Areas (unless the Common Areas have been specifically designated for use by motorized vehicles by the District Declarant). Golf Carts may use the foregoing if so determined by the District Declarant, the intent that being such use, if any, shall be limited to reasonable and necessary use for transportation to and from any neighboring golf course. In no event shall any person operate a motorized vehicle or golf cart anywhere within the District Property who does not have a valid driver's license. At such time as the District Declarant no longer



owns any property which is subject to this District Declaration or which can be annexed to the District Property, or at any such earlier time as District Declarant in its sole discretion may determine, the rights reserved to District Declarant in this section shall become rights of the District Association, to be exercised by the Board of Directors.

Section 5.37. Master Standards. The District Property shall comply with the Architectural Standards adapted by the Master Declarant and Master Association, the terms and conditions of the Master Declaration, and the planning and Design Criteria.

Section 5.38. Development. Each Owner shall comply, at its expense, with the requirements of the Development Order as it relates to the Unit or Unplatted Parcel owned by it, and each owner shall otherwise cooperate with the Master Declarant, District Declarant, Principal Association and District Association in their efforts to comply with the provisions of the Development order.

Section 5.39. Occupants Bound. All provisions of the District Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners, shall also apply to all occupants of any portion of the District Property.

Section 5.40. Subdivision of Portion of the District Property. As long as District Declarant owns any land which is subject to this Declaration or which under the terms of this District Declaration could be annexed to the District Property, no portion of the District Property shall be platted, replatted, subdivided or its boundary lines changed, nor shall any portion of a Unit or Unplatted Parcel, less than the whole thereof, be sold, conveyed or transferred except with the prior written approval of the District Declarant, which approval may be granted or withheld in the sole discretion of the District Declarant. Thereafter, no portion of the District Property shall be platted, replatted, subdivided, or its boundary lines changed, nor shall any portion of a unit or unplatted parcel, less than the whole thereof, be sold, conveyed or transferred except with the prior written approval of the District Association. Any such subdivision, boundary line change, platting or replatting shall not be in violation of applicable subdivision and zoning regulations, the Development Order or the Development Approvals. District Declarant, however, hereby expressly reserves the right to plat, replat, subdivide or change the boundary lines of any portion of the District Property owned by the District Declarant and the right to sell, convey or transfer any portion of a Unit or Unplatted Parcel less than the whole thereof, without notice to or the approval or consent of any Person being required.

Section 5.41. Garage or Yard Sales. No garage or yard sales of any kind shall be conducted, nor shall any signage related to any garage or yard sales be erected, in any manner except as specifically provided by rules and regulations promulgated by the District Declarant or the District ARC, which rules and regulations shall address the location, frequency, scope, hours, placement of signs and all other matters relating to garage or yard sales and signage or advertising thereof. Generally, such sales shall be limited to no more than one event per each two month period.

Section 5.42. Enforcement. In the event of the violation of or the failure to comply with the requirements of this Article, and the failure of the owner of the affected portion of the District

Property within ten (10) days following written notice by the District Association of such violation or non-compliance and the nature thereof, to cure or remedy such violation, then the District Association or its duly appointed employees, agents or contractors, shall have the right, but not the obligation, and an easement and license to enter upon the affected portion of the District Property, without being guilty of any trespass therefore, for the purpose of curing or eliminating such violation, all at the sole expense of the owner thereof. Such costs and expenses, including attorneys fees and associated costs whether incurred prior to or subsequent to formal litigation, together with an overhead expense to the District Association of fifteen percent (15%) of the total amount thereof shall be payable by the Owner of the affected portion of the District Property to the District Association within ten (10) days after written notice to the Owner of the amount thereof, which amount shall become or be treated in the same manner as a Special Assessment levied against said portion of the District Property. The District Association may place a lien upon such portion of the District Property to recover such costs and expenses, and attorneys fees, as provided in Article VII hereof, and the District Association may seek all other legal and equitable remedies available to it. The District Association shall also have the right to levy fines against an Owner for the violation of or the failure to comply with the requirements of this Article, or exercise any other remedy available at law, as more particularly set forth in the Bylaws, or the Association's Rules and Regulations. Any rights of the District Association hereunder may also be exercised by the Principal Association as further provided in this District Declaration.

## **ARTICLE VI.**

### Annexation of Additional Property

Section 6.1. Annexation. As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, District Declarant shall have the unilateral right, privilege, and option, from time to time at any time to annex into the District Property any additional property (i) which is either abutting the District Property (including additions thereto), which shall include properties which would abut the District Property but for the existence of a road right-of-way, easement or other similar property grant separating it from the District Property, or (ii) which is so situated that its addition will be consistent with a uniform scheme of development as determined in the sole discretion of District Declarant. It is intended and planned that the additional properties shall be annexed herein upon the recording of the subdivision plat for each of the proposed future phases. This right of annexation by District Declarant shall exist until District Declarant no longer owns any property within the District Property or within the additional property described above which may be the subject of annexation into the District Property. Such annexation shall be accomplished by filing in the public records of Utah County, State of Utah the Covenants, Conditions and Restrictions in form and content substantially similar to the these Covenants, Conditions and Restrictions for such future phases or by the filing of a separate Annexation Agreement annexing such property so as to become part of the District Property and Exhibit A, thereby submitting same to the terms of the District Declaration, which Annexation Agreement shall include the written consent of the Master Declarant and Master Association thereto. Any such annexation shall be effective upon the filing for record of such Covenants, Conditions and Restrictions or the Annexation Agreement unless otherwise provided therein. The District Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property into the District, provided that such transferee or assignee shall be the owner of at least a portion of the District Property or the additional property which may be the subject of annexation to the District Property,

and that such transfer is memorialized in a written, recorded instrument executed by District Declarant. Nothing herein shall obligate District Declarant to annex additional real property into the District Property, nor to continue with annexation, if and when it may be commenced.

Section 6.2. Residential District. The District Property designated or set forth in the current phase and in and any future phases annexed into the District as provided herein (thereby becoming part of the District Property), shall be a part of the Trailhead Townhomes Subdivision Residential District, including any areas designated as the intended future phases of the proposed subdivision of Park Place at Trailhead Subdivision may also include other property (i) submitted to the terms and conditions of the District Declaration by an Annexation Agreement, or (ii) submitted to the terms and conditions of other declarations of covenants, conditions, easements, reservations, reservations and restrictions and not the District Declaration by an annexation agreement, or (iii) submitted to the terms and conditions of other declarations and covenants, conditions, easements, reservations and restrictions and not the District Declaration, provided, however, the Master Declarant by written consent to such Declaration designates such property as part of Trailhead Townhomes Subdivision Residential District, and the governing association for such declaration shall be the District Association. The District Association shall be responsible for carrying out its rights and obligations as provided in any declarations pertaining to Trailhead Townhomes Subdivision and may not decline to accept such rights and responsibilities as to any property contained within Trailhead Townhomes Subdivision. The Units within Trailhead Townhomes Subdivision shall be used for single-family residential purposes unless otherwise specifically provided in this District Declaration, any supplemental Declaration or other declaration of covenants, conditions, easements, reservations and restrictions pertaining to property within Trailhead Townhomes Subdivision.

Section 6.3. Neighborhood Provisions. District Declarant hereby reserves the right to declare that all or any portion of the District Property (including any additional areas contained in existing and additional phases which are subsequently annexed herein or into which this phase is annexed into) shall constitute one or more neighborhoods. Each Neighborhood may, but shall not necessarily, be comprised of residential Units, Common Areas, facilities or properties which differ in size, character, scope, number, Common Expenses, appearance, intended use or maintenance requirements than other neighborhoods within the District Property, and may, therefore, be subjected to certain covenants and restrictions which may not apply uniformly or at all throughout the balance of the District Property. Accordingly, District Declarant hereby expressly reserves the unilateral right, privilege and option, from time to time at any time to modify, by amendment, supplement or Annexation Agreement to this District Declaration, the various covenants and restrictions set forth herein in a manner which may vary from one Neighborhood of the District Property to another, but which shall be applied and enforced consistently and uniformly in the Respective Neighborhoods to which each modification, if any, may apply. The covenants, conditions, easements, reservations and restrictions set forth in this District Declaration shall be presumed to apply uniformly throughout the District Property (including any additional areas contained in additional phases which are subsequently annexed herein) unless the relevant provision of the District Declaration specifically provides that it shall only apply to a Neighborhood of the District Property as identified therein. In the event that a provision of this District Declaration provides that it shall apply only to a specific Neighborhood of the District Property, then such specific provision, amendment or supplement shall control in the event of a conflict with any

provision of the District Declaration that would otherwise apply uniformly throughout the District Property. Notwithstanding anything to the contrary set forth elsewhere in this District Declaration, the following provisions shall apply:

- (a) Neighborhood Restrictions shall identify the Neighborhood to which the provisions are intended to apply. Neighborhood Restrictions may be set forth in this District Declaration, in the Annexation Agreement which submits additional property to the District Declaration, or in amendment or supplement to the District Declaration.
- (b) Neighborhood Restrictions may modify, alter, delete, or expand the application of any one or more of the provisions of the District Declaration in any manner which is materially different, in whole or in part, from the application of similar provisions to other neighborhoods of the District Property, including, but not limited to, provisions relating to calculation of Assessments, descriptions of Common Areas and Areas of Common Responsibility, calculation and apportionment of Common Expenses, rights of Owners, leasing, use restrictions, landscaping, storage, parking, improvement, structures, party facilities and maintenance responsibilities.
- (c) At the time of recording of the District Declaration, the District Declarant is not obligated to undertake or complete the annexation of any additional property or Neighborhood into the District Property, and nothing in this District Declaration shall be construed to obligate the District Declarant to commence or undertake, or, if and when commenced, to continue, any annexation of additional property or Neighborhoods into the District Property.
- (d) Common Expenses, Assessments (both regular and special) and all other costs and expenses of the District Association may be allocated and apportioned by the Board of Directors among the varying Neighborhoods in the District Property (including any additional areas contained in additional phases which are subsequently annexed herein) in a manner that shall reflect, in the reasonable judgment of the Board of Directors, the operational and maintenance responsibilities of the District Property and of the respective Neighborhoods thereof. The Board of Directors shall determine, in its reasonable discretion, which common expenses shall be applied in uniform fashion among all owners in the District Property, and which Common expenses may be specific or unique to the operation and maintenance responsibilities of a particular neighborhood therein, and which may be levied upon and paid by only the Owners in that particular Neighborhood without allocation among or contribution by other Owners in the District Property. Unless and until the Board of Directors shall make an affirmative determination that a different allocation of common area or special assessments shall apply, all common area and special assessments shall be uniform and consistent for all phases. Such allocations or apportionments of Common Expenses by the Board of Directors shall be reflected on the District Association budget for each fiscal year, but shall not require the preparation or adoption of separate budgets for any Neighborhood in the District Property.

- (e) The District ARC shall have the authority, on behalf of the Board of Directors, to prepare and promulgate design and development guidelines and application and review procedures for all portions of the District Property in which such guidelines and procedures may differ from those promulgated generally for the District Property or for the Properties which are subject to the Master Declaration.

Section 6.4. Amendment. This Article shall not be amended without the written consent of the District Declarant, and as the provisions pertaining to it, the Master Declarant. The provisions of this Declaration establishing and regulating architectural guidelines for the District shall not be amended without the express written consent of the District Declarant, the Master Declarant and Master Association.

## ARTICLE VII.

### Assessments

Section 7.1. Creation of Assessments. There are hereby created Regular Assessments for Common Expenses as may from time to time specifically be authorized by the District Association to be commenced at the time and in the manner set forth herein. Such Assessments may include an additional reasonable flat-fee for use of any recreation facilities approved by the Board of the District Association. Special Assessments shall be levied as provided in Section 7.3 of this Article VII. Each Owner by acceptance of a deed or recorded contract of sale to any portion of the Properties is deemed to covenant and agree to pay these Assessments. The District Declarant shall be exempt from all Assessment (Regular, Special, or otherwise) obligations in this Article for any Units or Unplatted Parcels which the District Declarant or its affiliates may own and the District Declarant's ownership of Units or Unplatted Parcels shall not be factored into the "assignment of points" calculations described below. Except as may be otherwise provided in Article VII, Section 7.3, Assessments shall be levied on all Units or Unplatted Parcels according to the following formula:

(a) Assignment of Points.

- i. Three (3) points per acre or portion thereof shall be assigned to an Unplatted Parcel.
- ii. For those portions of the District which are subject to a Plat or are otherwise designated by District Declarant as a Unit, each Unit shall be allocated one (1) point.

Section 7.2. Allocation of Assessments. The percentage of the total Assessment to be levied on a particular Unit or Unplatted Parcel shall be computed by dividing the total points assigned to that Unit or Unplatted Parcel subject to the assessment by the total points for all the Units and Unplatted Parcels in the District Property subject to the Assessment. The percentage of the total Assessment for each Unit or Unplatted Parcel shall be computed annually by the District Association. The Assessment for a Unit or Unplatted Parcel shall be arrived at by multiplying the total budget amount or total Assessment adopted by the Board of Directors (as it may be amended from time to time) by the applicable percentage of the total Assessment computed for such Unit or Unplatted Parcel. Upon Annexation of additional property into the District Property, Assessments

shall be recomputed under the above formula.

Section 7.3. Special Assessments. Special Assessments shall be levied as provided in Section 7.3 of this Article VII. In addition to the Regular Assessments authorized in Section 7.1 of this Article VII, the District Association may levy a Special Assessment or Special Assessments from time to time. The obligation to pay Special Assessments shall generally be computed on the same basis as for Regular Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board of Directors, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board of Directors so determines. The District Association also may levy a Special Assessment against any owner individually and against such Owner's Unit or Unplatted Parcel to reimburse the District Association for costs incurred in bringing an Owner and his Unit into Compliance with the provisions of this Declaration, which special assessment may be levied by the District Association after notice to an Owner and an opportunity for a hearing. The District Association may also levy a Special Assessment against the Units in any District to reimburse the District Association for costs incurred in bringing the District into compliance with the Provisions of this Declaration, which Special Assessment may be levied upon the vote of the Board of Directors after notice to the senior officer of the District Association or District Committee and an opportunity for a hearing. At no point shall the District Declarant or its assigns be liable for Special Assessments for any Units or Unplatted Parcels which it may own.

Section 7.4. Lien for Assessments. Upon recording of a notice or claim of lien on any Unit or Unplatted Parcel, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens, except: (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (b) the lien or charge of any first mortgage or deed of trust of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

Section 7.5. Date of Commencement of Assessments. The Assessments provided for herein shall commence as to each Unit or Unplatted Parcel on the first day of the first month following: (i) the date of conveyance of the Unit or Unplatted Parcel by Declarant; or (ii) the effective date of the first budget, whichever is later. The first Regular Assessment shall be adjusted according to the number of days remaining in the fiscal year at the time Assessments commence as to the Unit or Unplatted Parcel.

Section 7.6. Collection and Enforcement. All Assessments, together with interest, penalties, late charges, processing and other fees, costs, expenses and reasonable attorneys' and paralegals' fees, shall be a charge on the land and shall be a continuing lien upon the Unit or Unplatted Parcel against which each Assessment is made. All Assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit or Unplatted Parcel at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit or Unplatted Parcel pursuant to foreclosure of a first Mortgage, shall be liable for unpaid Assessments which accrued prior to such acquisition of title. The failure of the District Association to send a bill to a Member shall not relieve any Member of his or her liability for any Assessment or charge under this Declaration, but the

Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Member on the records of the District Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment.

Section 7.7. Foreclosure of Lien. The District Association shall have the power to bid for the Unit or Unplatted Parcel at foreclosure sale and to acquire and hold, lease, mortgage, and convey at the same time. During the period in which a Unit or Unplatted Parcel is Owned by the District Association following foreclosure: (a) no Assessment shall be assessed or levied on it; and (b) each other Unit or Unplatted Parcel shall be charged, in addition to its usual assessment, its equal pro rata share of the Assessment that would have been charged such unit had it not been acquired by the District Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 7.8. Estoppel Letters. The District Association shall, upon written demand at any reasonable time, furnish to any Owner liable for any type of Assessment a certificate in writing setting forth whether such Assessment has been paid as to any particular Unit or Unplatted Parcel. Such certificate shall be conclusive evidence of payment to the District Association of such Assessment therein stated to have been paid. The District Association may require a reasonable time period and the advance payment of reasonable processing fee for the issuance of such certificate.

Section 7.9. Payment Dates; Installments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the entire Assessment in the event of delinquent payments, including, without limitation in the case of the Regular Assessment, acceleration of payment of Regular Assessment for the entire fiscal year, and acceleration of payment of the full amount of any Special Assessment. The Board of Directors may in its sole discretion grant an option for the regular Assessment to be paid in installments rather than annually in advance, subject to an additional processing fee and interest being due if such option is elected. Unless the Board of Directors otherwise provides, the Regular Assessment shall be paid in monthly installments.

Section 7.10. Non-waiver of Assessment. No Owner may waive or otherwise exempt himself from liability for the Assessments provided herein by non-use of the Common Area (or any recreation facility) or by abandonment of the Unit or Unplatted Parcel against which the Assessments are made. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off against an Assessment shall be claimed or allowed by reason of any alleged failure of the District Association to take some action or perform some function required to be taken or performed by the District Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the District Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

Section 7.11. Annual Budget. It shall be the duty of the Board of Directors at least sixty

days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses during the coming fiscal year. The budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. Such capital budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board of Directors shall set the capital contribution, if any, in an amount sufficient to permit the District Association to meet the projected capitals needs, as shown on the capital budget, the period of the budget. The Board of Directors shall cause a copy of the Common Expense budget and a notice of the amount of the Regular Assessment to be levied against each Unit for the following fiscal year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and Regular Assessment shall become effective upon distribution to the Owners as provided above.

Notwithstanding the foregoing, however, in the event the Board of Directors fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

In the event that the Board of Directors shall determine during any fiscal year that the Regular Assessment established for such fiscal year is or will become inadequate or insufficient to meet all Common Expenses for such fiscal year, for whatever reason, the Board of Directors shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular Assessment for such fiscal year, issue a supplemental estimate of Common Expenses to all members of the Association and within thirty (30) days thereafter establish, make, levy, impose, enforce, and collect a supplemental or revised Regular Assessment for such fiscal year.

Section 7.12. Subordination of the Lien to First Mortgages. The lien of Assessments, including interest, costs and attorney's fees, shall be subordinate to the lien of any first Mortgage upon any Unit or Unplatted Parcel. The sale or transfer of any Unit or Unplatted Parcel shall not affect the Assessment lien. However, the sale or transfer of any Unit or Unplatted Parcel pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit or Unplatted Parcel from lien rights for any Assessments thereafter becoming due. When a Mortgagee holding an institutional first Mortgage of record or other purchaser of a Unit or Unplatted Parcel obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or Assessments by the District Association chargeable to such Unit or Unplatted Parcel which became due prior to the acquisition of title to such Unit or Unplatted Parcel by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all the Units or Unplatted Parcels, including such acquirer, its successors and assigns.

Section 7.13. Exempt Property. Notwithstanding anything herein to the contrary, the following property shall be exempt from the payment of Assessments:

- (a) All Common Area under this Declaration and any District Declaration;
- (b) All property dedicated to and accepted by any governmental authority or public



utility, including, without limitation, public schools, public streets and public parks, if any;

- (c) All real property not within a Unit or Unplatted Parcel which is part of the Master Drainage System; and
- (d) Any Unit or portion of the District Property owned in whole or in part by the Declarant.

Section 7.14. Alternative Billing of Assessments. The Master Association or District Association may, in lieu of collecting Assessments on an individual basis from each Owner, bill any District Association or District Committee for the combined Regular Assessments due with respect to all the Units or Unplatted Parcels within each such District. Each District Association or District Committee, as the case may be, shall pay the Regular Assessments due for all Units or Unplatted Parcels within the District, or within the Master Association, promptly upon receipt of any such billing. If any District Association or District Committee fails to pay the total combined Regular Assessments within thirty (30) days after the receipt of a bill therefore, the District Association shall thereupon send notice of the Regular Assessment due to each Owner of a Unit or Unplatted Parcel within the District and such Regular Assessment shall then be payable by each such Owner. In the alternative, the District Association may elect to sue any District Association or District Committee for the payment of all the Regular Assessments due for all Units within the District.

Section 7.15. Reinvestment Fee. Subject to the terms and conditions of this Section, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

1) Upon the occurrence of any sale, transfer, or conveyance of any Unit (as applicable, a "Transfer"), but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (i) 0.5% of the value of the applicable Unit, or (ii) the maximum rate permitted by applicable law.

2) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

- (a) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.
- (b) Any Transfer to the Association or its successors.

- (c) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Unit transferred.
- (d) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Unit by the estate of an Owner.
- (e) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded, removing clouds on titles.
- (f) Any lease of any Unit or portion thereof for a period of less than thirty (30) years.
- (g) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.
- (h) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.
- (i) Any Transfer from Declarant or Declarant's affiliates to a Successor Declarant or affiliated entity.

The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

### **ARTICLE VIII.**

#### Provision of Services

Section 8.1. Provision of Services to Units. The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or Master Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. Charges imposed by the Association for such services may be treated as Assessments at the election of the Board of the District Association. By way of example and not limitation, such services might include such things as nonpotable water for irrigation, cable television, other telecommunications services, community technology, high-speed internet information and/or data services, utilities, fire protection, security monitoring services, trash collection, landscape maintenance, pest control and caretaker services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in the termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay Assessments for any portion of the charges for such services that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Article VII.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject always to the specific contract terms which may prohibit unilateral action by the Board, and subject to any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

Section 8.2. Provision of Services to Service Areas.

- 8.2.1. Service Areas Designated by Declarant. The Association shall provide or obtain services to Units within any Service Area designated by the Declarant pursuant to Section 8.1 as required by the terms of a Supplement applicable to the Service Area. Service Areas need not be contiguous nor continuous within a geographic area.
- 8.2.2. Service Area Designated by Board. In addition to Service Areas the Declarant may designate pursuant to Section 8.1, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Units; or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a simple majority (fifty-one percent (51%) or greater) of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least sixty percent (60%) of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget.

Section 8.3. Community Technology.

- 8.3.1. Community Systems. The Declarant may provide, or may enter into and assign to the Association or cause the Association to enter into contracts with other Persons to provide, central telecommunications, receiving and distribution systems (e.g., cable television, high speed data/internet services, telephone, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Declarant determines appropriate.
- 8.3.2. The Association may enter into a bulk service agreement providing access to any such Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner shall pay the service provider directly for such services, or the Association may assess the charges as a Service Area Assessment or Specific Assessment pursuant to Article VII and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

- 8.3.3. Opportunities for Community Interaction. The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or internet home page, maintain an “on line” newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association sponsored activities. To the extent Utah law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessments and other invoices by electronic means.
- 8.3.4. Technical Specifications for Community Wiring and internal Structured Wiring: The Principal Association Board of Directors has and retains the right and authority to promulgate, impose, enforce, amend, and supplement technical specifications and standards for the installation and maintenance of fiber optics and telecommunication facilities, including head-end facilities, distribution systems and in-building wiring systems. All fiber optics and telecommunication systems, components, and facilities shall be engineered, installed, repaired and maintained to meet or exceed generally accepted industry standards as to quality and performance and, where applicable, to meet the equipment standards set forth in the most current version of Part 15 of the Rules of the FCC.
- (a) All fiber optics and telecommunications systems, components and facilities shall be periodically upgraded to current technology such that the fiber optics and telecommunications systems, components and facilities remain reasonably equivalent in quality and performance to that provided by other providers of similar systems and services in master-planned or community wide services, with such upgrades being undertaken at least every three (3) years.
- (b) Principal Association Board of Directors hereby establishes certain minimum technical specifications, requirements and standards for the installation of wiring, distribution systems and facilities to be installed in all homes, buildings and other structures in accordance with the specifications set forth in Exhibit H attached hereto and made a part hereof (the “Structured Wiring Specifications”). The “Structured Wiring Specifications” shall be amended from time to time to comply with the technical requirements of the suppliers and providers of the telecommunications systems and services and advances in the industry. All Builders, sub-builders, District Associations, and those constructing homes, buildings and other structures in the Community shall incorporate the design and technology features and requirements set forth in the “Structured Wiring Specifications” during the construction of such home, building or structure including all interior conduits, jacks, wiring termination boxes, distribution panels, keypads, and other ancillary appurtenances set forth in the “Structure Wiring Specifications”. The Structured Wiring work shall be completed in a timely manner and in accordance with the terms

and conditions of all applicable permits for each structure, as issued by the appropriate governing authorities.

(c) Easements for the installation, construction, repair, operation and maintenance of the fiber optics and telecommunication system to and favor of the providers or suppliers of the telecommunication services shall be reserved and created in all subdivisions within the Community, including: (1) an appropriate easement for the installation, construction, repair, operation and maintenance of the distribution system from head-end facilities to various subdivisions, from subdivision to subdivision and within subdivisions, to include access and use of utility trenches during the construction of subdivisions to install conduit and other distribution components, and (2) an appropriate easement for the installation, construction, repair, operation and maintenance of the fiber optics and telecommunications from public or private distribution easements to the corner or sides of homes, buildings and structures permitting the provision of service to such home, building or other structure (known as the "Home Drop Easement").

## **ARTICLE IX.**

### General Provisions

Section 9.1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by Declarant or the District Association, their respective successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ninety-nine (99) years, unless an instrument in writing, signed by two-thirds (2/3) of the then Owners, has been recorded within the year preceding the beginning of each successive period of ninety-nine (99) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 9.2. Enforcement. Every Owner and every occupant of a Unit shall comply strictly with the covenants, conditions, and restrictions set forth in the Declaration, the applicable District Declaration and in the deed to the Unit, if any. Failure to comply with this Declaration shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the District Association, or by Declarant. Failure to comply with the applicable District Declaration shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the District Association, Declarant, or in a proper case, by the an aggrieved Owner.

Section 9.3. Easements for Utilities. Etc. There is hereby reserved unto Declarant, so long as Declarant owns any property subject to this Declaration, and its assigns or designees for each of the following (which may include, without limitation, Eagle Mountain City, Utah, and any governmental entity or any utility service provider), blanket easements upon, across, over, and under all of the Common Area and, to the extent shown on any plat, over other portions of the Properties for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, fiber optics lines, security, and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, and all utilities, including, but not limited

to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units and the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, waterlines, or other utilities may be installed or relocated on the Properties, except as may be approved by Declarant, so long as Declarant owns any property subject to this Declaration, and thereafter by the Board of Directors.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement over the Properties. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

Section 9.4. Future Easements. There is hereby reserved to Declarant, together with the right to grant and transfer the same, the right, power and privilege to, at any time hereafter, grant to itself, the District Association, Eagle Mountain City or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and in the sole discretion of the Declarant, for the future orderly development of the District in accordance with the objects and purposes set forth in this Declaration. It is expressly provided, however, that no such further or additional easement shall be granted or created over and upon any unit pursuant to the provision of this Section if any such easement shall unreasonably interfere with the presently contemplated or shall unreasonably interfere with the presently contemplated or future use and development of that particular Unit. The easements contemplated by this Section may include, without limitation, such easements as may be required for utility, drainage, road right-of-way and other purposes reasonably related to the orderly development of the Eagle Mountain Properties Master Communities in accordance with the objects and purposes specified in this Declaration. Such further or additional easements may be hereafter created, granted or reserved by Declarant without the necessary for the consent or joinder of the owner of the particular portion of the Properties over which such further or additional easement is granted or required.

Section 9.5. Dispute Resolution and Limitation on Litigation.

9.5.1. Agreement to Encourage Resolution of Disputes Without Litigation.

- 9.5.1.1. Parties Bound. The District Declarant, including any of its successors, assigns, or successors in interest, the District Association and its officers, managers, directors, and committee members, the Community Council and its officers, directors, managers, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any

court with respect to a Claim described herein, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 9.5.2 in a good faith effort to resolve such Claim. Compliance with this Article is fundamental, material, jurisdictional and an express condition precedent to the initiation and continuation of any litigation or administrative action.

9.5.1.2. Claims. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (a.) the interpretation, application or enforcement of the Governing Documents;
- (b.) the rights, obligations, and duties of any Bound Party under the Governing Documents;
- (c.) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article V, which shall not be subject to review;

9.5.1.3. Notwithstanding the above, the following shall not be considered a Claim unless all parties to the matter otherwise agree in writing to submit the matter to the procedures set forth in Section 9.5.2:

- (a.) any suit by the Association to collect assessments or other amounts due from any Owner other than the District Declarant as such term is defined in this Amended and Restated Declaration;
- (b.) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration (relating to creation and maintenance of community standards);
- (c.) any suit that does not include the Declarant, an affiliate or a related party of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (d.) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving Notice required by Section 9.5.2.1, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and
- (e.) any suit by the Association to enforce the Governing Documents where

the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, and the violation or damages therefrom continue, prior to the Association filing suit.

9.5.2. Dispute Resolution Procedures.

9.5.2.1. Notice. The Bound Party asserting a Claim (the “Claimant”) against another Bound Party (the “Respondent”) shall give written notice (the “Notice”) by U.S. First Class postage prepaid mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- (a.) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim, the dates of occurrence of all relevant events, a listing or reference to all relevant documents, contracts, writing, or papers, all other facts, information or allegations necessary to provide all parties sufficient information to effectively participate in the Alternative Dispute Resolution process;
- (b.) The full name(s) address and contact information for all Claimants, the name(s), address and contact information for any agent, representative or attorney appearing on behalf of the Claimant,
- (c.) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises), including evidence that the Claimant has the legal standing to assert the Claim;
- (d.) The Claimant's proposed resolution or relief; and
- (e.) The Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim, and suggesting a meeting time, date and place.

9.5.2.2. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiations. The Parties shall exercise their good faith and due diligence to meet and negotiation within thirty (30) days of the date of the Claim. The parties can mutually agree in writing to extend the negotiation period. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a third party representative to assist the parties in negotiating a resolution of the Claim.

9.5.2.3. Mediation. If the parties have not resolved the Claim through negotiations within thirty (30) days of the date of the Notice (or such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the District Association (if the District Association is not a party to the Claim) or to any independent agency



providing dispute resolution services in the Eagle Mountain, Utah area. Each Bound Party shall present the mediator with a written summary (containing at least the same information as required to be set forth in the Notice) of the Claim within ten (10) days after the date of termination of the negotiation period.

<b>DISPUTE RESOLUTION TIME LINE</b>			
Claim Between Bound Parties			
Day 1	Day 2 to Day 30	Day 31 to Day 60	Day 61 to 90+
Written Notice of Claim	Negotiation Period	Request Mediation	Mediation Period
<ul style="list-style-type: none"> <li>*Factual Basis</li> <li>*Legal Basis</li> <li>*Propose Resolution</li> <li>*Propose a Meeting</li> <li>*Send copy to Board</li> </ul>	<ul style="list-style-type: none"> <li>*Good faith effort</li> <li>*Parties meet in person</li> <li>*May request Board assistance</li> </ul>	<ul style="list-style-type: none"> <li>*Claimant must submit claim</li> <li>*Mediator assigned by Association or independent agency</li> <li>*If claim is not submitted, it is waived</li> </ul>	<ul style="list-style-type: none"> <li>*Agency supplies rules</li> <li>*Fee split between parties</li> <li>*Written summary from each side</li> <li>*Supervised negotiations</li> <li>*Contractual settlement or Termination of mediation</li> </ul>

If the Claimant does not submit the Claim to mediation within such time, does not appear for the mediation when scheduled or does not participate in good faith in the mediation, the Claimant shall be deemed to participate in good faith in the mediation, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties who were not part of the mediation process) on account of such claim.

If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonably by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including any attorney's fees, and each Party shall pay an equal share of the mediator's costs and fees.

Section 9.6. Settlement. Any settlement of the Claim achieved through negotiation or

mediation shall be documented in writing, set forth the nature of the Claim and the agreed upon resolution or award, and signed by all parties, herein after referred to as the "Settlement Agreement." If any party thereafter fails to abide by the terms of such Settlement Agreement, then the other party may file suit or initiate administrative proceedings to enforce such Settlement Agreement without the need to comply again with the procedures set forth above in this Section. Neither party can use, make reference to, or introduce into evidence, any statements, admissions, agreement, concessions, or stipulations made during the negotiations or mediation process in any subsequent action, unless: (1) the foregoing was reduced to writing and signed by all parties, (2) is contained within the written Settlement Agreement, or (3) existed independently or outside the negotiation and mediation process. In such enforcement action, the prevailing party shall be entitled to recover all costs incurred in enforcing or defending such enforcement action, including, without limitation, attorney's fees and court costs.

Section 9.7. Indemnification. The District Association shall indemnify every officer, director and committee member, including any officers, directors and committee members appointed or elected during the period of District Declarant Control against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their individual willful misfeasance, malfeasance, misconduct, or bad faith. The offices directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the association (except to the extent that such officers or directors may also be members of the District Association), and the District Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member may be entitled. The District Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9.8. Litigation. Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:

- i. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
- ii. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
- iii. Receive approval from 75% of the entire voting interest of the Association, who must be present in person or by proxy at the special meeting, to initiate any legal

proceeding of the Claim against the District Declarant, its successors, successors in interest, assigns, and/or its affiliate, if applicable

This section and the restriction contained herein shall not apply, however, to an action brought by the District Association: (1) to enforce the provisions of this Declaration against a party other than District Declarant (including, and without limitation, the collection, enforcement and foreclosure of assessments and liens); (2) for the imposition and collection of assessments against a party other than District Declarant as provided in Article VII hereof; (3) for proceedings involving challenges to ad valorem taxation or condemnation proceedings; (4) against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies, other than a contract involving the initial construction and sale of the Units or Common Area improvements; or (5) to defend claims filed against the District Association or to assert counterclaims in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant, or after the Class B Control period, is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.

Any provision in this Declaration notwithstanding: (1) other than as set forth in this Article, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, and (b) not less than seventy-five percent (75%) of the total voting power of the Board; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.

ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

Section 9.9. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this District Declaration shall be cumulative with those of any District Association and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any District Association shall be subject and subordinate to those of the District Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the District Association.

Section 9.10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 9.11. Interpretation. In all matters of enforcement or interpretation of this Declaration, all ambiguities shall be resolved in the favor of the Declarant.

Section 9.12. Jurisdiction; Venue; Choice of Law. The exclusive jurisdiction of all actions or proceedings under or concerning this Declaration shall be in the appropriate court having subject matter jurisdiction in the State of Utah. The venue of all actions shall lie in Utah County, State of Utah. The Laws of the State of Utah shall apply to this Declaration, notwithstanding any provision of any conflict or choice of law provision to the contrary.

Section 9.13. Condemnation. If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under the threat of condemnation with such approval as may be required under Section 9.14, each Owner shall be entitled to a written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

FIRST: The Association shall be entitled to recover its fees and expenses, including any attorney's fees and expenses, incurred by the Association in defending such action.

SECOND: If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available and practical under current municipal codes, unless within sixty (60) days after such taking the Declarant, during the Development and Sales Period, and Voting Members entitled to cast at least seventy percent (70%) of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and current municipal codes. The provisions of Section 4.6 regarding the use and disposition of funds for restoring damaged improvements shall apply.

THIRD: If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 4.6.5.

Section 9.14. Partition. Except as permitted in this Declaration, the Common Area and Limited Common Area shall remain undivided, and no Person shall have any right of partition and shall not bring any action to partition any portion of the Common Area or Limited Common Area without the prior written consent of all Owners, the Association and all Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 9.15.

Section 9.15. Transfer, Mortgaging, or Dedication of Common Area. The Association may transfer or dedicate portions of the Common Area to the City of Eagle Mountain, Utah, or to any other local, state, or federal governmental or quasi-governmental entity, may subject the Common Area to a security interest, or may transfer or convey Common Area as set forth below. No conveyance or encumbrance of Common Area or Limited Common Area shall deprive any Unit or the rights of ingress, egress, access or support to such Unit.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by Voting Members at the same time such sale or mortgage is authorized upon the written direction of Voting Members entitled to cast at least seventy-five percent (75%) of the total votes in the Association and, during the Development and Sales Period, with the written consent of the Declarant.

The proceeds from the sale or mortgaging of Limited Common Areas shall be disbursed in the manner directed by the Owners of Units to which the Limited Common Area is assigned at such time such sale or mortgage is authorized upon the written approval of all Owners and Mortgagees of the Units to which such Limited Common Area is assigned.

## **ARTICLE X.**

### Declarant's Rights

10.1. Assignment of Rights. Any or all of the general or special obligations of Declarant may be transferred to other Persons, including, without limitation, the District Association provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Utah County, State of Utah. Nothing in this declaration shall be construed to require Declarant or any successor to develop any of the property set forth in any Exhibit attached hereto and made a part hereof, in any manner whatsoever.

10.2. Development Activities. Notwithstanding any provisions contained in the

Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of these Units, including, but not limited to, business offices, signs, model Units and sales offices, and Declarant shall have easement for access to and use of such facilities.

10.3. Approval of Additional Covenants. So long as Declarant continues to have rights under this Article, no Person shall record any Declaration of covenants, conditions and restrictions, or declaration of condominium or similar instruments, affecting any portion of the properties without Declarant's Review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration or condominium or similar instrument, being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

10.4. Amendment. This Article may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of: (a) twenty-five (25) years from the date of this Declaration as recorded; or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE XI.**

### Amendment

11.1. Declarant's Right to Amend. Declarant reserves the right to amend this declaration unilaterally at anytime during the Class B Control Period, without prior notice and without the consent of any Person for any purpose including, but without limitation to, withdrawal of certain portions of the Properties then owned by the Declarant or its affiliates from the provisions of this Declaration and a change in the uses permitted for the Properties under this Declaration and a change in the uses permitted for the Properties in this Declaration, by recordation of an amendment in the public records of Utah County, State of Utah. Any amendment of Declarant shall be consistent with the general development plan for the Properties set forth in this Declaration. It may also designate separate residential, commercial, industrial, office, governmental, educational or other districts. Other covenants and restrictions consistent with the general plan of development may include requirements for insurance and repair of the Common Area and Units, rights and obligations for the District Association, including rules and regulations and enforcement powers, reservation of additional easements over the properties, and certain special mortgagee provisions required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration, and the Department of Housing and Urban Development. Notwithstanding the foregoing, the Declarant shall not amend any rights of the City under this Declaration, expressly including the City's rights and authority to enforce the architectural guidelines, without the prior written consent of the City.

11.2. Members Right to Amend. This Declaration may also be amended by the affirmative vote or written consent, or any combination thereof, of voting Members representing sixty-seven percent (67%) of the total votes of the District Association, including sixty-seven percent (67%) of the votes held by members other than the Declarant. However, the percentage of votes necessary to

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

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

11.4. Mortgagee's Rights. No amendment shall remove, revoke or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by any Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

11.5. Acceptance of Deed. By acceptance of a deed of conveyance to a Unit or Unplatted Parcel each Owner thereby gives its full, irrevocable and unqualified consent on behalf of itself, its mortgagees, and its successors-in-title to the amendment of this Declaration in the manner provided in this Article. Section

11.6. Aviation Easements for Airport. Each Owner, by acceptance of a deed to a Unit or Unplatted Parcel within the Community, hereby expressly acknowledges, for himself and for his guests, invitees, agents, assignees and successors-in-interest, that the Community is adjacent to an airport, referred to as the "Jake Garn Airport", and the Owner agrees that, just as the proximity of an airport to the Owner's residence or property may have the effect of creating a unique and valuable environment in which to reside, so may such proximity involve certain inherent aspects which may be less desirable, including, but not limited to, various activities commonly associated with the use and operations of airplanes and the normal and usual activities associated with the operation and maintenance of an airport and the operations of airplanes. "Airplanes" shall include without limitation aircraft of all types, including, but not limited to, fixed wing aircraft, rotor wing aircraft, lighter-than-air craft, powered and non-powered aircraft, jet and piston powered aircraft, manned and unmanned aircraft, single and multi-engine aircraft, and all associated and supporting equipment. The "operation and maintenance" of aircraft and the airport shall include, but not be limited to, the actual operation of aircraft, the use of the airspace immediately above the Community, the over-flight of the property by aircraft, landing and departures of aircraft, the operation of radios, operation of radar, storage and dispensing of fuels, repair and construction of aircraft, airport lights, engine repairs, and all other activity associated with aircraft and airports. Accordingly, Founder hereby creates and grants, and each Owner consents, agrees and waives any and all objection to the creation and granting of, perpetual easements to the Founder, the owner and operator of the "Jake Garn Airport", to all owners and occupants of "Jake Garn Airport" and the surrounding "Jake Garn Airpark" lands, to permit the doing of every act reasonably necessary and proper to the operation and maintenance of airplanes and the "Jake Garn Airport" and the adjacent "Jake Garn Airpark", which acts may include, but shall not be limited to, the over-flight of the Community of airplanes, the creation of noise, fumes, vibration, odors, visual effects, lights, fuel odors, from the airport and airplanes, the landing and taking-off of airplanes, maintenance of airplanes, the flight of airplanes over and upon any and all parts of the Community, including Units, Unplatted Parcels, Common Areas, streets and rights-of-way, and the operation of airplanes and equipment on, over and about

the Common Areas, streets and rights-of-way of the Community. All lots, units, and properties in the Community are further subject to height and use restrictions imposed by the Federal Aviation Administration pertaining to the operation of aircraft and airports, including height restrictions and clear-view flight paths. All Owners assume all risks associated with the operation and maintenance of the airport or the operation and maintenance of airplanes, and all Owners agree and covenant not to make any claim or institute any action whatsoever against the owner and operator of the "Jake Garn Airport" or the adjacent "Jake Garn Airpark", the Founder, Principal Association, District Associations, the directors, officers, employees and agents of the foregoing, or any other party other than the pilot who caused the property damage or personal injury arising or resulting from the negligent operation of any particular aircraft, or for negligent design of the Airport or placement of the Unit. Nothing herein shall in any way relieve pilots or aircraft owners from liability for damages resulting from the negligent operation of airplanes. Further, all Owners waive objection to and assume the risk of noise, personal injury or property damage caused by maintenance or operation of the Airport, the Airpark or airplanes, including, but not limited to, noise from maintenance equipment at any and all times, although such maintenance typically takes place around sunrise and sunset; noise caused by pilots and aircraft; the use of pesticides, herbicides and fertilizers; view restrictions caused by maturation of trees and shrubbery; and reduction in privacy caused by constant aircraft traffic on or from the Airport or Airpark or the removal or pruning of trees and shrubbery on the Airport or Airpark. Owners shall not interfere with the activities and operations of the Airport or Airpark, nor shall Owners enter or trespass upon or over the property of the Airport unless such Owner is a member thereof or is otherwise permitted by the owner or management of the Airport. Each Owner expressly acknowledges that the Founder or is assigns may or may not be the owner of the Airport or Airpark, which is to be treated as separate private property, and that the Founder makes no representations or warranties as to membership or use by any Owner in the Airport or Airpark, or as to the operation or activities of the Airport or Airpark, or, finally, as to the location, landscaping or appearance of the various improvements of the Airport or Airpark, including the design and layout (as they may affect views, flight patterns of aircraft, ingress and egress to the Airport or Airpark or, without limitation, any other aspect of the Community) of runways, taxiways, hangars, maintenance facilities, all or any part of which may be constructed, removed, eliminated, relocated or modified from time to time in the sole discretion of the owner of the Airport or Airpark without the consent of any Owner of any Unit or Unplatted Parcel in the District Property. Ownership of a Unit or Unplatted Parcel or membership in the Principal Association or a District Association does not give, nor shall it be construed to give, any right, vested or otherwise, or any easement, prescriptive or otherwise, to use the Airport or Airpark or any improvements located thereon, and does not grant any ownership or membership or other interest therein. Founder hereby reserves the right, which right shall be delegated to the owner and operator of the "Jake Garn Airport" or any District Association created in the Airpark area upon the expiration of the Founder Control Period, to promulgate such additional rules and regulations, and to create and grant such other further and additional easements, all as may be reasonably necessary or desirable, within the sole discretion of the Founder, for the assurance and maintenance of an orderly relationship between the Airport, Airpark and the Community, provided that no rule or amendment shall be adopted, enacted or promulgated which in any manner or fashion reduces, restricts, or infringes upon the rights and protection granted to the Airport and Airpark herein. This Article can not be amended, modified, or deleted without the prior written unanimous consents of the Founder, the managing entity or owner of Jake Garn Airport, and all District Associations within the Airpark areas, which such consents maybe withheld or denied in the absolute discretion of each



such entity.

**IN WITNESS WHEREOF**, the undersigned District Declarant, Master Declarant, and Master Association have executed this Declaration as of the Effective Date first written above



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )


On the \_\_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me, a notary public in and for the State of Utah, \_\_\_\_\_ the \_\_\_\_\_ of Eagle Mountain Properties Communities Master Association, Inc., the signer(s) of the above instrument, who duly acknowledge to me that he has the authority to execute the within and foregoing instrument on behalf said company, and that said company executed the same.

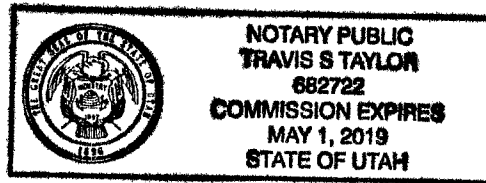
\_\_\_\_\_  
Notary Public  
Residing in:  
My commission expires:

\*\*\*\*\*

STATE OF UTAH )  
 ) ss.  
COUNTY OF DAVIS )

On the 25 day of JANUARY 2017, personally appeared before me, a notary public in and for the State of Utah, Stan T. Rowlan, Manager of Trail Head Eagle Mountain, LLC, the signer(s) of the above instrument, who duly acknowledge to me that he has the authority to execute the within and foregoing instrument on behalf said limited liability company, and that said limited liability company executed the same.

  
\_\_\_\_\_  
Notary Public  
Residing in:  
My commission expires:



"EXHIBIT A"

**SURVEYOR'S CERTIFICATE**

ENT 64748-2008 16 of 30

I, VICTOR E. HANSEN, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 176695 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY BY AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS, BLOCKS, STREETS, AND EASEMENTS AND THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT AND THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

*Victor E. Hansen*  
 VICTOR E. HANSEN RLS 176695

*Sept. 21, 2006*  
 DATE

**BOUNDARY DESCRIPTION**

A PARCEL OF LAND IN THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 6 SOUTH RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, LOCATED IN EAGLE MOUNTAIN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT N89°32'12"W 2,139.32 FEET ALONG THE SECTION LINE AND NORTH 1,948.68 FEET FROM THE SE CORNER OF SECTION 12, TOWNSHIP 6 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 3,641.24 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 95.57 FEET, THROUGH A CENTRAL ANGLE OF 01°30'14" (CHORD BEARS N00°47'58"E 95.57 FEET); THENCE N00°00'05"W 202.57 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 10,334.40 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE 701.49 FEET THROUGH A CENTRAL ANGLE OF 03°53'21" (CHORD BEARS S84°14'11"E 701.35 FEET) TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1,313.13 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 234.43 FEET THROUGH A CENTRAL ANGLE OF 10°13'43" (CHORD BEARS S02°02'20"W 234.11 FEET) TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 83.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 83.36 FEET THROUGH A CENTRAL ANGLE OF 57°32'30" (CHORD BEARS S35°55'27"W 79.90 FEET) TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 87.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 35.17 FEET THROUGH A CENTRAL ANGLE OF 23°09'34" (CHORD BEARS S53°06'55"W 34.93 FEET) TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 63.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE 61.12 FEET THROUGH A CENTRAL ANGLE OF 55°35'25" (CHORD BEARS S69°19'50"W 58.76 FEET) TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 10,021.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE 260.07 FEET THROUGH A CENTRAL ANGLE OF 01°29'13" (CHORD BEARS N83°37'04"W 260.06 FEET); THENCE N79°31'23"W 54.86 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 48.26 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 79.51 FEET THROUGH A CENTRAL ANGLE OF 94°24'02" (CHORD BEARS N29°24'56"W 70.82 FEET); THENCE N17°54'35"E 12.43 FEET; THENCE N59°33'44"W 37.87 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 68.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 58.08 FEET THROUGH A CENTRAL ANGLE OF 48°56'09" (CHORD BEARS S60°43'12"W 56.33 FEET) TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 82.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE 34.71 FEET THROUGH A CENTRAL ANGLE OF 24°14'59" (CHORD BEARS S73°03'47"W 34.45 FEET) TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 68.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE 39.54 FEET THROUGH A CENTRAL ANGLE OF 33°19'12" (CHORD BEARS S77°35'53"W 38.99 FEET) TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 10,057.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE 41.73 FEET THROUGH A CENTRAL ANGLE OF 00°14'16" (CHORD BEARS N85°51'35"W 41.73 FEET) TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 36.60 FEET THROUGH A CENTRAL ANGLE OF 83°53'07" (CHORD BEARS N44°02'06"W 33.42 FEET) TO THE POINT OF BEGINNING.

# EXHIBIT B – BYLAWS

**BYLAWS  
OF  
TRAILHEAD TOWNHOMES OWNERS ASSOCIATION, INC.**

**EAGLE MOUNTAIN, UTAH COUNTY, UTAH**

THESE BYLAWS OF TRAILHEAD TOWNHOMES OWNERS ASSOCIATION, INC. are effective upon recording in the Utah County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

**RECITALS**

1. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
2. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the project known as Trailhead Townhomes Subdivision, and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I  
DEFINITIONS**

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration.

**ARTICLE II  
APPLICATION**

All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Living Units, or the mere act of occupancy or use of any said Living Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

**ARTICLE III  
OWNERS**

3.1 **Annual Meetings.** The annual meeting of the Owners shall be held each year during the months of April and August or on a day and at a time established by the Board of Directors. The purpose of the annual meeting shall be electing Board Members and transacting such other business as may come before the meeting. If the election of Board Members cannot be held on the day designated herein for the annual meeting of the Owners, or at any adjournment thereof, the Board

of Directors shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board of Directors may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.2 **Special Meetings.** Special meetings of the Owners may be called by a majority of the Board of Directors, the District Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a special meeting within 45 days of receipt of the request.

3.3 **Place of Meetings.** The Board of Directors may designate any place in Salt Lake, Summit, or Utah County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association.

3.4 **Notice of Meetings.** The Board of Directors shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Owners. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than fifteen (15) days prior to the meeting. Such notice may be emailed, hand-delivered, or mailed. If emailed, such notice shall be deemed delivered when sent to the Owner's email address registered with the Association. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Owner at the Owner's address registered with the Association, with first-class postage thereon prepaid. Each Owner shall register with the Association such Owner's current email address and mailing address for purposes of notice hereunder. Such registered email and mailing addresses may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Living Unit shall be deemed to be the Owner's registered address and notice to the Living Unit address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email by giving written notice to the Board of Directors stating that the Owner will not accept notices by way of email.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting.

3.6 **Record Date for Notice Purposes.** The Board of Directors may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Living Units in

the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 **Quorum.** At any meeting of the Owners, the presence of Owners and holders of proxies entitled to cast more than thirty-three percent (33%) of the voting interests of the Association shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting, the Board of Directors shall have power to adjourn the meeting and reschedule for a time not earlier than twenty-four (24) hours, nor later than thirty (30) days after the set time for the original meeting. Notice of such rescheduled meeting shall not be required except an oral announcement at the meeting to be rescheduled. No other type of notice shall be required for the rescheduled meeting. The presence of Owners and holders of proxies entitled to cast more than twenty percent (20%) of the voting interests of the Association shall constitute a quorum for the transaction of business at the rescheduled meeting.

3.8 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Living Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Living Unit or the Owners' attorneys when duly authorized in writing. 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. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.9 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Living Unit of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owner, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Living Unit is jointly owned, any Owner may exercise the vote for such Living Unit on behalf of all Co-Owners of the Living Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Living Unit, no vote shall be counted for that Living Unit. In no event shall fractional or cumulative votes be exercised with respect to any Living Unit.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board of Directors or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board of Directors. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver on any notice requirements.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence



of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of U.C.A. §16-6a-707 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Owners.

#### ARTICLE IV BOARD OF DIRECTORS

4.1 **General Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of three (3) persons who meet the qualifications provided in the Declaration. During the Period of District Declarant Control, the Board of Directors shall have the composition and qualification as determined by the District Declarant.

4.3 **Election to the Board of Directors.** During the Period of District Declarant Control, the Board of Directors shall be elected by District Declarant. Following the Period of District Declarant Control, the election to the Board of Directors shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Period of District Declarant Control, Board Member terms shall be determined exclusively by District Declarant. Following the Period of District Declarant Control, the Owners shall elect three (3) Board Members; one (1) for one (1) year, one (1) for two (2) years, and one for three (3) years. At each following Annual Meeting, Owners shall elect one (1) Board Member for three (3) year terms.

4.5 **Regular Meetings.** The Board of Directors shall hold meetings at least quarterly at the discretion of the Board of Directors.

4.6 **Special Meetings.** Special meetings of the Board of Directors may be called by the President or a majority of the Board Members on at least two (2) business days' prior notice to each Board Member. The person or persons authorized to call special meetings of the Board of Directors may fix any place, within Salt Lake, Summit, or Utah County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message. By unanimous consent of the Board of Directors, special meetings may be held without call or notice to the Board Members.

4.7 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the

Board of Directors. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.8 **Board Meetings.** Except as provided below in (a) through (f), following the Period of District Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- a. Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- b. Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- c. Discuss a labor or personnel matter;
- d. Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- e. Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- f. Discuss a delinquent assessment.

During the Period of District Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.9 **Board Meeting Location.** The Board of Directors may designate any place in Salt Lake, Summit, or Utah County as the place of meeting for any regular or special Board meeting. Board meetings may also be held with Board Members appearing telephonically so long as any Board Member appearing telephonically consents to such appearance. Following the Period of District Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.10 **Board Action.** Notwithstanding noncompliance with Sections 4.7 and 4.8, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with Sections 4.7 and 4.8 may not bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

4.11 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.12 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the District Declarant may only be removed by the District Declarant. The District Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of District Declarant Control may be removed at any time, with or without cause, at a special meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association.

4.13 **Vacancies and Newly Created Board Memberships.** If vacancies shall occur in the Board of Directors for any reason during the Period of District Declarant Control, the District Declarant shall elect the Board Member to fill the vacancy. Following the Period of District Declarant Control, if vacancies shall occur in the Board of Directors for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board of Directors occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.14 **Action Taken Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of U.C.A. §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.15 **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.16 **Adjournment.** The Board of Directors may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.17 **Meeting.** For purposes of this Article IV, a Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

## ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board of Directors.

5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board of Directors at the first Board meeting following each annual meeting of the Owners. Each such officer shall hold such office until the next ensuing meeting of the Board of Directors following the annual Owners meeting and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board of Directors may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board of Directors or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board of Directors at any time, with or without cause.

5.5 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board of Directors at any regular or special Board meeting.

5.6 **The President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board of Directors.

5.7 **The Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board of Directors or Owners. The Vice President shall perform such other duties as required by the Board of Directors.

5.8 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board of Directors may require such person to keep. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **The Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board of Directors, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners

and at any meeting of the Board of Directors. The Treasurer shall perform such other duties as required by the Board of Directors.

5.10 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board of Directors.

## ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board of Directors may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board of Directors. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board of Directors in a written resolution. The Board of Directors may terminate any committee at any time.

6.2 **Proceeding of Committees.** Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Directors.

6.3 **Quorum and Manner of Acting.** At each meeting of any committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Directors hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board of Directors.

6.4 **Resignation and Removal.** Any member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Directors may at any time, with or without cause, remove any member of any committee designated by it thereunder.

6.5 **Vacancies.** If any vacancy shall occur in any committee designated by the Board of Directors due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board of Directors, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Directors.

ARTICLE VII  
INDEMNIFICATION

7.1 **Indemnification** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee, including any such Board Member, officer, or committee member appointed or elected during the period of District Declarant Control, shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification**. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance**. The Board of Directors, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VII.

7.4 **Settlement by Association**. The right of any person to be indemnified shall be subject always to the right of the Association through the Board of Directors, in lieu of such indemnity, to

settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE VIII RULES AND REGULATIONS

The Board of Directors shall have the authority to adopt and establish by resolution such Project management and operational Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board of Directors may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board of Directors shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

## ARTICLE IX AMENDMENTS

9.1 **Amendments by District Declarant.** During the Period of District Declarant Control, the District Declarant acting alone may amend, alter, or repeal and adopt new Bylaws, without the approval of the Owners, for any reason. No other amendment shall be valid or enforceable during the Period of District Declarant Control unless the District Declarant has given written consent to such amendment. Any amendment during the Period of District Declarant Control shall be executed by District Declarant on behalf of the Association and shall become effective upon recordation in the office of the recorder of Utah County, State of Utah.

9.2 **Amendments by Association.** After termination of the Period of District Declarant Control, amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon, or included as part of the written ballot in lieu of such meeting. Except as otherwise provided herein, the Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of more than sixty percent (60%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Utah County, State of Utah. In such instrument the President shall execute the amendment and certify that the vote required by this Section for amendment has occurred. If a Living Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Living Unit under this Section. If a Living Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Living Unit under this paragraph. No acknowledgment of any Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any rights of District Declarant without the express written consent of District Declarant.

ARTICLE X  
MISCELLANEOUS PROVISIONS

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 **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 in these Bylaws, 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 are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Association has executed this instrument the day and year set forth below.

**TRAILHEAD TOWNHOMES OWNERS  
ASSOCIATION, INC.**

By: [Signature]

Its: Director

State of Utah )  
 ) ss:  
County of ~~Utah~~ DAVIS )

On this 25 day of JANUARY, 2016, personally appeared before me Stan T. Rowlan, the signer(s) of the above instrument, who duly acknowledged to me that he/she has the authority to execute the foregoing instrument on behalf said company, and that said company executed the same.

[Signature]  
NOTARY PUBLIC



# **EXHIBIT C – ARTICLES OF INCORPORATION**

**ARTICLES OF INCORPORATION  
of  
Trailhead Townhomes Owners Association, Inc.**

**A Utah Non-Profit Corporation**  
(Pursuant to the provisions of UCA § 16-6a-202)

I, the undersigned natural person, being of the age of eighteen years or more, acting as incorporator under the Utah Revised Non-Profit Corporation Act, §16-6a-101, et seq., Utah Code Annotated (1953, as amended) (“Nonprofit Act”), adopt the following Articles of Incorporation for such Corporation.

**ARTICLE I  
NAME**

The name of this Corporation is Trailhead Townhomes Owners Association, Inc. (“Corporation”).

**ARTICLE II  
DURATION**

The duration of this Corporation shall be perpetual.

**ARTICLE III  
PURPOSE**

The Corporation is organized exclusively for non-profit purposes, and the specific purposes for which the Corporation is organized are to provide for the maintenance, preservation, and architectural control of the real estate project located in Utah County, State of Utah, known as Trailhead Townhomes Subdivision; collect and disburse the assessments and charges provided for in the Declaration and Bylaws; administer, enforce, and carry out the terms, covenants, and restrictions of the Declaration and the provisions of the Bylaws; have and to exercise any and all powers, rights, and privileges which a corporation organized under the Nonprofit Act may now or hereafter have or exercise; and generally provide for and promote the health, safety, and welfare of the Corporation’s Members.

**ARTICLE IV  
MEMBERS & VOTING**

The Corporation shall have Members. The Corporation will not issue shares evidencing membership. The terms and conditions of membership and voting will be set forth in the Declaration and Bylaws of the Corporation.

**ARTICLE V  
DIRECTORS**

The affairs of the Corporation shall be managed and governed by a Board of Directors. The Board of Directors shall initially be composed of individuals or entities appointed by Trail Head Eagle Mountain,

LLC (“Declarant”) as more particularly set forth in the Declaration and Bylaws. Declarant shall have the exclusive right to appoint and remove all Directors and officers of the Corporation during the Period of Declarant Control. Declarant may voluntarily surrender its right to appoint and remove Directors and officers prior to the expiration of the Period of Declarant Control, but, in that event, Declarant may require, for the remainder of the Period of Declarant Control, that specific actions of the Corporation or Board, as described in an instrument executed by Declarant, be approved by Declarant before they become effective. Following the Period of Declarant Control, the Board of Directors shall be elected by the Members as more particularly set forth in the Declaration and Bylaws.

Each Director shall hold office until his/her successor has been duly appointed/elected and qualified, or until a Director is removed or resigns as provided in the Bylaws. The Board of Directors shall exercise such powers as are provided by these Articles of Incorporation, the Bylaws, the Declaration, and applicable laws of the State of Utah. The Board of Directors shall exercise all powers on behalf of the Corporation, except for those powers specifically reserved for the vote of the Members.

#### **ARTICLE VI OFFICERS**

The Board of Directors is authorized to elect and appoint officers and agents of the Corporation as shall be necessary and appropriate. Such officers and agents shall hold office until their successors are duly elected or appointed and qualified, or until they are removed or they resign. All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the affairs of the Corporation as may be provided in these Articles of Incorporation, the Bylaws, the Declaration, or as may be determined by resolution of the Board of Directors, so long as such resolution is not inconsistent with these Articles of Incorporation, the Bylaws, or the Declaration.

#### **ARTICLE VII CORPORATION POWERS**

The Corporation shall have such powers and authority as are provided by the Declaration, the Bylaws, the Nonprofit Act, and other applicable laws and acts. Specifically, the Corporation shall have power and authority to sue or be sued and defend the Corporation’s name; maintain a corporate seal; receive gifts, devises, or bequests for personal and real property; to purchase or lease personal or real property and to otherwise acquire, hold, improve, use, and possess the same; to convey, mortgage, pledge, lease, exchange, transfer, bargain, or otherwise dispose of any or all of its property and assets; to secure and acquire loans in the name of the Corporation; to conduct its normal and ordinary affairs, transact business, and carry on operations with such offices as are necessary; to elect Directors to the Board, and to appoint officers and agents of the Corporation and to define their duties, by bylaw or otherwise; to indemnify any Director, officer, or agent of the Corporation for expenses actually and necessarily incurred in furthering the activities and operations of the Corporation or in defense of any litigation or action in which any said Director, officer, or agent is made a party; and to exercise all other powers necessary and reasonably convenient to effect any and all of the purposes for which the Corporation is now authorized or hereafter may be authorized by the laws of the United States and the State of Utah.

#### **ARTICLE VIII LIMITATIONS ON DISPOSITION OF EARNINGS AND ASSETS**

The Corporation’s objectives are not for pecuniary profit and no part of the net earnings of the Corporation, if any, shall inure to the benefit of any Director, officer, or Member of the Corporation or any other individual, and no Director, officer, or Member of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution or liquidation of the

Corporation. Notwithstanding any other provision of these Articles of Incorporation to the contrary, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income taxes under Section 501(c) of the Internal Revenue Code of 1954, as amended.

**ARTICLE IX  
BYLAWS**

Provisions for the regulation of the internal affairs of the Corporation shall be set forth in the Bylaws (and/or Declaration) (UCA § Section 16-6a-206).

**ARTICLE X  
DISSOLUTION**

The Corporation may be dissolved only upon the termination of the Declaration in accordance with the terms thereof and with the assent given in writing and signed by Members holding not less than ninety percent (90%) of the voting interests of the Corporation.

**ARTICLE XI  
LIABILITY**

The Board, Directors, officers, employees, and Members of this Corporation shall not be liable, either jointly or severally, for any obligation, indebtedness, or charge against the Corporation. This provision shall apply to former Directors, officers, employees, and Members including, without limitation, those appointed by the Declarant during the Period of Declarant Control.

**ARTICLE XII  
INDEMNITY OF DIRECTORS AND OFFICERS AND COMMITTEE MEMBERS**

The Corporation shall indemnify any and all of its Directors and officers and committee members, or former Directors and officers and committee members, whether appointed by Declarant or otherwise, against all expenses, claims, and losses to the maximum extent permitted by law, and shall advance expenses incurred by such Directors, officers, and committee members, as referenced in §16-16a-904 of the Nonprofit Act, as the same may be amended from time to time, to the maximum extent permitted by law. Such indemnification shall not be deemed exclusive of any or all other rights to which those indemnified may be entitled, under the Declaration or Bylaws, or other law, agreement, vote, or otherwise. This provision shall apply to Directors, officers, and committee members both prior to, during, and after the Period of Declarant Control.

**ARTICLE XIII  
INCORPORATOR**

The name and address of the Incorporator is:

Trail Head Eagle Mountain, LLC  
95 S. River Bend Way, Suite A  
North Salt Lake City, UT 84054

**ARTICLE XIV  
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office shall be:

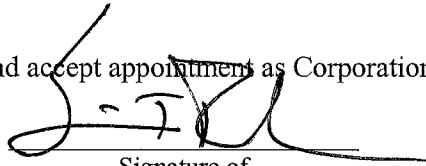
95 S. River Bend Way, Suite A  
North Salt Lake City, UT 84054

Such office may be changed at any time by the Board of Directors without amendment to these Articles of Incorporation.

The Corporation's registered agent at such address shall be:

Trail Head Eagle Mountain, LLC

I hereby acknowledge and accept appointment as Corporation's registered agent.



Signature of  
Sean T. Rowlan Manager of Trail Head Eagle Mountain, LLC

**ARTICLE XV  
MISCELLANEOUS**

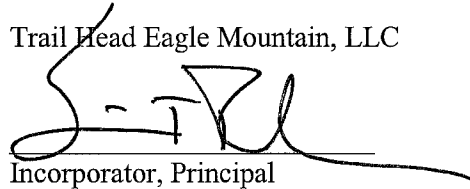
1. Amendment. During the Period of Declarant Control, these Articles may be amended by Declarant, including its successors and assigns, in its sole discretion. No other amendment shall be valid or enforceable during the Period of Declarant Control unless the Declarant has given written consent to such amendment. Following the Period of Declarant Control, any amendment to these Articles must be authorized and approved by at least sixty-seven percent (67%) of the voting interests of the Corporation. Any amendment so authorized and approved shall be accomplished in conformity with the Nonprofit Act and other applicable laws.
2. Defined Terms. Capitalized terms used herein, shall have the same meaning and effect as defined and used in the Declaration and Bylaws of the Corporation.
3. Interpretation. The captions preceding the various portions of these Articles are for convenience and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any provision contained in these Articles shall not affect the validity or enforceability of the remainder hereof. These Articles have been prepared in conjunction with the Declaration and should be read in light of that fact and liberally so as to effect the purposes of both instruments. In the event of a conflict between the provisions of these Articles and the provisions of the Declaration, the provisions of the Declaration shall prevail.

**CERTIFICATION**

In Witness Whereof, Stou T. Bowler has executed these Articles of Incorporation on behalf of the Incorporator this 25 day of January, 2017 and says:

That I am authorized by the incorporator herein to execute these Articles, which I have read and know of the contents thereof, and that the same are true to the best of my knowledge and belief. Furthermore, these Articles of Incorporation have been duly approved by the Corporation.

Trail Head Eagle Mountain, LLC

A handwritten signature in black ink, appearing to read "Stou T. Bowler", written over a horizontal line.

Incorporator, Principal

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65, All Common Areas and All Roads, TRAILHEAD, PLAT A, AMENDED, a Planned Unit Development, according to the official plat thereof, on file and of record in the office of the Recorder of Utah County, Utah.

Together with the pertinent easement over and rights of use and enjoyment of said project's common areas.

53:541:0001, 53:541:0002, 53:541:0003, 53:541:0004, 53:541:0005, 53:541:0006, 53:541:0007, 53:541:0008, 53:541:0009, 53:541:0010, 53:541:0011, 53:541:0012, 53:541:0013, 53:541:0014, 53:541:0015, 53:541:0016, 53:541:0017, 53:541:0018, 53:541:0019, 53:541:0020, 53:541:0021, 53:541:0022, 53:541:0023, 53:541:0024, 53:541:0025, 53:541:0026, 53:541:0027, 53:541:0028, 53:541:0029, 53:541:0030, 53:541:0031, 53:541:0032, 53:541:0033, 53:541:0034, 53:541:0035, 53:541:0036, 53:541:0037, 53:541:0038, 53:541:0039, 53:541:0040, 53:541:0041, 53:541:0042, 53:541:0043, 53:541:0044, 53:541:0045, 53:541:0046, 53:541:0047, 53:541:0048, 53:541:0049, 53:541:0050, 53:541:0051, 53:541:0052, 53:541:0053, 53:541:0054, 53:541:0055, 53:541:0056, 53:541:0057, 53:541:0058, 53:541:0059, 53:541:0060, 53:541:0061, 53:541:0062, 53:541:0063, 53:541:0064, 53:541:0065, 53:541:0066, 53:541:0067