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**MASTER DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**

**DIVARIO**  
*A Master Planned Community*  
*Washington County, Utah*

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**MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR**

**DIVARIO**

*Washington County, Utah*

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the \_\_\_\_ day of September, 2019, by ST. GEORGE 730, LLC, a Nevada limited liability company ("Declarant," which term shall include its permitted successors and assigns of Record).

**PART ONE: INTRODUCTION TO THE COMMUNITY**

*Declarant has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of DIVARIO as a master planned community ("Community").*

**ARTICLE 1  
CREATION OF THE COMMUNITY**

Section 1.1. **Purpose and Intent.** Declarant owns or has an interest in certain parcels of real property located in Washington County, State of Utah, as more particularly described in Exhibit "A" hereto ("Original Property"), and intends, by Recording this Declaration, to establish a general plan of development for the Community. This Declaration provides a flexible and reasonable procedure for the future expansion of the Community, to include additional real property as Declarant may deem appropriate, as follows. Declarant reserves the right from time to time to add to the Community all or any portion(s) of any other undeveloped real property adjacent to the Properties described in Exhibit "A" ("Annexable Area"), by amending the description set forth in Exhibit "A" to incorporate the same. The Original Property and the portions of Annexable Area from time to time annexed of Record to the Community by Declarant shall comprise the "Properties." An integral part of the development plan is the creation of DIVARIO MASTER HOMEOWNERS ASSOCIATION (the "Association"), a Utah nonprofit corporation, whose members shall be comprised of all Owners of residential real property in the Properties, to own, administer, operate, and/or maintain various common areas and community improvements, and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

Section 1.2. **Binding Effect.** All of the property described in Exhibit "A," and any additional property made a part of the Community from time to time in the future by Recording one or more Declaration(s) of Annexation, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, unless otherwise provided by applicable Utah law, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by a Recorded instrument signed by Members comprising the Requisite Membership Percentage, and which complies with any applicable Utah law. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

Section 1.3 **Governing Documents.** The Community Governing Documents consist of:

- (a) Official Plats;
- (b) this Declaration (and any and all Recorded Supplemental Declarations and/or Declarations of Annexation, applicable to specified Neighborhoods);
- (c) Association's Articles of Incorporation;
- (d) Association's Bylaws;
- (e) Design Guidelines (described in Article 4);
- (f) Rules and Regulations (described in Article 3); and
- (g) Resolutions of the Association's Board of Directors;

all as may be amended from time to time. The Governing Documents apply to all Owners and Residents in the Community, as well as to their respective Invitees. Any lease on a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

**Section 1.4. Priorities and Inconsistencies.**

(a) The Governing Documents shall be construed to be consistent with one another to the extent possible. If there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that any provision of the Declaration fails to comply with any applicable provision of Utah Code Annotated §§ 57-8a-101 *et al.*, and thereafter, the Governing Document listed first in Section 1.3 shall prevail over any lower listed Governing Document.

(b) In the event of any inconsistency between any Community Governing Document and any other Governing Document which is specific only to a particular Neighborhood, the former shall prevail.

(c) Any inconsistency between any two or more Neighborhood-specific Governing Documents shall be resolved in like manner as set forth above.

(d) Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and any such more restrictive provision shall not be deemed to irreconcilably conflict with this Declaration, subject to the right of Declarant to veto any such more restrictive provisions,

**Section 1.5. Enforcement.** The Governing Documents shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity, subject to the provisions of Article 18.

**Section 1.6. Term and Interpretation.**

(a) The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners

and assigns, until terminated in accordance with this Declaration.

(b) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Area of Common Responsibility. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter,

(c) The provisions of this Declaration shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or local ordinance, Subject to the foregoing, if any court of competent jurisdiction should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provision or other applications of such provision.

Section 1.7. Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 1.8. Compliance with Applicable Laws. The Association shall comply with all applicable laws, including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable law. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

Section 1.9. Exhibit. Exhibit "A" attached to this Declaration is incorporated by this reference. Amendment of such Exhibit shall be governed by Article 22 below.

## **ARTICLE 2**

### **DEFINITIONS AND CONCEPTS**

Capitalized terms shall be defined as set forth below. Other capitalized terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions, unless otherwise defined in Utah Code Annotated §§ 57-8a-101 *et seq.*, within an appropriate context.

"Area of Common Responsibility": The Common Elements, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles of Incorporation" or "Articles": The Articles of Incorporation of the Association, as filed with the Utah Division of Corporations.

**“Assessments”**: Each and all of Base Assessments, Neighborhood Assessments, Special Assessments, and Specific Assessments, as applicable.

**“Association”**: Divario Master Homeowners Association, a Utah nonprofit corporation, and its successors or assigns.

**“Base Assessment”**: Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of the Community. Each and all of the Neighborhood Assessments, Special Assessments, and Specific Assessments, as applicable, are in addition to Base Assessments.

**“Board of Directors” or “Board”**: The body responsible for administration of the Association, elected or appointed in accordance with the Bylaws and this Declaration, and consistent with the Utah Revised Nonprofit Corporations Act, Utah Code Annotated §§ 16-6a-101 *et seq.*

**“Builder”**: Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Community for further subdivision into Units, development, and/or resale in the ordinary course of such Person's business.

**“Bylaws”**: The Bylaws of the Association, as may be amended from time to time.

**“City”**: The city of St. George, Utah, a Utah municipal corporation, in which the Properties are located.

**“Commercial Component”**: Certain land which does not comprise part of the residential Planned Community encumbered by this Declaration, but which shall be required to pay certain amounts for use of certain Association Common Elements, as set forth in Article 17.

**“Common Areas”**: All real property or interests therein (including, but not necessarily limited to, certain easements designated on Official Plats as pedestrian access corridor easements, public utility easements, landscape easements, drainage and/or sewer easements, and any, other such easements) owned or leased by the Association, which includes entry signage or monuments, Private Streets, street lights, street signs, curbs and gutters, Paseos, Pocket Parks, Common Area landscaping, access and ingress/egress easements, and otherwise as described in the Community Association Act, but otherwise, shall exclude Units.

**“Common Expenses”**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

**“Community”**: DIVARIO, a Utah master planned community. The Community is not a cooperative, as that term is used in the Community Association Act.

**“Community Association Act”**: The Utah Community Association Act, Utah Code Annotated §§ 57-8a-101 *et seq.*, as may be amended from time to time.

**“Community Standards”**: The standards of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standards shall or may be established initially by Declarant and may be more specifically defined in the Design Guidelines, the Rules and Regulations (if any), and Board resolutions. Any subsequent amendments to the standards shall meet or exceed the standards set by Declarant and Board during the Declarant Rights Period. Such standards may contain both objective and subjective elements. The Community Standards may evolve as development progresses and as the needs

and demands of the Community change.

**“Condominium Ownership Act”**: Title 57, Chapter 8 of the Utah Code Annotated, “Condominium Ownership Act,” as the same may be amended from time to time.

**“County”**: Washington County, State of Utah, together with its successors and assigns.

**“Custom Lots”**: Lots, as shown on an Official Plat, within a designated Custom Lot Neighborhood, in which each such lot is intended to be conveyed to a Purchaser, for construction by the Purchaser of a custom home subject to design requirements of Declarant for custom homes.

**“Declarant”**: St. George 730, LLC, a Nevada limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibit “A” for the purpose of development and/or sale, and who is designated as Declarant in an express Recorded assignment executed by the immediately preceding Declarant.

**“Declarant Rights Period”**: The period or time during which Declarant owns any property subject to this Declaration or which may become subject to this Declaration by annexation in accordance with Section 10.1, and during which period of time, Declarant has reserved certain rights as set forth in this Declaration. The Declarant Rights Period shall terminate five (5) years after the last to occur of: (a) the sale by Declarant of the last of the Properties described in Exhibit “A,” and (b) the date on which any right to annex any portion of the Annexable Area was last exercised by Declarant.

**“DRC”**: The Design Review Committee, if any, created pursuant to Section 4.2.

**“Design Guidelines”**: The architectural, design, and construction guidelines and application and review procedures applicable to the Properties, as promulgated and administered pursuant to Article 4, as may be amended.

**“Development Agreement”**: That certain Development Agreement between the City of St. George and Declarant dated January 9, 2014, and recorded February 26, 2014, as Doc. No. 20140005707 in the office of the Washington County Recorder, including all addenda and exhibits incorporated by reference therein and all amendments thereto.

**“Director”**: A duly appointed or elected and current member of the Board of Directors.

**“Dwelling”**: A single Family detached residential building located on a Unit (or, in a condominium, a condominium Unit) designed and intended for use and occupancy as a residence by a single Family, but specifically excluding “manufactured housing” or mobile homes, neither of which shall be permitted as Dwellings. Notwithstanding the above, an approved ancillary “casita,” “guest house” or “in-law suite” on a Unit shall not be a separate Dwelling, but instead, shall be deemed a part of the structure serving primarily as the Dwelling on the Unit.

**“Family”**: A group of natural persons related to each other legally related to each other by marriage or adoption, or a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Utah laws and local health codes and other ordinances.

**“Governing Documents”**: The documents listed in Section 1.3. Any inconsistency among the Governing Documents shall be governed pursuant to Section 1.4.

**“Home Owner”**: An Owner as defined in this Declaration below but excluding the Declarant or any Builder.

**“Improvement”**: Any structure or appurtenance thereto of every type and kind, whether above or below the land surface, placed in the Properties, including, but not limited to, Dwellings and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, garages, roads, driveways, parking areas, hardscape, Private Streets, streetlights, curbs, gutters, walls, perimeter walls, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

**“Invitees”**: Each and all of the following: tenants, guests, and other invitees of Declarant or any Builder or Owner (including, as may be applicable, agents, employees, suppliers, and contractors of the same).

**“Limited Common Areas”**: Those Common Areas designated in any Supplemental Declaration or in an Official Plat as reserved for the use of a certain Unit(s) to the exclusion of other Units.

**“Lot”**: The real property of any residential Unit, as shown on an Official Plat (subject to this Declaration and the Official Plat). The term shall mean all interests defined as a “Residential Lot” in the Community Association Act. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any dwelling thereon. The boundaries of each Lot shall be delineated on a Recorded Official Plat. A Lot is also a Unit as defined herein.

**“Majority”**: Unless otherwise specifically defined in a provision of the Governing Documents, a majority of those votes, Owners, or other groups, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

**“Manager”**: The Person, if any, whether an employee or independent contractor, appointed by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

**“Master Plan”**: The master land use plan for the Community incorporated as part of the Development Agreement and approved by the City of St. George, as may be amended, that Declarant may from time to time subject to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Master Plan bar its later annexation to this Declaration as provided in Article 10.

**“Maximum Units”**: The maximum number of Units approved or reasonably expected to be approved for development within the Community under the Master Plan, as amended from time to time; provided, however, that nothing in this Declaration shall be construed to require Declarant to develop the maximum number of Units approved. The Maximum Units as of the date of this Declaration is not to exceed 3196 Units.

**“Member”**: A Person subject to membership in the Association pursuant to Section 6.2.

**“Mortgage”**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

**“Neighborhood”**: Any residential area within the Properties designated by Declarant as a Neighborhood (whether or not governed by a Neighborhood Association, as more particularly described in Section 6.8). Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood



Committee or Neighborhood Association, if any, having concurrent but subordinate jurisdiction over the property within the Neighborhood. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then such benefited Units shall be assessed an additional Specific Assessment for such benefits or services. Neighborhood boundaries may be established and modified as provided in Section 6.6.

**“Neighborhood DRC”**: A Neighborhood Design Review Committee, if any, created pursuant to Section 4.2(a).

**“Neighborhood Assessments”**: Assessments levied against the Units in a particular Neighborhood to pay for the Neighborhood Expenses, if any, within such Neighborhood, as described in Section 8.4. Neighborhood Assessments are additional to each and all of Base Assessments, Special Assessments, and Specific Assessments, as applicable.

**“Neighborhood Association”** A homeowners association, if any, created by Supplemental Declaration, having subordinate, concurrent jurisdiction with the Association over any Neighborhood. Nothing in this Declaration shall require the creation of a Neighborhood Association for any Neighborhood. Any Neighborhood not governed by a Neighborhood Association shall be governed solely by the Association.

**“Neighborhood Common Areas”**: A portion of the Common Areas, allocated for the primary or exclusive use and benefit of one or more designated Neighborhood(s) (but less than the entire Community), as more particularly described in Article 14; and/or the Common Areas unique to a Neighborhood which itself is a “Condominium Project” pursuant to Utah Code Annotated §§ 57-8-1 *et seq.*, established under a Supplemental Declaration.

**“Neighborhood Expenses”**: The expenditures made by, or financial liabilities of, the Association (or Neighborhood Association, if applicable), together with any allocations to reserves, for maintenance, management, operation, repair, replacement and insurance of Neighborhood Common Areas, if any, or for the particular benefit of Owners of Units within a particular Neighborhood, together with a reasonable administrative charge, all as may be authorized pursuant to this Declaration or in any applicable Supplemental Declaration.

**“Neighborhood Representative(s)”**: The representative or alternate selected by the Members within each Neighborhood to represent the Neighborhood in Association matters other than those requiring a vote of the membership, as described in Sections 6.10 and 6.11, subject to Section 6.9 below.

**“Nonprofit Corporations Act”**: Title 16, Chapter 6a of the Utah Code Annotated, the “Utah Revised Nonprofit Corporations Act,” as the same may be amended from time to time.

**“Notice and Hearing”**: Written notice and an opportunity for a hearing before the Board, at which the Owner concerned shall have the opportunity to be heard in person, or by counsel at the Owner’s expense, in the manner further provided in the Bylaws.

**“Officer”**: A duly elected or appointed and current officer of the Association.

**“Owner”**: One or more Persons, which may include Declarant, or a Builder, who hold the Record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term “Owner” shall include sellers under executory contracts of sale, but shall exclude Mortgagees.

**"Parcel"**: A parcel of land within the Community, conveyed by Declarant to a Builder, and/or owned by a Builder, for the purpose of constructing improvements for later sale to consumers (i.e., for further subdivision into Units, development, and/or resale in the ordinary course of such Builder's business).

**"Paseo(s)"**: Certain landscaped walkway easement areas in the Properties, shown as such on a Plat or designated as such from time to time by Declarant,

**"Pocket Park(s)"**: Certain limited park areas in the Properties, shown as such on a Plat or designated as such from time to time by Declarant.

**"Person"**: A natural person, a corporation, Limited Liability Company, partnership, trustee, or any other legal entity.

**"Plat"**: The final plat maps of portions of the Community as Recorded from time to time, as may be amended and supplemented from time to time of Record.

**"Private Streets"**: All private streets, rights of way, street scapes, and vehicular ingress and egress easements, in the Properties, shown as such on a Plat.

**"Properties"**: The real property described in Exhibit "A," together with such additional property from time to time as is made subject to this Declaration in accordance with the terms and provisions hereof.

**"Public Infrastructure District"**: A special district which may be created as a special purpose unit of local government in accordance with Utah law to provide certain public infrastructure to some or all of the Community.

**"Record," "Recording," or "Recorded"**: To file, filing, or filed of record in the official records of the Office of the County Recorder of Washington County, State of Utah, consistent with the requirements of Title 57, Chapter 3 of the Utah Code Annotated, "Recording of Documents," as the same may be amended from time to time. The date of Recording shall refer to that time at which a document, map, Official Plat or other document is Recorded.

**"Requisite Membership Percentage"**: Eighty percent (80%) or more of the total aggregate voting power of the Membership of the Association.

**"Requisite Neighborhood Percentage"**: Eighty percent (80%) or more of the total aggregate voting power of those certain Association Members who are Owners of Units in the relevant Neighborhood.

**"Resident"**: Unless otherwise specified in the Governing Documents, shall mean any person who is physically residing in a Unit.

**"Rules and Regulations"**: The restrictions relating to an Owner's use of his or her Unit and conduct of Persons on the Properties, as more specifically authorized and provided for in Article 3.

**"Special Assessment"**: Assessments levied in accordance with Section 8.5, Special Assessments are additional to each and all of Base Assessments, Neighborhood Assessments, and Specific Assessments, as applicable.

**"Specific Assessment"**: Assessments levied against a particular Unit or Units for expenses incurred or to be incurred by the Association for purposes described in Sections 3.5, 4.8, 5.3, 7.3, 7.4, 7.11, 8.6, and/or 18.9, below (or in any other section of this Declaration specifically referring to Specific Assessments).

Specific Assessments are additional to each and all of Base Assessments, Neighborhood Assessments, and Special Assessments, as applicable.

**“Supplemental Declaration”**: An instrument Recorded by Declarant or with the express prior written consent of Declarant; which shall be supplemental to this Declaration, and which may create a Neighborhood Association and/or impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to a particular Neighborhood or other land described in such instrument. Any purported Supplemental Declaration Recorded without the express prior written consent of Declarant shall be null and void.

In the event of any general conflict between this Declaration and any Supplemental Declaration, this Declaration shall control; however, with respect to any conflict between restrictions or requirements set forth in this Declaration and any Supplemental Declaration, the more restrictive of the same shall control. The primary purpose of this shall be to permit restrictions or requirements to be adopted for each Neighborhood which may be stricter or more stringent than those set forth generally in this Declaration, or for restrictions or requirements to be adopted for the entire Community which may be stricter or more stringent than those set forth generally in any particular Supplemental Declaration, and for the appropriate association to enforce the same.

**“Unit”**: Subject to the provisions pertaining to unsubdivided parcels of land, as set forth in Section 8.1 below: A contiguous portion of the Properties, whether improved or unimproved (other than Common Areas and any Neighborhood Common Areas, and property dedicated to the public), which may be independently owned and conveyed and which is intended to be developed, used, and occupied as a Dwelling for single Family (as shown and separately identified on a Plat). The term shall also include all “Lots” as defined herein, and interests defined as “Unit” in the Condominium Ownership Act. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon, and the boundaries of each Unit shall be delineated on a Plat. Prior to Recording of an Official Plat for a particular Parcel, said Parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the applicable preliminary plat or site plan approved by Declarant, whichever is more current. Until a preliminary plat or site plan has been approved, such Parcel shall contain the number of Units set by Declarant in conformance with the Master Plan.

## ***PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS***

*The standards for use, conduct, maintenance, and architecture at the Community are what give the Community its identity and make it a place which people want to call “home.” Each Owner and Resident, in upholding such standards, can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards, while providing flexibility for Community Standards to evolve as the Community changes and grows over time, and as customs, requirements, technology, standards, and laws evolve.*

### **ARTICLE 3** **USE AND CONDUCT**

Section 3.1. **General Framework for Regulation.** The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements, and restrictions governing the Properties. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect the Community, its Owners and Residents. Therefore, this Article 3 establishes procedures for modifying and expanding the initial Rules and

Regulations, and additional Rules and Regulations which may be created and revised from time to time, and also sets forth initial use restrictions applicable to the Community.

**Section 3.2. Rule Making Authority.**

(a) **Authority of Board.** Subject to the Governing Documents, the Nonprofit Corporations Act, and the Board's duty to exercise prudent business judgment on behalf of the Association and its Members, and consistent with the provisions of the other Governing Documents, the Board may: (i) create, modify, and enforce reasonable Rules and Regulations governing the use of the Properties, and/or (ii) modify, cancel, limit, create exceptions to, or expand, such Rules and Regulations (all or any one or more of such actions described in the foregoing subsections (i) and/or (ii), an "Action on Rules and Regulations"). The Board's enforcement power shall generally extend to and include the provisions of this Declaration, and Rules and Regulations adopted by the Board hereunder, and the Board shall generally leave enforcement of each Neighborhood's Supplemental Declaration, and any rules and regulations adopted thereunder, to the Neighborhood Association associated therewith. The Board shall send notice to all Owners concerning any proposed Action on Rules and Regulations at least Fifteen (15) business days prior to the Board meeting at which such Action on Rules and Regulations is to be considered. Such notice shall be sent in the manner provided for in subsection (c) below, Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Such Action on Rules and Regulations shall become effective, after compliance with subsection (c), unless disapproved by the Requisite Membership Percentage or by Declarant (during the Declarant Rights Period). The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition signed by Members representing at least ten percent (10%) of the total votes of the Association as required for special meetings in the Bylaws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until fifteen (15) days after such meeting is held, and then shall be subject to the outcome of such meeting.

(b) **Notice.** At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b), the Board shall provide a copy of the new Rule or Regulation or explanation of any modifications to the existing Rules and Regulations to each Owner, specifying the effective date. The Board may send a copy of the new or modified Rule or Regulation either by U.S. mail; electronic telecommunication, facsimile or email with confirmation of receipt; or, publication in the Community newsletter delivered or mailed to each Owner, provided that such notice is clearly identified under a separate headline in the newsletter. Upon written request by a Member or Mortgagee, the Association shall provide, without cost, a single copy of the newly revised Rules and Regulations. The Association may charge a reasonable fee for additional copies of the revised Rules and Regulations.

(c) **No Application to Administrative Rules and Regulations.** The procedures required under this Section shall not apply to the enactment and enforcement of administrative rules and regulations governing use and operation of the Common Areas unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on Private Streets, and the method of allocating or reserving use of a facility (or any portion of a facility) by particular individuals at particular times. The Board shall exercise business judgment in the enactment of such administrative rules and regulations.

(d) **Authority to Change Design Guidelines.** Prior to expiration or termination of the Declarant Rights Period (or express delegation by Declarant of its rights under Article 4), neither

the Board nor the Association shall have any authority to modify, repeal, or expand the Design Guidelines without the written consent of Declarant. In the event of a conflict between the Design Guidelines and the Rules and Regulations, the Design Guidelines shall control.

**Section 3.3. Owners' Acknowledgment: Notice to Home Owners.** All Home Owners are given notice that use of their Units and the Common Areas is and/or will be limited by the Governing Documents, including, but not limited to, the Rules and Regulations, as may be amended, expanded, and otherwise modified. Each Home Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision, and that the Rules and Regulations may change from time to time as provided under Section 3.2. All Purchasers of Units and subsequent Home Owners are hereby placed on notice that changes may have been adopted by the Association. Copies of the current Rules and Regulations may be obtained from the Association.

**Section 3.4. Protection of Owners and Others.** Rules and Regulations shall be subject to and consistent with applicable federal and state laws, applicable health codes and other ordinances, the Declaration, Bylaws, and Design Guidelines, and must be adopted without intent to circumvent or evade the requirements and provisions of any of the foregoing. Additionally, no Rule or Regulation, or any other action by the Association or Board, shall unreasonably hinder or impede the rights of Declarant and/or Builders to develop the Properties in accordance with the rights reserved to the Declarant in this Declaration. Subject to and without limiting the foregoing, no Rule or Regulation shall be adopted or enforced in violation of any of the following provisions:

(a) **Equal Treatment.** Specifically, subject to Section 1.8, above, the Rules and Regulations shall be uniformly applied under the same or similar circumstances with regard to similarly situated Owners; provided that Rules and Regulations may vary by Neighborhood (but shall be uniformly applied in such manner within any particular Neighborhood).

(b) **Displays.** There shall be no abridgement of the right of Owners to display religious and holiday signs, symbols, and decorations inside dwellings; provided that the Rules and Regulations may, to the maximum extent permitted by applicable law, regulate the time, place, manner, and duration, of any displays visible from outside the Unit. No Rule or Regulation shall regulate the content of political signs; however, Rules and Regulations may, to the maximum extent permitted by applicable law, regulate the time, place, manner, and duration, of posting such signs (including reasonable design criteria).

(c) **Household Composition.** No Rule or Regulation shall interfere with the right of an Owner to use a Unit as a residence for a single Family (provided that the foregoing shall not be interpreted under any circumstances to permit any "boarding houses" or to permit any condition or residence which would violate any applicable health code or other ordinance, or any applicable state or federal law).

(d) **Activities Within Dwellings.** No Rule or Regulation shall interfere with the activities carried on within the confines of Dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and may restrict or prohibit any activities that would; (1) create monetary costs for the Association or other Owners, (2) devalue property values within any portion of the Properties, (3) create a danger to the health, safety and/or welfare of Residents of other Units, (4) generate excessive noise or traffic, (5) create unsightly conditions visible outside the dwelling, (6) create an unreasonable source of annoyance, or (7) otherwise violate local, state, or federal laws or regulations.

(e) **Alienation.** No Rule or Regulation shall prohibit leasing or transfer of any Unit,

or require consent of the Association or Board for leasing or transfer of any Unit; provided that no such lease shall be for a term of less than thirty (30) days. The Rules and Regulations may require that Owners use lease forms reasonably approved by the Board, but shall not impose any fee payable to the Association on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(f) Abridging Existing Rights. If any new or amended Rule or Regulation would otherwise require Owners to dispose of personal property which they maintained in or on the Unit prior to the effective date of such regulation, or to vacate a Unit in which they resided prior to the effective date of such regulation, and such property was maintained or such occupancy was in compliance with this Declaration and all Rules and Regulations previously in force, such new or amended Rule or Regulation shall not apply to any such Owners without their written consent,

(g) No Mobile Homes. Notwithstanding any other provision in this Declaration; (1) each Dwelling Unit shall be improved and used solely as a residence for a single Family and for no other purpose; and (2) no part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any "manufactured" or mobile home, or for business, commercial, manufacturing, mercantile, primary storage, vending, or any other nonresidential purposes; provided that Declarant may exercise the reserved rights described in Articles 10, 11, and/or 12 of the Declaration.

Section 3.5. Initial Use Restrictions. Subject to the rights and exemptions of Declarant as set forth in this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Section 3.5 may be modified or waived in whole or in part by the DRC in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the DRC. Any other provision herein notwithstanding, neither Declarant, the Association, the DRC, nor their respective managers, directors, officers, members, agents or employees shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein. Additional or supplemental use restrictions may also be promulgated from time to time in Recorded Supplemental Declaration(s).

(a) Single Family Residence. Each Dwelling Unit shall be improved and used solely as a residence for a single Family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any "manufactured" or mobile home, or for business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering," destructive construction testing, or any other nonresidential purposes; provided that Declarant may exercise the reserved rights described in Articles 10, 11, and/or 12 of the Declaration. The foregoing sentence shall not modify Article 16 or 17 below. The provisions of this Section shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Unit, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no external evidence (visible from any street or any other portion of the Properties) of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home, This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no such lease shall be for a term of less than thirty (30) days.

(b) No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or Common Elements may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to the Governing Documents, any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. Absent prior written approval of the DRC, no two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner may permanently remove any block wall or other intervening partition between Units.

(c) Insurance Rates. Without the prior written approval of the DRC and the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any applicable law. Any other provision herein notwithstanding, neither the DRC nor the Board shall have any power whatsoever to waive or modify this restriction.

(d) Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind ("Animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, household birds or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, or in unreasonable quantities or in violation of any applicable governmental ordinance or any other provision of the Declaration, and are subject to such limitations as may be set forth in the Rules and Regulations. As used in this Section, "unreasonable quantities" shall ordinarily mean more than three (3) such domestic pets per household; provided, however, that the Board or DRC may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board or DRC, a nuisance to other Owners or Residents. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, Residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar improvement pertaining to animals shall be placed or permitted in any Unit, unless approved by the DRC in advance and in writing (and, in any event, any such "dog run" or similar improvement shall not exceed the height of any party wall on the Unit, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the reasonable judgment of the DRC), and (b) all Owners shall comply fully in all respects with all applicable governmental ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

(e) Nuisances. No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings; and no plant waste, compost, bulk materials, or other debris of any kind (all, collectively, hereinafter, "rubbish and debris") shall be kept, stored or allowed to accumulate on any privately owned Unit unless stored within an enclosed structure or container which has been approved by the DRC, or unless such matter is screened from view in a manner approved by the DRC, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary or offensive. Without limiting the foregoing, a refuse container, the use of which has been approved by the DRC, containing such materials, may be placed outside at times reasonably necessary (not to exceed twelve (12) hours before or after scheduled trash collection hours) to permit garbage or trash pickup. No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Areas. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security or fire protection purposes), noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment normally utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents, or any equipment or item which may unreasonably interfere with television or radio reception within any Unit or the Common Areas, shall be located, used or placed on any portion of the Properties without the prior written approval of the DRC. No loud motorcycles, dirt bikes or other loud mechanized vehicles may be operated on any portion of the Area of Common Responsibility without the prior written approval of the DRC, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. The Board shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of other Family members or persons residing in or visiting his Unit; and any damage to the Common Areas, personal property of the Association, or property of another Owner or Resident, caused by such other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

(f) Exterior Maintenance and Repair; Owner's Obligations. No property or Improvement anywhere within the Properties shall be permitted to fall into disrepair, and all property (including any Improvements) in the Properties shall at all times be kept in a safe condition, and in good condition and repair. If any Owner or Resident shall permit any Unit, which is the responsibility of such Owner or Resident to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the DRC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner and/or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Specific Assessment pursuant to the Declaration, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment for all purposes of the Declaration. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all



amounts due for such work within ten (10) days after receipt of written demand therefor. The Association shall have no liability whatsoever for any damage done to an Owner's Unit as a result of such entrance and repair, provided, however, that the Association was acting in good faith.

(g) Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the DRC, and any request therefor shall be subject to Article 4 of the Declaration, including, but not necessarily limited to, any condition imposed by the DRC, and further shall be subject to the Owner obtaining all necessary governmental approvals. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to an initial Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the DRC.

(h) Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, and any applicable governmental health authorities having jurisdiction, and has been approved in advance and in writing by the DRC.

(i) No Hazardous Activities. No activities shall be conducted, nor shall any improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements, Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, unless except a regular barbecue fire contained within a receptacle commercially designed therefor, so that no fire hazard is created, or except as specifically authorized in writing by the DRC (all as subject to applicable ordinances and fire regulations).

(j) No Unightly Articles. No unightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, garden or maintenance equipment, or inoperable vehicle) shall be permitted to remain on any Unit so as to be reasonably visible from any street, or from any other Unit, Common Elements, or neighboring property.

(k) No Temporary Structures. Unless required by Declarant during the initial construction of Dwellings and other Improvements, or unless approved in writing by the DRC in connection with the construction of authorized Improvements, no outbuilding, tent, shack, shed or other temporary or portable structure or Improvement of any kind shall be placed upon any portion of the Properties.

(l) No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon, in, or below any Unit or the Common Areas, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat, natural gas, or other mineral or depleting asset shall be erected. Declarant hereby reserves all water rights, if and to the extent there are any water rights, pertaining to all of the Properties and all portions thereof.

(m) Alterations. There shall be no excavation, construction, alteration or erection of

any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties without the prior approval of the DRC pursuant to Article 4 hereof. There shall be no violation of the setback, side yard or other requirements of local governmental authority, notwithstanding any approval of the DRC. This Section shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition.

(n) Signs. Subject to the reserved rights of Declarant in the Declaration (and any reserved rights of a Builder of Record with regard to such Builder's subdivision), no flag, flag pole, balloon, beacon, banner, sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view on any portion of the Properties, or on any public street abutting the Properties, without the prior written approval of the DRC, except: (a) one (1) sign for a Unit, advertising for sale or lease of a privately owned Unit; provided, however, that such sign conforms to the specifications promulgated (from time to time) by the DRC, relating to dimensions, design, number, style and location of display, and/or (b) a "security" sign, subject to DRC requirements and limitations, and/or (c) traffic and other signs installed by Declarant as part of the original construction of the Properties or required by governmental authority with jurisdiction. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable governmental ordinances.

(o) Improvements.

(1) No Unit shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-Family Dwelling. No part of the construction on any Unit shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any Dwelling Unit, except one or more chimneys or vent stacks. No basketball backboard, jungle gym, play equipment, or other sports apparatus, whether temporary or permanent, shall be constructed, erected, or maintained on the Properties without the prior written approval of the DRC. Apart from any installation by Declarant (or by Builder, as applicable, subject to all requirements applicable to the builder) as part of its original construction, no patio cover, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant (or Builder, as applicable) during the original construction of the Dwelling), unless the prior written approval of the DRC is obtained.

(2) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and neighboring properties.

(3) No fence or wall shall be erected or altered without prior written approval of the DRC. All alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the DRC.

(4) Garages shall be used only for their ordinary and normal purposes. Unless constructed or installed by Declarant (or Builder, as applicable) as part of its original construction, no Owner or Resident may convert the garage on his or her Unit

into living space or otherwise use or modify a garage so as to preclude regular and normal parking of vehicles therein, without the prior written approval of the DRC in its discretion. The foregoing notwithstanding, Declarant (or Builder, as applicable) may convert a garage located in any Unit owned by Declarant (or Builder, as applicable) into a sales office or related purposes.

(p) Antennas and Satellite Dishes. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained on any Unit. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (1) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (2) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is in compliance with requirements set forth in applicable Rules and Regulations.

Declarant or the Association (or any Builder, with respect to such Builder's subdivision) may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant (or a Builder, with respect to such subdivision) may grant easements for installation, maintenance, repair and/or replacement of any such master or cable television service.

(q) Landscaping. Within one hundred eighty (180) days after the later to occur of (1) close of escrow for the sale of a Unit to a Home Owner, or (2) issuance of a Certificate of Occupancy for a Dwelling constructed on such Unit, the Home Owner thereof shall cause to be installed and shall thereafter maintain (except for any landscaping to be maintained by the Association pursuant to the Declaration) the landscaping on those portions of the front and side yards of the Unit (and, with respect only to those Units whose rear yards directly abut Paseos, Pocket Parks, or other Common Areas ("Abutting Units"), the rear yard of such Abutting Unit) which are subject to view from the abutting street or streets (or Paseo or Pocket Park), in a neat and attractive condition, including all necessary landscaping and gardening, and properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation, if any, originally placed on such Unit by Declarant or a Builder. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. In addition, each Owner shall keep free from weeds, debris and other unsightly objects all portions of the yard on his Unit which are not subject to view from the abutting street or streets. The Board may adopt Rules and Regulations proposed by the DRC to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with the Governing Documents, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the DRC shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists an unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon such Owner's Unit for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Specific Assessment enforceable in the manner set forth in the Declaration. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Unit, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

(r) Parking and Vehicular Restrictions. No Person shall park, store, or keep on any

street (public or private) or anywhere else within the Properties: any disabled, unregistered, or unlicensed vehicle; or any large commercial-type vehicle (including, but not limited to, any dump truck, cement-mixer truck, oil or gas truck, or any other similar vehicle); provided that the foregoing shall not be deemed to exclude reasonable and temporary parking on streets, where not otherwise prohibited, of moving vans, delivery trucks, maintenance vehicles, landscaping trucks, or similar vehicles, for the sole purpose of reasonably prompt loading, unloading, delivery, maintenance, and/or landscaping (but in no event shall such vehicles be permitted to remain overnight). No Person shall park, store, or keep on any street (public or private) within or abutting the Properties any recreational vehicle (including, but not limited to, any camper unit, house car or motor home, trailer, trailer coach, camp trailer, watercraft, aircraft, or mobile home); provided that recreational vehicles may be kept or parked: (a) within an authorized "R.V. Storage Area" (if any, designated as such by the Board) subject to all applicable Rules and Regulations; and/or (b) in a side-yard of a Unit, on a cement pad, behind the front foundation line of the dwelling constructed on the Unit, in a fenced area, or in an enclosed garage; such fenced area shall be gated with a wrought iron, screened gate (no vinyl or wood shall be allowed), as approved by the DRC; which gate shall be maintained and repaired by the Owner. Notwithstanding any of the foregoing, one camper truck, van, or similar vehicle, up to and including one (1) ton, when used for everyday-type transportation, may be kept or parked wholly enclosed within an Owner's garage. Without limiting the foregoing, no Owner shall park, store, or keep, anywhere within the Properties, any vehicle or vehicular equipment, mobile or otherwise, deemed by the Board or the DRC to be a nuisance. No Person shall perform repair or restoration of any motor vehicle, trailer, watercraft, aircraft, or other vehicle, upon any portion of the Properties or on any street abutting the Properties; provided that repair and/or restoration of one motor vehicle shall be permitted, but only if performed wholly within an Owner's garage with the garage door closed; provided further that such activity may be prohibited entirely by the Board or DRC if either determines, in its respective reasonable discretion, that such activity constitutes a nuisance. Each Owner and/or Resident shall maintain his garage in a manner which ensures that the garage is capable of regularly and normally accommodating as many vehicles as it was originally designed to accommodate. Garages shall be kept closed at all times, except as reasonably required for ingress to and egress therefrom. The Board may establish Rules and Regulations further governing or restricting parking (including, but not limited to, any guest parking in specifically designated areas). Notwithstanding any of the foregoing, these restrictions shall not be interpreted in such manner as to permit any activity contrary to any applicable law or governmental ordinance.

(s) Sight Visibility Restriction Areas. The maximum height of any and all Improvements (including, but not necessarily limited to, landscaping), on any "Sight Visibility Restriction Area" set forth on a Plat, shall be restricted to a maximum height as set forth on the Plat. In the event that any Improvement located on any Sight Visibility Restriction Area on a Unit exceeds the maximum height permitted by the relevant Plat, the Association shall have the power and an easement (but not the obligation) to enter upon such Unit and to bring such Improvement into compliance, and the Owner of such Unit shall be solely liable for the costs thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Specific Assessment under this Declaration.

(t) No Waiver. The failure of the Board or DRC to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of

such breach, and no waiver by the Board or Manager if any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

(u) Declarant Exemption. Units owned by Declarant (and/or Builder, if applicable, subject to any requirements on the Builder or obligations of the Builder to Declarant) shall be exempt from the provisions of this Section 3.5, until such time as Declarant (or Builder, as applicable) conveys title to the Unit to a Home Owner; and activities of Declarant (or Builder, as applicable) reasonably related to Declarant's (or Builder's) development, construction, and marketing efforts, shall be exempt from the provisions of this Section 3.5. During the Declarant Rights Period, this Section 3.5(u) may not be amended without Declarant's prior written consent, and any purported amendment in violation of the foregoing shall be null and void.

#### **ARTICLE 4** **ARCHITECTURE AND LANDSCAPING**

Section 4.1. General. No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other works (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article 4 and the Design Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Dwelling without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Dwelling visible from outside the structure shall be subject to prior review and approval as set forth herein.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or similarly licensed building designer unless otherwise approved by Declarant or its designee in its sole discretion.

This Article 4 shall not apply to the activities of Declarant during the Declarant Rights Period.

#### Section 4.2 Design Review.

(a) Review By Declarant or Designated DRC. Each Owner, by acquiring title to a Unit, acknowledges that Declarant, as developer of portions of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article 4 ("Work") shall be commenced on such Owner's Unit unless and until Declarant or the DRC has given its prior written approval for such Work, which approval may be granted or withheld in the sole discretion of Declarant or DRC. In reviewing and acting upon any request for approval, Declarant or DRC shall be acting solely in the interest of Declarant and shall owe no duty to any other Person. The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written, Recorded instrument executed by Declarant. Declarant may from time to time, but shall not be obligated to, delegate all or any portion of its reserved rights under this Article 4 to a design review committee appointed by Declarant ("DRC"), comprised of

architects, engineers, or any other persons, who need not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to: (1) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (2) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. During the Declarant Rights Period, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates.

(b) Period of Declarant's Article 4 Rights. The rights reserved to Declarant under this Article 4 shall continue through the Declarant Rights Period, unless earlier terminated or expressly delegated by a written and Recorded instrument executed by Declarant.

(c) Certain Waivers of Design Review Matters for Qualifying Builders. The design review process may be waived by Declarant, at Declarant's option, for a Builder which has purchased real property from Declarant, and which has duly received Declarant's approval of a project plan pursuant to the process set forth in a Recorded Development Declaration satisfactory to Declarant and DRC.

(d) Review by Board: Appointed DRC. Upon expiration or termination of the Declarant Rights Period, or upon express delegation by Declarant of its Article 4 rights: (1) the Board, acting through the DRC, shall assume jurisdiction over design matters, and (2) the DRC, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. Until such time as the Declarant Rights Period expires or terminates, or unless and until such time as Declarant delegates its Article 4 rights to the Board, neither the Board nor the Association shall have any jurisdiction or authority whatsoever over design matters.

(e) Review Fees: Assistance. For purposes of this Article 4, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application and/or to any subsequent review(s) of any revision(s) thereto. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

#### Section 4.3. Design Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions which may vary from Neighborhood to Neighborhood. The Design Guidelines are intended to provide guidance to Home Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Reviewer shall make the Design Guidelines available to Home Owners and Builders who seek to engage in development or construction within the Community. In Declarant's sole discretion, such Design Guidelines may be Recorded (in which event the Recorded version, as unilaterally may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time). Declarant shall have sole and full authority to amend the Design Guidelines during the Declarant Rights Period, notwithstanding a delegation of reviewing authority to the DRC (unless Declarant also expressly delegates such power to amend). Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design

Guidelines, with the Board's consent. Any amendments to the Design Guidelines shall be prospective only, and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

(b) Procedures. Unless a waiver contemplated by Section 4.2(a) above applies, prior to commencing any Work within the scope of this Article 4, an Owner shall submit to the relevant Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as reasonably deemed necessary to consider any application and may require deposits by a Home Owner prior to approval or commencement of Work.

In reviewing each submission, the Reviewer may consider any factors it deems reasonably relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall, within forty-five (45) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

In the event that the Reviewer fails to respond within the 45-day period, approval shall be deemed to have been given, subject to Declarant's veto right pursuant to this Section. However, no approval (whether expressly granted or deemed granted pursuant to the foregoing) shall be inconsistent with the Design Guidelines, unless a variance has been expressly granted pursuant to Section 4.5. There shall be no deemed variances.

Until expiration of the Declarant Rights Period, the DRC shall notify Declarant in writing within three (3) business days after the DRC has approved any application relating to proposed Work within the scope of matters Declarant delegated to the DRC. The notice shall be accompanied by a copy of the application and any additional information Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC and the applicant.

If construction does not commence on a project for which Plans have been approved within 120 days after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within 180 days of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If

approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article 4, provided such activities are undertaken in strict compliance with the requirements of such resolution.d

**Section 4.4. No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article 4 will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar applications or proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

**Section 4.5 Variances.** The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or other financial considerations, shall not be considered a hardship warranting a variance. Notwithstanding the above, the Reviewer may not authorize variances without the written consent of Declarant, during the Declarant Rights Period.

**Section 4.6. Limitation of Liability.** The standards and procedures in this Article 4 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person, Review and approval of any application are made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring: (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Units are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners; (d) that views from any other Unit are protected; or (e) that no defects exist in approved construction. Neither Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor, subcontractors, employees, or agents, whether or not Declarant has approved or featured such Person as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board and its Directors, and the DRC and its members, shall be defended and indemnified by the Association as provided in Section 7.6.

**Section 4.7 Certificate of Compliance.** Any Owner may request that the Reviewer issue a certificate of design compliance certifying that there are no known violations of this Article 4 or the Design Guidelines. The Association shall either grant or deny such request within forty-five (45) days after receipt of a written request and may charge a reasonable administrative fee for issuing such



certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate and which may violate this Article 4 or the Design Guidelines.

**Section 4.8 Cure of Nonconforming Work; Enforcement.** Any construction, alteration, or other work done in violation of this Article 4 or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the Association, or Reviewer, an Owner shall, at its own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by applicable law), may be assessed against the benefited Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Work and all Work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Work by the deadline set forth in the approval, Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the Bylaws, to enter upon the Unit and remove or complete any incomplete Work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article 4 and the Design Guidelines may be excluded from the Properties, subject to Notice and Hearing. In such event, neither Declarant, the Association, nor their officers and directors shall be held liable to any Person for exercising the rights granted by this paragraph. The Association and/or Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article 4 and the decisions of the Reviewer.

## **ARTICLE 5** **MAINTENANCE AND REPAIR**

**Section 5.1 Maintenance of Units.** Each Owner shall maintain his or her Lot, Dwelling, Unit, any all landscaping and other improvements comprising the Unit, as well as the interior surface of any perimeter wall or fence, in a manner consistent with the Governing Documents, the Community Standards, and all applicable covenants, unless some or all of such maintenance responsibility is otherwise assumed by or assigned to the Association (or by a Neighborhood Association, if any, pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit). In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**Section 5.2 Maintenance of Neighborhood Property.** The Association (or the applicable

Neighborhood Association, if any) shall maintain any Neighborhood Common Elements, and any other property for which it has maintenance responsibility, in a manner consistent with the Governing Documents, the Community Standards, and all applicable covenants. Upon resolution of the Board, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Neighborhood and adjacent public roads or Area of Common Responsibility, Private Streets within the Neighborhood, and lakes or ponds or other features which are a part of the Neighborhood. The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the reasonable judgment of the Board, the level and quality of service being provided is not consistent with the Community Standards. All costs of maintenance of such property within the Neighborhood shall be assessed as Neighborhood Assessments only against the Units within the Neighborhood to which the services are provided.

**Section 5.3 Responsibility for Repair and Replacement.** Unless otherwise specifically provided for in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community Standards.

By virtue of taking title to a Unit, each Home Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the applicable Neighborhood Association (if any) or the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Home Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Home Owner.

Each Home Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 4. In the event that such repair and reconstruction cannot be promptly undertaken, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community Standards and shall present a timetable for repair and reconstruction to the Board within 90 days of the damaging or destructive event. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for Neighborhood Common Elements, if any, in the same manner as if the Neighborhood Association were a Home Owner and the Neighborhood Common Elements were a Unit. Additional Recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

### ***PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION***

*This Declaration establishes the Association as a mechanism by which each Owner, as a Member, is able to participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Association's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are*

*reserved for the Association's Membership, being the Owners of Units in the Community,*

**ARTICLE 6**  
**THE ASSOCIATION AND ITS MEMBERS**

Section 6.1 **Function of the Association.** The Association shall be the entity responsible, through its Board of Directors, for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and applicable laws.

Section 6.2 **Membership.** Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall constitute one Member, and may attend any meeting of the Association, but only one (1) such co-owner ("Designated Co-Owner"), designated from time to time by all of the co-owners in a written instrument provided to the Secretary of the Association, shall be entitled to exercise the vote to which the Unit is entitled, pursuant to Section 6.7 below. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. All co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership, subject to the Governing Documents and to reasonable Board regulation.

Section 6.3 **Board of Directors.**

(a) The affairs of the Association shall be managed by a Board of Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 6.4 below) must be Members of the Association. In accordance with the provisions of Section 6.4 below, upon the formation of the Association, Declarant shall appoint the Board, which shall initially consist of three (3) Directors. During the Declarant Rights Period, Declarant may unilaterally increase the Board to five (5) or seven (7) Directors. After the Declarant Rights Period, the number of Directors may be changed by amendment of the Bylaws, provided that there shall not be less than any minimum number of Directors nor more than any maximum number of Directors from time to time required or permitted by applicable Utah law. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of the Nonprofit Corporations Act or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office; provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. The Owners shall not be entitled to remove the Directors appointed by Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes

occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Utah law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void, Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

(b) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (51) of the votes on that Board are present at the beginning of the meeting.

Section 6.4 Declarant's Appointment of Board. Directors appointed by Declarant need not be Owners. Declarant shall have the power and right to appoint and remove all of the Directors, upon and after formation of the Association, subject to Section 6.5 below.

Section 6.5 Declarant Rights Period. During the Declarant Rights Period, Declarant at any time, and from time to time, with or without cause, may remove or replace any Director appointed by Declarant. Declarant may earlier relinquish its right to appoint and/or replace Directors, by specific written instrument.

Section 6.6 Control of Board by Home Owners. Subject to and following the period of Declarant's control, as set forth in Section 6.5 above: (a) the Home Owners shall elect a Board of not less than three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director). All Directors elected by Members must be Home Owners, and each such Director shall, within thirty (30) days of his appointment or election, certify in writing that he or she is a Home Owner and has read and reasonably understands the Governing Documents and applicable provisions of the Nonprofit Corporations Act to the best of his or her ability. The Board shall elect the Officers, all of whom must be Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 6.7 Voting. The Association shall have one class of membership, comprised of all Owners. Each Owner shall have one equal vote for each Unit in which it holds the interest required for membership under Section 6.2, provided that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.11 (unless owned by Declarant). Notwithstanding the foregoing, or any other provision in this Declaration or any other Governing Document, (i) there shall be a temporary second class of membership in which Declarant, as defined in the Declaration, shall be the sole member, and which class shall allow the Declarant five (5) votes for each Unit in which it holds an interest; and (ii) Declarant exclusively shall retain and shall exercise all votes allocable to Units and/or Parcels conveyed to Builders (and each Builder, by acquiring or owning title to any portion of the Properties, shall be unconditionally deemed to have agreed to and accepted exclusive retention by Declarant of such voting rights), until each such Unit is conveyed by a Builder to a Home Owner (at which time, the Home Owner exclusively shall have the vote allocable to his or her Unit, pursuant to this Declaration). The temporary second class shall expire upon the expiration of the Declarant Rights Period, and the Declarant shall thereafter be a member of the single remaining class with all other Owners. Accordingly, the total number of votes for the Association shall equal the total number of Units and/or Parcels created under and subject to this Declaration, plus four (4) additional votes for each Unit owned by Declarant during the Declarant Rights Period.

Special Declarant Rights, including the right to approve, or withhold approval of, actions proposed under the Governing Documents during the Declarant Rights Period, are specified in the relevant sections of the Governing Documents. Declarant may appoint a majority of the Board of Directors during the Declarant Rights Period.

Where a Unit is owned jointly by co-owners, only one (1) such co-owner ("Designated Co-Owner"), designated from time to time by all of the co-owners in a written instrument provided to the Secretary of the Association, shall be entitled to exercise the one (1) vote to which the Unit is entitled. Where no Designated Co-Owner has been designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. Fractional votes shall not be allowed. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. Absent such advice and in the event that more than one such co-owner casts a vote, the Unit's vote shall be suspended and shall not be included in the final vote tally on the matter being voted upon.

Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent.

Section 6.8 Neighborhoods. Exhibit "A" to this Declaration, and each Supplemental Declaration submitting additional property to this Declaration shall initially assign the property submitted thereby to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. During the Declarant Rights Period, Declarant unilaterally may amend this Declaration or any Supplemental Declaration to re-designate Neighborhood boundaries; provided that two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

The following is a summary of the formation and function of Neighborhoods:

**NEIGHBORHOOD:**

- Created at request of Builder with Declarant's consent when property within the Community is subdivided and a sub-declaration is recorded
- Units in a Neighborhood share any Neighborhood Common Elements
- Neighborhood may request that the Association provide special services or a higher level of services

Any Neighborhood, acting either through a Neighborhood Committee elected as provided in the Bylaws or through a Neighborhood Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to the Properties, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of the Requisite Neighborhood Percentage, the Association shall provide the requested services. The cost of such services, which may include an administrative charge in such amount as the Board reasonably deems appropriate (provided that any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the benefited Units within such Neighborhood as a Neighborhood Assessment.

**ARTICLE 7**  
**ASSOCIATION POWERS AND RESPONSIBILITIES**

Section 7.1 **Acceptance and Control of Association Property.**

(a) To further its functions as set forth above, the Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Area of Common Responsibility, to permit use of such portions of the Area of Common Responsibility by community organizations and by others, whether nonprofit or for profit, or for the provision of goods or services for the general benefit or convenience of Owners and Residents,

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit "A." The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error, or needed by Declarant to make adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Area of Common Responsibility, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Area of Common Responsibility, as it deems appropriate.

Section 7.2 **Maintenance of Area of Common Responsibility.**

(a) *Generally.* The Association shall maintain, in accordance with the Community Standards, the Area of Common Responsibility, which shall include, but need not be limited to:

- (1) all portions of and structures situated upon the Common Elements;
- (2) such portions of any additional property included within the Area of Common Responsibility (which may include landscaping within public rights-of-way within or abutting the Properties) as may be dictated by the Development Agreement, this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by or on behalf of the Association;
- (3) any and all ponds, streams, and/or wetlands located within the Properties which serve as part of the storm water drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith;
- (4) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities must be identified by written notice from Declarant to the Association and shall remain a part of the Area of Common Responsibility and shall be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and
- (5) the exterior of all perimeter walls or fences initially constructed by

Builders around the Properties or which separate a Unit from Area of Common Responsibility (regardless of whether such wall or fence is located on the Area of Common Responsibility or on a Unit). Except for wrought iron and like fences or walls and/or such other fences for which the Association assumes complete maintenance responsibility, a Home Owner shall be responsible for maintaining the interior surface of perimeter walls or fences located on such Home Owner's Unit. A perimeter wall or fence shall not be a party wall or party fence as set forth in Article 15.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community Standards or otherwise in the best interests of the Association.

The Association shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation, and management of wildlife, snakes, rodents, and pests within the Area of Common Responsibility.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to any property which the Association is obligated to maintain by this Declaration or any Supplemental Declaration, either by agreement with the Neighborhood Association or because, in the reasonable business judgment of the Board, the level and quality of service then being provided is not consistent with the Community Standards. Costs of such maintenance shall be assessed as a Neighborhood Assessment against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) *Continuous Operation.* The Association shall maintain any facilities or equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless the Requisite Membership Percentage or Declarant (during the Declarant Rights Period) agree in writing to discontinue such operation. The Area of Common Responsibility shall not be reduced during the Declarant Rights Period by amendment of this Declaration or any other means except with the prior written approval of Declarant.

(c) *Maintenance as Common Expense.* The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility and such other costs as provided in Section 7.2(a), or any other cost or expense of the Association incurred by the Association in furtherance of its functions or reasonably related thereto, shall be a Common Expense; provided that the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Neighborhood Common Elements, if any, shall be a Neighborhood Expense assessed to the Neighborhood(s) to which such Neighborhood Common Elements are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 7.3 Insurance.

(a) *Required Coverages.* The Association, acting through its Board or its duly

authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(1) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Area of Common Responsibility to the extent that the Association has responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(2) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, with umbrella coverage of at least \$15,000,000; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(3) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(4) Directors' and officers' liability coverage (including coverage for committee members);

(5) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter 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; and

(6) Such additional insurance as the Board, in its business judgment, determines prudent or necessary.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood, which insurance shall comply with the requirements of Section 7.3(a)(1). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Neighborhood Common Elements may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Neighborhood Common Elements are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate. In addition, the 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 Washington County area.

(b) *Policy Requirements.* All Association policies shall provide for a certificate of



insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after Notice and Hearing, that the loss is the result of the negligence or willful misconduct of one or more Owners and/or Residents, or their respective Families or Invitees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Elements shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;

(3) not be brought into contribution with insurance purchased by Owners, Residents, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(6) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(7) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(8) include an endorsement precluding the insurer from denying a claim by a Member or Owner or conditioning recovery under the policy based on or due to the negligent acts or omissions of the Association, any other Member, or any other Owner.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

(9) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and Manager, and the Owners and their Residents and their respective Families and Invitees;

(10) a waiver of the insurer's rights to repair and reconstruct instead of paying

cash;

- (11) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (12) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (13) a cross-liability provision; and
- (14) a provision vesting in the Board's exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

The Association shall provide Declarant with at least twenty (20) days prior written notice of any cancellation, termination, substantial modification, or non-renewal of any Association insurance policy,

(c) *Restoring Damaged Improvements.* In the event of damage to or destruction of Common Elements or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property substantially to the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Elements shall be repaired or reconstructed unless the Requisite Membership Percentage or Declarant (during the Declarant Rights Period) decides within 60 days after the loss not to repair or reconstruct. If the damage is to Neighborhood Common Elements, the Neighborhood Common Elements shall be repaired or reconstructed unless the Requisite Neighborhood Percentage or Declarant (during the Declarant Rights Period) decides within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Elements shall be repaired or reconstructed.

If a decision is made not 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, landscaped condition consistent with the Community Standards.

If Owners within a Neighborhood vote not to repair or reconstruct improvements on such Neighborhood Common Elements, any insurance proceeds attributable to such Neighborhood Common Elements, minus the costs of clearing and landscaping, shall be distributed as an assessment credit to such Owners. If Members vote not to repair or reconstruct improvements on Common Elements, the foregoing provision shall also apply to all Owners within the Community with respect to insurance proceeds attributable to such Common Elements. This provision may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those

Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a),

(d) *Waiver of Claims.* To the extent permitted by law, the Association and each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Property, waives any claims against Declarant and its affiliates for any damages or losses for which insurance coverage is available, to the extent of such insurance coverage.

Section 7.4 Compliance and Enforcement.

(a) Every Owner and Resident shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after Notice and Hearing. The Board shall establish a range of penalties for such violations, with violations of the Declaration, unsafe conduct, harassment, or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation:

(1) imposing a graduated range of reasonable monetary fines which shall constitute a lien upon the violator's Unit: provided such fines shall not exceed such maximum amounts as may be established from time to time by applicable state or local law. Before the Association may impose such a fine, it must first deliver, personally or by mail, a schedule of such fines to all Owners at their address as it appears on the records of the Association. In the event that any Invitee of an Owner, any Resident, or any Family or Invitee of an Resident, violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the Owner provided that if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. For each failure to comply, the amount of said fine shall not exceed the maximum permitted by applicable state or local law;

(2) suspending an Owner's right to vote;

(3) suspending any Person's right to use any recreational or park facilities within the Common Elements; provided that nothing herein shall authorize the Board to limit reasonable ingress or egress to or from a Unit;

(5) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(6) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article 4 and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(7) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 4 and the Design Guidelines from continuing or performing any further activities in the Properties; and

(8) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(9) in addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of Notice and Hearing:

(A) exercising other reasonable measures in any emergency situation (which shall specifically include, but not limited to, the towing of vehicles that are parked in violation of the Rules and Regulations);

(B) subject to Article 18, bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(10) In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Specific Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative with any and all other remedies available at law or in equity.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(1) the Association's position is not strong enough to justify taking any or further action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(3) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(4) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable State and local laws and ordinances, and shall permit local governmental bodies to enforce their respective laws and ordinances within the Properties for the benefit of the Association and its Members.

Section 7.5 Implied Rights; Board Authority. Subject to the Governing Documents, and the Nonprofit Corporations Act and other applicable law, the Association may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by applicable law, all rights and powers of the Association may reasonably be exercised by

the Board without a vote of the Membership. Subject to Article 18, the Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

**Section 7.6 Indemnification of Officers, Directors, and Committee Members.**

(a) **Indemnification.** The Association shall indemnify every Officer, Director, and committee member against all damages and expenses, including attorneys fees and costs, reasonably incurred 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; provided that such obligation to indemnify shall be limited to those actions for which liability is limited under this Declaration, the Articles of Incorporation, the Bylaws, and applicable Utah law.

(b) **Claims Related to Breach of Duty.** The Association's Officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability (except as Home Owners and Members of the Association) with respect to any contract or other commitment made or action taken in good faith on behalf of the Association.

(1) Volunteer Directors, Officers, and committee members of the Association shall not be personally liable in excess of the coverage of insurance specified in subparagraph (B) below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the following requirements are met by the volunteer Director, Officer, or committee member and the Association:

(A) the Director's, Officer's, or committee member's act or omission was performed within the scope of their duties, in good faith, and not willful, wanton, or grossly negligent; and

(B) the Association maintained and had in effect (at the time of the act or omission of the director, officer, or committee member and at the time a claim was made) one or more insurance policies which included coverage for general liability of the Association and individual liability of directors, officers, and committee members for negligent acts or omissions in that capacity, both in the amount of at least \$2,000,000.00.

(2) The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer under this subsection (2).

The Association shall indemnify and hold each such Officer, Director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The 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 7.7 Security. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED**

TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTIES, DESIGNED TO MAKE THE PROPERTIES SAFER THAN THEY OTHERWISE MIGHT BE. NEITHER THE ASSOCIATION, THE BOARD, THE MANAGER, ANY NEIGHBORHOOD ASSOCIATION, NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THE ABOVE-MENTIONED PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTIES (OR ANY ONSITE ROVING PATROL OR RESOURCES, IF APPLICABLE) CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND COVENANTS TO INFORM ALL RESIDENTS OF HIS OR HER UNIT, AND THEIR RESPECTIVE FAMILIES AND INVITEES, THAT THE ASSOCIATION, THE BOARD, COMMITTEES, NEIGHBORHOOD ASSOCIATIONS, AND/OR ALL OTHER PERSONS INVOLVED WITH THE GOVERNANCE, MAINTENANCE, AND MANAGEMENT OF THE PROPERTIES, INCLUDING DECLARANT, ARE NOT INSURERS OF SAFETY OR SECURITY WITHIN THE PROPERTIES. ALL OWNERS AND RESIDENTS, AND THEIR RESPECTIVE FAMILIES AND INVITEES, ASSUME ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PERSONS, UNITS, THE CONTENTS OF UNITS, AND OTHER PROPERTY, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE MANAGER, NOR DECLARANT HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING ANY ENTRY GATE, ANY PATROLLING OF THE PROPERTIES, ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES. ALL OWNERS AND RESIDENTS, AND THEIR RESPECTIVE FAMILIES AND INVITEES, FURTHER ACKNOWLEDGE THAT THEY HAVE NOT RELIED UPON ANY SUCH REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.

**Section 7.8 Provision of Services.** The Association shall enter into contracts or agreements required by Declarant pursuant to the Master Plan or related agreement. Additionally, the Association shall be authorized, but not obligated, to enter into and terminate, in the Board's discretion, subject to applicable law, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Owners and Residents, and their Families and Invitees, and to charge use and consumption fees for such services and facilities. For example only, services and facilities offered might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, and similar services and facilities.

**Section 7.9 Change of Services and Use of Common Elements.** The Board shall have the power and right to terminate services the Association provides or to change the use of portions of the Area of Common Responsibility during the Declarant Rights Period without having to obtain the approval or consent of the Members. After the Declarant Rights Period, the Board may do so only with the vote of a Majority of the voting power of the Board (provided that the Board reasonably determines that such change shall not materially or substantially adversely affect the Association and the Owners), and with the written consent of Declarant (during the Declarant Rights Period.) Any such change shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Association and the Owners, (b) the new use is for the benefit of the Association and the Owners; (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of

the Area of Common Responsibility; and (d) the new use is consistent with the Master Plan then in effect.

Section 7.10 View Impairment. NEITHER DECLARANT NOR THE ASSOCIATION GUARANTEES OR REPRESENTS THAT ANY VIEW OVER AND ACROSS THE OPEN SPACE FROM ADJACENT UNITS OR OTHER PROPERTY WILL BE PRESERVED WITHOUT IMPAIRMENT. WITHOUT LIMITING THE FOREGOING, NEITHER DECLARANT NOR THE ASSOCIATION SHALL HAVE THE OBLIGATION TO RELOCATE, PRUNE, OR THIN TREES OR OTHER LANDSCAPING EXCEPT AS SET FORTH IN ARTICLE 5. ANY EXPRESS OR IMPLIED EASEMENTS FOR VIEW PURPOSES OR FOR THE PASSAGE OF LIGHT AND AIR ARE HEREBY EXPRESSLY DISCLAIMED.

Section 7.11 Relationship with Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association (if any Neighborhood Associations are established) which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community Standards. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, of such action, an administrative charge, and sanctions.

Section 7.12 Relationship with Governmental and Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Elements to state or local governments, public school systems, and non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members, and residents. For purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time,

Section 7.13 Cooperation with Special Improvement District. The Association shall have the power, and is hereby authorized, to contract with and to cooperate with a Special Improvement District, if any, in order to ensure that their respective responsibilities are discharged. The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by the Special Improvement District, if applicable, is consistent with the Community Standards. Each Owner, by acceptance of a deed or Recorded contract or sale, is deemed to covenant and consent to the creation of a Special Improvement District and to promptly execute a separate document evidencing such consent, if requested to do so by Declarant.

Section 7.14 Manager. The Association, acting through the Board, shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, and helping the Board to enforce the Governing Documents, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be for a term not longer than one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice. In the event of any

explicit conflict between the Governing Documents and any agreement with a Manager, the Governing Documents shall prevail.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Utah Real Estate Division pursuant to the provisions of applicable state law). Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee thereof, may be a Director or Officer of the Association.

(d) As a condition precedent to the employ of, or agreement with, a Manager, the Manager (or any replacement Manager) first shall be required, at its expense, to review the Governing Documents, and any and all Association Reserve Studies and inspection reports pertaining to the Properties.

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's gross error or omission shall be paid (or reimbursed to the Association) by the Manager; and (3) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover. In any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed),

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a review performed of the books and records of the Association, to verify assets.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. Such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

(h) Notwithstanding any of the foregoing, the Manager shall not undertake any action requiring approval or vote of the Board or Membership (or the consent of Declarant) unless such approval or vote (or consent) shall have been first obtained, and, under no circumstances, shall the



Manager undertake any action which circumvents the provisions of the Governing Documents.

Section 7.15 Transfer of Membership. The Membership held by any Home Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Home Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Home Owner who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Home Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Unit until fee title to the Unit sold is transferred, including any approved but not yet levied Assessments which accrue or are incurred prior to the Close of Escrow for the Unit. If any Home Owner should fail or refuse to transfer his Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the purchaser shall have a valid proxy from the seller of said Unit. Declarant shall levy a transfer fee against a new Home Owner and his Unit, as set forth in further detail below.

Section 7.16 Continuing Rights of Declarant. Declarant shall retain the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of the Declarant Rights Period, throughout the remaining term of this Declaration, the Board shall deliver, to Declarant, notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, all Reserve Studies, and all audited annual reports. Such notices and information shall be delivered to Declarant at its most recently designated address.

## **ARTICLE 8** **ASSOCIATION FINANCES**

Section 8.1 Association Budgets for Base Assessments. Until the Association first levies assessments, the Declarant shall generally be responsible for all Common Expenses (provided that, prior to and until conveyance to the Association by a Builder of real property and/or Improvements as Common Elements, that Builder shall be responsible for payment of all expenses of maintenance and repair of such real property and Improvements, and any and all property taxes levied from time to time upon such real property and Improvements), Thereafter, assessments for Common Expenses shall be levied annually in accordance with this Article 8. At least sixty (60) days before the beginning of each fiscal year, the Board shall have caused to be prepared a proposed Association budget of the estimated Common Expenses for the coming year, including any contributions to be made to an Association Reserve Fund, pursuant to Section 8.3. The Association budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.6.

Notwithstanding the foregoing, or any other provision in this Declaration, no Assessments shall be levied upon any large parcel or unsubdivided parcel until a final subdivision map has been Recorded

on such parcel and until Declarant or Builder has conveyed title to any Unit or Units to a Purchaser.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.8 to fund the Common Expenses. Accordingly, the formula for calculating the Base Assessment against each Unit shall be the total budget amount for the coming year divided by the total number of Units created under and subject to this Declaration. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

In the event that Common Expenses for a fiscal year exceed the aggregate Base Assessments and other assessments, then Declarant may, but shall not be obligated to, pay a subsidy (in addition to any Base Assessments paid by Declarant under Section 8.7), which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the proposed annual Association budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Member at least thirty (30) days prior to the effective date of such budget.

If any proposed budget is disapproved in such manner, or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is deemed ratified in the foregoing manner.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

Any amounts accumulated from assessments for general Common Expenses in excess of the amount actually required for such Common Expenses and reserves for future Common Expenses shall be credited to each Unit assessed in proportion to the share of the assessments so assessed. Such credits may be applied, in the discretion of the Board, to the next annual Base Assessment against that Unit and thereafter until exhausted.

**DIVARIO MASTER ASSOCIATION  
 SAMPLE FISCAL YEAR**

*(Dates are representative only; see text of declaration for actual deadlines.)*

<i>Jan 1</i>	<i>May 1</i>	<i>Nov 1</i>	<i>Dec 1</i>	<i>Dec 10</i>
Base Assessments and any Neighborhood Assessments due and payable (unless board decides otherwise). Any Unit not subject to assessment at beginning of fiscal year shall be assessable beginning on 1 <sup>st</sup> day of month following the month in which the Unit becomes subject to Governing Documents. Board may establish installment payment periods throughout the fiscal year.	Association's annual report must be made available to all Members and shall include: <ul style="list-style-type: none"> <li>• Balance Sheet</li> <li>• Income Statement</li> <li>• Statement of Change in Financial Position</li> </ul>	Board must prepare Association Budget and any Neighborhood Budgets	Board must deliver copy of proposed Association budget to all Owners, and also copy of proposed Neighborhood budget, if any, to each Owner in the Neighborhood, together with notice of Membership meeting to ratify budgets by Decemehr 1 <sup>st</sup> ..	Association budget automatically becomes effective unless disapproved by Requisite Membership Percentage at Membership Meeting  Neighborhood budget automatically becomes effective unless disapproved by Requisite Neighborhood Percentage at Membership Meeting

The above diagram illustrates the timing for submitting budgets and collecting assessments. The Association may at any time enter an agreement or agreements with one or more Neighborhood Associations for the purpose of coordinating the invoicing and collection of assessments hereunder and under any Supplemental Declaration.

**Section 8.2 Budgeting for Reserves.** The Board shall cause to be prepared and reviewed at least annually a reserve budget for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Association budget adopted pursuant to Section 8.1 or the Neighborhood budgets adopted pursuant to Section 8.2, as appropriate, a capital contribution to fund reserves ("Reserve Funds") in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

The Board may adopt resolutions regarding the expenditure of Reserve Funds, including policies designating the nature of assets for which Reserve Funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. During the Declarant Rights Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

**Section 8.3 Reserve Fund; Reserve Studies.**

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"), (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements, (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever, (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); and (vi) under no circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst ("Reserve Analyst"), with sufficient experience in preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study").

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event initially within one (1) year after the Close of Escrow to a Home Owner for the first Unit within the Properties, and thereafter at least once every five (5) years (or at such other intervals as may be required from time to time by applicable State law), The Board shall review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient; and shall make such adjustments as the Board deems reasonable and prudent to maintain the required reserves from time to time by increasing Assessments). It shall be an obligation of the Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation:

- (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore;
- (2) an identification of the Major Components which have a remaining useful life of less than thirty (30) years;
- (3) an estimate of the remaining useful life of each Major Component so identified;
- (4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and
- (5) an estimate of the total Annual Assessment that may be required to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study).

(e) Each Reserve Study shall be prepared in accordance with any legal requirements from time to time as applicable, applied in each instance on a prospective basis. Subject to the foregoing sentence, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally agreed that the following, among others, shall be deemed reasonable and prudent for and in connection with preparation of each Reserve Study: (i) utilization, by a Reserve Analyst, of the "pooling" or "cash flow" method, or other generally recognized method, and/or (ii) utilization or reliance, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to the Reserve Fund (provided that, subject to and without limiting Sections 8.4 or 8.5 below, no assumption shall be made of such future increases in excess of ten percent (10%) per year plus a reasonable annual inflationary factor), with corresponding increases in Assessments.

**Section 8.4 Neighborhood Budgets; Neighborhood Assessments.** If Neighborhood budgets are to be prepared, then, at least sixty (60) days before the beginning of each fiscal year, the Board shall have caused to be prepared separate Neighborhood budgets, covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such Neighborhood budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.8, and any contribution to be made to a Reserve Fund pursuant to Section 8.3. Each proposed Neighborhood budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Units in such Neighborhood.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.6 to fund Neighborhood Expenses; provided, if so specified in the applicable Supplemental Declaration or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of the proposed Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Unless the Neighborhood budget is rejected by at

least the Requisite Neighborhood Percentage, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed budget is duly rejected as aforesaid, the Neighborhood budget for the immediately preceding fiscal year shall be reinstated, as if duly approved for the fiscal year in question, and shall remain in effect until such time as a subsequent proposed Neighborhood budget is deemed ratified.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment if needed, no less than annually subject to the notice requirements and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above.

Any amounts accumulated from assessments for Neighborhood Expenses in excess of the amount required for actual Neighborhood Expenses and reserves for future Neighborhood Expenses shall be credited to each Unit assessed in proportion to the share of such assessments as assessed. Such credits may be applied, in the discretion of the Board, to the next annual assessment for such Neighborhood Expenses against that Unit and thereafter until exhausted.

Section 8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership (if such Special Assessment is for Common Expenses), or against the Units within any Neighborhood (if such Special Assessment is for Neighborhood Expenses). Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the Requisite Membership Percentage (if a Common Expense) or Requisite Neighborhood Percentage (if a Neighborhood Expense), or the written consent of Declarant (during the Declarant Rights Period). Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 8.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items described in Section 7.8). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) following Notice and Hearing, to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or Resident, or their respective Families or invitees.

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, subject to Notice and Hearing with respect to such Owners in the Neighborhood before levying any such assessment.

Section 8.7 Authority to Assess Owners; Time of Payment. Declarant establishes and the Association is hereby authorized to levy assessments as provided for in this Article 8 and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit (or Parcel, as applicable) on the relevant Assessment Commencement Date, and shall be subject to the limitations and requirements set forth in Section 8.10 below. The "Assessment Commencement Date" with respect to each Unit or Parcel shall be the date on which a final subdivision plat creating such Unit or Parcel is Recorded; provided that Declarant may (but shall have no obligation to) establish a later Assessment

Commencement Date uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year (or, at the option of the Board, on a quarterly basis). If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

Section 8.8 Obligation for Assessments. Each Owner, by acquiring title to or entering into a Recorded contract of sale for any portion of the Properties, covenants and agrees to timely pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a maximum rate of eighteen percent (18%) per annum or such higher rate as the Board may establish, subject to the limitations of Utah law), late charges as determined by Board resolution, costs, costs of collection, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Section 8.9 Lien for Assessments. In accordance with the Act, and subject to the limitations of any other applicable Utah law, the Association shall have an automatic statutory lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including attorneys' fees), as set forth in further detail in Article 9 below.

Section 8.10 Limitation on Increases of Assessments. Notwithstanding any other provision in the Governing Documents, the Base Assessments shall be limited as follows: prior to January 1, 2020, the Base Assessment per Unit shall not exceed Fifty Dollars (\$ 50.00) per month. Notwithstanding any other provision to the contrary (but subject to the immediately preceding and immediately following sentences), and except for assessment increases necessary for emergency situations or to reimburse the Association

pursuant to Section 8.5, the Board may not impose a Base Assessment, Neighborhood Assessment, or Specific Assessment that is more than thirty percent (30%) greater than each of those assessments for the immediately preceding fiscal year nor impose a Special Assessment which in the aggregate exceeds ten percent (10%) of the budgeted Common Expenses or Neighborhood Expenses, as the case may be, for the current fiscal year, without the Requisite Membership Percentage (if a Common Expense) or Requisite Neighborhood Percentage (if a Neighborhood Expense) or written consent of Declarant (during the Declarant Rights Period). Notwithstanding the preceding sentence, in the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) with respect to the initial sale of a Unit by Declarant or a Builder to a Home Owner, then the maximum annual increase of Assessments shall be subject to any express prohibition by FHA or VA from time to time applicable to such maximum annual increase of such Assessments.

For purposes of this Section 8.10: (a) the term "Base Assessment" or "Neighborhood Assessment" shall be deemed to include the amount assessed against each Unit plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased; and (b) an "emergency situation" is any one of the following:

- (1) an extraordinary expense required by an order of a court;
- (2) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (3) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which the Board could not have reasonably foreseen in preparing and distributing the budget pursuant to Section 8.3. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

Section 8.11 Exempt Property. The following property shall be exempt from payment of Assessments (including, but not necessarily limited to, Base Assessments, Neighborhood Assessments, Special Assessments, and Specific Assessments):

- (a) all Common Elements (all portions of the Area of Common Responsibility, pursuant to Section 5.1, which are not encumbered by this Declaration);
- (b) any property dedicated to and accepted by any governmental authority or public utility;
- (c) any Neighborhood Common Elements; and
- (d) Commercial Component and Multi-Family Component (which shall, however, be subject to payment of periodic amounts as set forth in Article 17, below); and
- (e) in addition, Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code, so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

Section 8.12 Capitalization of Association. Upon acquisition of record title to a Unit by the first Home Owner thereof, a contribution shall be made by or on behalf of the Home Owner to the working capital of the Association in an amount not less than one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of any assessment. This amount shall be deposited into the purchase and sale escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

Section 8.13 Subsidies and/or Advances by Declarant. Declarant shall have the right, in its sole and absolute discretion, from time to time during the Declarant Rights Period, to: (a) subsidize the Association, by direct payment of any and all Excess Common Expenses ("Declarant Subsidies"); and/or (b) advance funds and/or make loan(s) to the Association, to be used by the Association for the sole purpose of paying Excess Common Expenses ("Declarant Advances"). "Excess Common Expenses" for purposes of this Section 8.13 shall mean such amount, if any, of Common Expenses in excess of Assessments and non-Reserve funds reasonably available at such time to pay Common Expenses. The aggregate amount of any and all Declarant Subsidies and/or Declarant Advances, or portions from time to time respectively thereof, together with interest thereon at the rate of eighteen percent (18%) per annum, shall be repaid by Association to Declarant as soon as non-Reserve funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration or under applicable Utah law). Each Owner, by acceptance of a deed to his or her Unit, shall be conclusively deemed to have acknowledged and agreed to all of the foregoing provisions of this Section 8.13, whether or not so stated in such deed.

## **ARTICLE 9**

### **NONPAYMENT OF ASSESSMENTS; REMEDIES OF ASSOCIATION**

Section 9.1 Nonpayment of Assessments. Any Assessment or installment of an Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, late charges, costs of collection, and related charges, fees, and costs, as set forth in Section 8.7. No such late charge or related charge or interest on any delinquent installment may exceed the maximum rate or amount allowable by applicable law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or other portion of the Area of Common Responsibility or by abandonment of his Unit.

Section 9.2 Notice of Delinquent Assessment. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail notice of delinquent assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration, If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance



of such assessments levied against such Owner and his Unit to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 9.3 Notice of Default or Notice of Delinquent Assessment. No action shall be brought to enforce any assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default or notice of delinquent assessment is Recorded; or (b) the date the Recorded notice of default or notice of delinquent assessment is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default or notice of delinquent assessment must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment as described in Section 8.7 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Association to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Association for such purpose. The lien shall continue until fully paid or otherwise satisfied.

Section 9.4 Foreclosure Sale. Declarant hereby conveys and warrants pursuant to Utah Code Sections 57-1-20 and 57-8a-302 to attorney Matthew J. Ence, as Trustee, with power of sale, each Unit and all improvements to the Unit for the purpose of securing payment of assessments under the terms of this Declaration. The Association may from time to time appoint a substitute trustee by recording of a substitution of trustee as provided by applicable law. Subject to the limitation set forth in Section 9.5 below, any foreclosure sale provided for above shall be conducted by the appointed Trustee consistent with the provisions of Title 57, Chapter 1 of the Utah Code Annotated governing the exercise of powers of sale in Mortgages and Deeds of Trust, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default shall be provided as required by Utah Code Annotated § 57-1-24, as amended; a notice of delinquent assessment, if complying with the requirements of this Article, may serve the same purpose. Notice of time and place of sale shall be provided as required by Utah Code Annotated § 57-1-25, as amended.

Section 9.5 Limitations on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a fine or for a violation of the Governing Documents. The foregoing limitation shall not apply to foreclosure of a lien for a Base Assessment, Neighborhood Assessment, or Special Assessment, or any portion respectively thereof.

Section 9.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 9.7 Cumulative Remedies. The assessment liens and the rights of foreclosure and

sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 9.8 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article 9, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the beneficiary under any Recorded first deed of trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any first Mortgage upon the Unit. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the first Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 9.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced (except to the extent of assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to foreclose the lien), and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to applicable Utah law. The sale or transfer of any Unit shall not affect an assessment lien. However, subject to the provisions of this Section 9.9, the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or non-judicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person (except to the extent of assessments which would have become due, in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien).

#### ***PART FOUR: COMMUNITY DEVELOPMENT***

*The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of the Community and to accommodate changes in the Master Plan which inevitably occur as a community the size of this Community grows and matures.*

### **ARTICLE 10 ANNEXATION: EXPANSION OF THE COMMUNITY**

Section 10.1 Annexation and Expansion by Declarant. Declarant may from time to time subject to the provisions of this Declaration annex any other adjacent real property to the Properties covered by this Declaration, by amending Exhibit "A" to include the property to be annexed. Such an Amendment Recorded by Declarant pursuant to this Section shall not require the consent of any other Person (except the owner of such property, if other than Declarant).

Declarant's right to expand the Community pursuant to this Section shall expire when the Declarant Rights Period expires. Until then, Declarant may transfer or assign this right to any Person who is the owner or developer of any real property which is adjacent to the real property described Exhibit "A" (as amended). Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Declarant reserves the right, but not the obligation, to annex additional property to the maximum extent allowed by applicable State and local law, provided that the amount of additional property so annexed shall not exceed ten percent (10%) of the aggregate property described in Exhibit "A." Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any property other than that described in Exhibit "A" in any manner whatsoever.

Any such annexation shall be effective upon the Recording of the Amendment facilitating the same, unless otherwise provided therein. All Units subject to this Declaration, whether initially described in Exhibit "A" or annexed pursuant to an Amendment hereof, shall have equal voting rights and an equal, pro rata share of liability for Base Assessments.

Section 10.2 Expansion by the Association. The Association may also subject additional property to this Declaration by Recording an Amendment describing the additional property. Any such Amendment shall require the affirmative vote of the Requisite Membership Percentage at a meeting duly called for such purpose and the consent of the owner of the property. In addition, during the Declarant Rights Period, the prior written consent of Declarant shall be necessary. The Amendment shall not be valid unless signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

Section 10.3 Additional Covenants and Easements. During the Declarant Rights Period, Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in an Amendment subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by a Person other than Declarant, then the consent of such Person shall be necessary and shall be evidenced by such Person's execution of the Amendment or Supplemental Declaration. Any such Amendment or Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

Section 10.4 Effect of Filing Amendment or Supplemental Declaration. Any Amendment Recorded pursuant to this Article 10 shall be effective upon Recording unless otherwise specified in such instrument. On the effective date of an Amendment, the Units in any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration. Any Amendment Declaration of Annexation or Supplemental Declaration Recorded pursuant to this Article 10 shall comply with the requirements of State and local law as may be applicable.

## **ARTICLE 11**

### **ADDITIONAL RIGHTS RESERVED TO DECLARANT**

Section 11.1 Withdrawal of Property. Declarant reserves the right to amend this Declaration

during the Declarant Rights Period for the purpose of removing and withdrawing any portion of the Properties from the coverage of this Declaration, whether originally described in Exhibit "A" or added by Declaration of Annexation of Supplemental Declaration; provided, no property described on a particular Plat shall be withdrawn after a Unit shown on that Plat has been conveyed by Declarant to any Home Owner (other than a Home Owner in which Declarant has a direct or indirect ownership, management, or other similar interest), Such a withdrawal shall reduce the Maximum Units subject to the Declaration, the number of votes in the Association and the Units subject to assessment. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn (if not Declarant), but shall be subject to any applicable State and local law governing such withdrawals. If the property is shown on a Plat as Common Elements, but has not yet been conveyed by deed to the Association, then the Association shall consent to such withdrawal (and shall execute and Record a quitclaim deed thereto) upon the request of Declarant.

Section 11.2 Marketing and Sales Activities. Declarant (and Builders, subject to Declarant's reserved rights in Article 4) may construct and maintain upon portions of the Common Elements such facilities and activities as may be reasonably required, convenient, or incidental, to the construction or sale of Units, including, but not limited to, business offices, signs, model Units, and sales offices, and shall have easements for access to and use of such facilities.

Section 11.3 Right To Develop; Construction Easement. Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Properties for the purpose of making, constructing, and installing such improvements to the Properties as Declarant deems appropriate in its sole discretion (subject to the extent, if any, such discretion of Declarant is expressly limited by written agreement between Declarant and a Builder). Additionally, Declarant hereby partially assigns to and reserves for the benefit of each Builder a concurrent right of access and use and an easement over and upon only the property located within such Builder's subdivision, for the purpose of Builder making, constructing, and installing improvements to such property, subject to and only to the extent provided in the Builder's project plan approved by Declarant, or as otherwise may be approved by Declarant in writing (but without any liability to Declarant by reason of such approval). To the maximum extent permitted by applicable law, each Person that acquires any interest in the Properties acknowledges that the Community is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

Section 11.4 Right To Designate Sites for Governmental and Public Interests. During the Declarant Rights Period, Declarant may designate sites within the Properties for governmental, educational, or religious activities and interests, including without limitation: fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. So long as such sites have not previously been conveyed by deed to the Association, the Association shall take whatever action is required with respect to such site to permit such use, including dedication of the site and/or Recordation of a quitclaim deed to the site (if so requested by Declarant).

Section 11.5 Right to Approve Additional Covenants. Subsequent to this Declaration, no Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted Recording without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by Recorded, written consent signed by Declarant.

Section 11.6 Right to Approve Changes in Community Standards. No amendment to or

modification of any Rules and Regulations or Design Guidelines shall be effective without prior notice to and the written approval of Declarant during the Declarant Rights Period.

Section 11.7 Right to Merge or Consolidate the Association. Declarant reserves the right to merge or consolidate the Association with another common interest community of the same form of ownership or make it subject to a master association.

Section 11.8 Right To Appoint and Remove Directors During the Declarant Rights Period. During the Declarant Rights Period, the Declarant may appoint, remove, and/or replace any director or officer of the Association previously appointed or elected by Declarant pursuant to this Declaration.

Section 11.9 Right To Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided that (a) the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws; (b) no such transfer or assignment shall be effective unless it is in a Recorded, written instrument signed by Declarant; and (c) no such transfer or assignment shall be unreasonably made by Declarant with regard to any of the property set forth in Exhibit "A." The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 11.10 Easement to Inspect and Right to Correct.

(a) *Easement.* Declarant reserves, for itself and such other Persons as it may designate, perpetual, non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Community, including Units and the Area of Common Responsibility. Declarant shall have the right to redesign, correct, or improve any part of the Community, including Units and the Area of Common Responsibility.

(b) *Right of Entry.* In addition to the above easement, Declarant reserves a right of entry onto a Unit upon reasonable notice to the Owner; provided, in an emergency, no such notice need be given. Entry into a Unit shall be only after Declarant notifies the Owner (or Resident) and agrees with the Owner regarding a reasonable time to enter the Unit to perform such activities. Each Owner agrees to cooperate in a reasonable manner with Declarant in Declarant's exercise of the rights provided to it by this Section.

Entry onto the Area of Common Responsibility and into any improvements and structures thereon may be made by Declarant at any time, provided advance notice is given to the Association; provided, in an emergency, no notice need be given.

(c) *Damage.* Any damage to a Unit or the Area of Common Responsibility resulting from the exercise of the easement and right of entry described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or Resident.

Section 11.11 Use of "Divario" in Name of Development.

(a) Each Person, by acquiring title to a Unit or other portion of the Properties, shall

be deemed to have acknowledged and agreed that Declarant claims the sole and exclusive right to the designation "Divario," and claims the sole and exclusive right to all related trade names, trademarks, service marks and logos ("Trademarks"). Each such Person covenants and warrants that it shall not use, nor permit others to use, in any manner whatsoever, the Trademarks or any of them, without the prior written consent of Declarant. However, the Association shall be entitled to use the words "Divario" in its name.

(b) Notwithstanding the foregoing, the names of all subdivisions within the Community on their recorded subdivision maps shall incorporate the trailer "... at Divario" for the purpose of identifying such subdivisions as being subject to the terms of the Development Agreement, for so long as so required by the Development Agreement.

Section 11.12 Equal Treatment. During the Declarant Rights Period, neither the Association nor any Neighborhood Association shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and/or affiliates, or their respective Invitees, including personnel and/or visitors, to Neighborhood Common Elements, Common Elements, or other Areas of Common Responsibility;

(b) limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising, marketing, or using the Association or the Common Elements or any property owned by any of them in promotional materials;

(c) limits or prevents Purchasers of new residential housing constructed by Declarant, its successors, assigns, and/or affiliates in the Community from becoming Members of the Association or enjoying full use of the Common Elements, subject to the membership provisions of this Declaration and the Bylaws;

(d) impacts the ability of Declarant, its successors, assigns, and/or affiliates, to carry out to completion its development plans and related construction activities for the Community, as such plans are expressed in the Master Plan. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(e) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any Neighborhood Association shall at any time exercise its authority over the Area of Common Responsibility or any Neighborhood Common Elements (including, but not limited to, any gated entrances and other means of access to the Properties or any Annexable Area) to interfere with Declarant's rights set forth in this Declaration or to impede access to any portion of: (1) the Properties or (2) the Commercial Component, (3) the Multi-Family Component, or (4) any Annexable Area.

Section 11.13 Other Rights. Declarant hereby reserves all other easements, rights, powers, and authority of Declarant set forth in this Declaration.

Section 11.14 Exemption of Declarant. Notwithstanding anything to the contrary in this

Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or Association or Neighborhood Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional improvements as Declarant deems advisable in the course of development of the Properties.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units,

(c) Prospective Purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant.

Section 11.15 Termination of Rights. The rights contained in this Article 11 shall terminate upon the earlier of (a) thirty (30) years from the conveyance of the first Unit to a Home Owner (provided that if Declarant still owns any property in the Properties on such thirtieth (30th) anniversary date, then such rights and reservations shall continue for one successive period of twenty (20) years thereafter), or (b) Recording by Declarant of a written statement that all new Unit sales activity has ceased in the Community, or (c) an earlier termination date as imposed by applicable State law. (Thereafter, Declarant may continue to use the Common Elements for the purposes stated in this Article 11 only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Elements). This Article 11 shall not be amended during the Declarant Rights Period without the prior written consent of Declarant.

#### ***PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY***

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Association, Declarant, Builders, and others within or adjacent to the Community.*

#### **ARTICLE 12 CUSTOM LOTS**

Section 12.1 General; Supplemental Declaration. Pursuant to Supplemental Declaration(s), Custom Lots shall comprise Custom Lot Neighborhood(s), and shall be subject to additional covenants, conditions and restrictions set forth by Declarant in its sole discretion (including, but not necessarily limited to, additional requirements such as specific time deadlines for commencement and completion of construction by a Purchaser of the custom home on its Custom Lot.

Section 12.2 Additional Design Guidelines. Declarant, in its sole discretion, from time to time may promulgate additional Design Guidelines for Custom Lots (in which event, the Owners of Custom Lots and the DRC shall additionally follow and abide by the Design Guidelines in the implementation of Article 4).

**ARTICLE 13**  
**EASEMENTS**

Section 13.1 Easements in Common Elements. Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Elements, subject to;

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's rights set forth under Section 7.4, above, including, but not limited to, the Board's right to:
  - (1) impose reasonable Rules and Regulations with regard to use of any recreational facility situated upon the Common Elements, including rules limiting the number of Family or guests who may use the Common Elements;
  - (2) suspend the right of an Owner to use any Common Elements; provided there shall be no suspension of an Owner's reasonable ingress and egress to his or her Unit:
    - (i) for any period during which any assessment or other charge against such Owner's Unit remains delinquent; and
    - (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after Notice and Hearing;
  - (3) permit use of any recreational facilities situated on the Common Elements by persons other than Owners and Residents (and their respective Families and Invitees), upon payment of use fees established by the Board;
  - (4) dedicate or transfer all or any part of the Common Elements, subject to such approval requirements as may be set forth in this Declaration and subject further to the Act;
  - (5) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration, and subject further to the Act;
  - (6) limit the use of Neighborhood Common Elements to the exclusive use of Owners in the relevant Neighborhood;
  - (7) create, enter into agreements with, and grant easements to tax-exempt organizations under Section 7.12;
- (d) the right of the Association to rent or lease any portion of any recreational facilities on the Common Elements on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's Family and/or invitees; and
- (e) the right of the Association to require Members (and/or their Families and guests) to present activity or use privilege cards, as may be issued by the Association, for access and use of



recreational facilities on the Properties.

The initial Common Elements, if any, as identified in Exhibit "A" shall be conveyed to the Association concurrent with or reasonably soon after the conveyance of the first Unit in Exhibit "A" to a Home Owner.

Section 13.2 Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Section 13.3 Easements for Utilities, Etc.

(a) *Association and Utility Easements.* Declarant reserves for itself, during the Declarant Rights Period, and hereby grants to the Association and all utility providers, perpetual non-exclusive easements throughout all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

- (1) installing utilities and Infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways, trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;
- (2) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in the preceding subsection (a)(1); and
- (3) reading utility meters.

(b) *Recorded Specific Easements.* Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibit "A."

(c) *Property Restoration.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or Resident.

Section 13.4 Easements To Save Additional Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Elements for the purposes of enjoyment, use, access, and development of any Annexable Area, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such property.

**Section 13.5 Easements for Maintenance, Emergency, and Enforcement.** Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. Any damage caused as a result of the Association fulfilling its maintenance responsibilities shall be repaired by the Association at its expense.

Declarant grants to the Association an easement and the right to enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing, or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Specific Assessment.

**Section 13.6 Easements for Related Bodies of Water and Flood Water.** Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water located within the Area of Common Responsibility to: (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility, (b) construct, maintain, and repair structures and equipment used for retaining water; (c) maintain such areas in a manner consistent with the Community Standards; and (d) replace, remove, and/or fill in such bodies of water. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Elements and Units (but not the dwellings thereon) adjacent to or within one hundred feet (100') of bodies of water constituting a part of the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

**Section 13.7 Easements for Cross-Drainage.** Declarant hereby reserves for itself and grants to the Association easements over every Unit and the Common Elements (and other portions of the Area of Common Responsibility, to the extent practicable) for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Unit to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Board, and Declarant (during the Declarant Rights Period).

**Section 13.8 Rights to Storm water Runoff, Effluent and Water Reclamation.** Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section 13.8 may not be amended without the consent of Declarant or its successor, and the rights created in this Section 13.8 shall survive termination of this

**Declaration,**

**Section 13.9 Easements for Parking; Easements for Vehicular and Pedestrian Traffic.** The Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to enforce such parking limitations and rules by all means lawful for such enforcement on public streets, including the removal of any violating vehicle, by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked for such purpose.

In addition to the general easements for use of the Common Elements reserved herein, there hereby are reserved to Declarant, the Association, and their respective successors, assigns, Invitees, nonexclusive, appurtenant easements for vehicular and pedestrian traffic over private main entry gate areas and all Private Streets and sidewalks within the Properties (including, but not limited to, those which may yet be built from time to time and those which, when or after being built by Declarant, Builder, or other authorized third party, may comprise or will comprise Neighborhood Common Elements); provided that Owners who are not Owners of Units within a particular Neighborhood which is separately gated shall not have an easement by virtue of this section to enter upon Neighborhood Common Elements within said separately gated Neighborhood.

**Section 13.10 Easements Incident to Construction, and Marketing and Sales Activities.** In addition to the general easements for use of the Common Elements reserved herein, there shall be reserved to Declarant, its successors and assigns, and their respective Invitees, during the Declarant Rights Period, for access, ingress, and egress over, in, upon, under, and across the Properties, including the Common Elements (including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, marketing and/or sales of the Properties, or any portion thereof); provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, or its Family or Invitees, to or of that Owner's Unit, or the Common Elements. Additionally, Declarant hereby partially assigns to and reserves for the benefit of each Builder a concurrent right of access, ingress, and egress over, in, upon, under, and across only the property located within such Builder's subdivision (including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the Builder's use, development, marketing and/or sales of such property) subject to and only to the extent provided in the Builder's project plan approved by Declarant, or as otherwise may be approved by Declarant in writing (but without any liability to Declarant by reason of such approval); provided that no such right or easement shall be exercised by Builder in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, or its Family or Invitees, to or of that Owner's Unit, or Common Elements.

**Section 13.11 Easements for Public Service Use.** In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement of any fire hydrants on portions of certain Units and/or Common Elements, and other purposes normally related thereto; and (b) local, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents, to enter upon any part of the Common Elements or any Unit, for the purpose of carrying out their official duties.

**ARTICLE 14**  
**NEIGHBORHOOD COMMON ELEMENTS**

Section 14.1 **Purpose.** Certain portions of the Common Elements may, but need not necessarily, be designated by Declarant in a Recorded instrument as Neighborhood Common Elements and reserved for the exclusive use or primary benefit of Owners and Residents within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Neighborhood Common Elements may include Neighborhood entry features, recreational facilities, landscaped medians, and cul-de-sacs, lakes, and other portions of the Common Elements within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Neighborhood Common Elements shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Neighborhood Common Elements are assigned.

Section 14.2 **Designation.** Subject to Section 14.1, initially, any Neighborhood Common Elements shall be designated as such in the deed conveying such area to the Association or on the subdivision Plat relating to such Common Elements; provided, any such assignment shall not preclude Declarant from later assigning use of the same Neighborhood Common Elements to additional Units and/or Neighborhoods, during the Declarant Rights Period.

Thereafter, a portion of the Common Elements may be assigned as Neighborhood Common Elements and Neighborhood Common Elements may be reassigned upon approval of the Board and the vote of the Requisite Membership Percentage, together with the Requisite Neighborhood Percentage of the Neighborhood(s) affected by the proposed assignment or reassignment; provided that, during the Declarant Rights Period, any such assignment or reassignment shall also require Declarant's written consent. Any assignment or reassignment of Neighborhood Common Elements shall be made in accordance with the requirements of the Act and other applicable Utah law.

**ARTICLE 15**  
**PARTY WALLS AND OTHER SHARED STRUCTURES**

Section 15.1 **General Rules of Law to Apply.** Each wall, fence, driveway or similar structure built as a part of the original construction on the Units, other than a perimeter wall or fence as provided in Section 7.2, which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of this Article 15.

Section 15.2 **Maintenance, Damage, and Destruction.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and is not repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**ARTICLE 16**  
**HOA PARKS**

Section 16.1 Transfer of Parks to HOA. Prior to any dedication to the City of St. George, Declarant may, from time to time, convey any park or paseo ("HOA Park") to the Association or a Neighborhood Association ("HOA"), provided the conveyance is subject to the terms and conditions of the Development Agreement, and the HOA acknowledges in writing that: (a) it is obligated to perform any unfulfilled terms and conditions of the Development Agreement, and (b) it accepts Declarant's maintenance obligations for such park or paseo.

Section 16.2 Use and Control of HOA Parks. With respect to any HOA Park, the HOA to which Declarant conveys title shall have the exclusive right to program and control the use thereof; provided, however, that in all circumstances the general public shall have reasonable rights of access and use to all parks and paseos listed in the Development Agreement.

**ARTICLE 17**  
**COMMERCIAL COMPONENT; MULTI-FAMILY COMPONENT**

Section 17.1 General Disclaimers. Each Owner in the Properties, by acceptance of the deed to its Unit, whether or not so stated in such deed, is hereby conclusively deemed to have acknowledged and agreed: (a) that the convenience of Commercial Component areas (including upscale and/or convenient retail, restaurant, and entertainment areas, and other commercial areas), and Multi-Family Component areas, as part of an coordinated and integrated Community, will significantly benefit the Owners and the property values of Units within the Properties, even taking into consideration the detailed disclaimers and releases set forth in this Article 17 and Article 23 below, (b) that this Article 17 is integral to preservation of the Community, and benefit to property values of Units within the Properties, and (c) accordingly, to have accepted this Article 17 (and Article 23 below) and the provisions respectively thereof.

Each Owner further acknowledges and agrees that the Commercial Component and Multi-Family Component (collectively, "Commercial and Other Components") are NOT A PART of the Common Elements and NOT A PART of the Properties and (although obligated to make periodic payments as set forth in Section 18.4 below) is not subject to Assessments under this Declaration. NEITHER MEMBERSHIP IN THE ASSOCIATION NOR OWNERSHIP OR OCCUPANCY OF A UNIT SHALL CONFER ANY OWNERSHIP INTEREST IN OR RIGHT TO ENTER UPON ANY OF THE COMMERCIAL AND OTHER COMPONENTS.

Section 17.2 Conveyance of Commercial Component and Other Components. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to ownership or operation of any of the Commercial and Other Components. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Component. The ownership or operation of the Commercial and Other Components, and portions thereof, may change at any time. Consent of the Association, any Neighborhood Association, or any Owner shall not be required to effectuate any change in ownership or operation of any of the Commercial and Other Components, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

Section 17.3 View Impairment. Neither Declarant, the Association, nor the owner of any of the Commercial and Other Components ("Component Owners") guarantees or represents that any view over and across the Commercial and Other Components from adjacent Units will be preserved without

impairment. Any additions or changes to the Commercial and Other Components may diminish or obstruct any view from the Units, and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 17.4 Rights of Access and Parking. Declarant hereby expressly reserves the following easements. The Component Owners, their successors and assigns, their respective Invitees, and the Persons permitted to use the Commercial and Other Components (or portion thereof) by the Component Owners (regardless of whether such persons are Owners hereunder) and their Families and Invitees, shall at all times have a right and non-exclusive easement of ingress, egress, access and use over those certain Common Elements (including Private Streets, sidewalks, and entry areas), if any, whether by automobile or other means, located within the Properties and reasonably and customarily necessary to travel between the entrances to the Properties and the Commercial and Other Components.

Section 17.5 Payments of Reasonable Amounts by Commercial and Other Components. Each Owner in the Properties, by acceptance of the deed to its Unit, whether or not so stated in such deed, is conclusively deemed to have acknowledged and agreed that the convenience of Commercial Component areas (including upscale and/or convenient retail, restaurant, and entertainment areas, and other commercial areas), and Multi-Family Component areas, as part of an coordinated and integrated Community, will significantly benefit the Owners and the property values of Units within the Properties. Subject to the foregoing, in consideration of the benefits to the Commercial and Other Components, of rights to use, and use of, certain Private Streets and other Common Elements within the Community, as set forth in this Declaration, the Commercial and Other Components shall be required to pay to the Association, in lieu of Assessments, the following, amounts ("Reasonable Amounts") which shall be conclusively deemed to constitute reasonable amounts therefor: (a) for each Commercial Component, Reasonable Amounts shall be amounts equal to Base Assessments computed on a deemed basis of four (4) Units per each net acre comprising such Commercial Component; and (b) for each Multi-Family Component, Reasonable Amounts shall be amounts equal to Base Assessments computed on a deemed basis of six (6) Units per each net acre comprising such Multi-Family Unit. No other payment shall ever be required by or for the benefit of the Association (or otherwise in connection with the Common Elements) from any Commercial Component or Multi-Family Component. Reasonable Amounts shall be due and payable periodically in installments, in like manner and at such times as Base Assessments are due from Units under this Declaration. Declarant is hereby fully empowered and entitled (but not obligated), in its sole discretion, to enter from time to time into separate written agreements with any owner of a Commercial Component or Multi-Family Component, and to Record separate instruments, to memorialize the foregoing.

Section 17.6 Design Control. The Commercial and Other Components are not subject to the design review provisions set forth in this Declaration. Separate design review provisions for the Commercial and Other Components shall be set forth in separate Recorded instruments.

Section 17.7 Further Limitations on Amendments. In recognition of the fact that the provisions of this Article operate in part to benefit the Commercial and Other Components, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any of the Commercial and Other Components, may be made without the written approval of the affected Component Owners. The foregoing shall not apply, however, to amendments made by Declarant. Notwithstanding the foregoing, or any other provision in this Declaration, without the express prior written approval of Declarant (or Declarant's successor or assignee of Record as to such rights); (a) the Reasonable Amounts set forth in Section 17.5 above shall not be increased; (b) no other payment shall be required by or for the benefit of the Association (or related to the Common Elements) from any Commercial Component or Multi-Family Component, or the owners respectively thereof; and/or (c) this Article (expressly including, but not limited to, Section 17.5 above) may not be revoked, deleted,

modified, or supplemented (collectively and severally, an "amendment of Article 17"), and any purported amendment of Article 17, or any portion thereof, or the effect respectively thereof, without such express prior written approval, shall be void.

Section 17.8 Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Component Owners shall cooperate to the maximum extent possible in the operation of the residential Community and the Commercial and Other Components. Each shall reasonably assist the other in upholding the Community Standards as pertain to maintenance and the Design Guidelines. The Association shall have no power to promulgate Rules and Regulations other than those promulgated by Declarant affecting activities on or use of the Commercial and Other Components without the prior written consent of the owners of such Component affected thereby.

***PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY***

*The growth and success of the Community as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the Community and with our neighbors, and protection of the rights of others who have an interest in the Community.*

**ARTICLE 18**  
**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

Section 18.1 Consensus for Association Litigation. Except as provided in this Section, the Association (and the Board) shall not commence or institute a judicial or administrative proceeding without first providing written notice of such proposed action to each Member at least twenty-one (21) days before a meeting to vote on such proposed action and obtaining the approval at such meeting of at least the Requisite Membership Percentage. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) defenses, affirmative defenses, and/or counterclaims brought by the Association in proceedings instituted against the Association; and/or (e) settlement of any of the matters set forth in the preceding subsections (a) through (d). This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 18.2 Alternative Method for Resolving Disputes. Declarant, the Association, their officers, directors, and committee members, all Owners and other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article 19 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Sections 19.3 ("Claims") shall be resolved using the procedures set forth in Section 19.4 in lieu of filing suit in any court,

Section 18.3 Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 18.4. However, matters of aesthetic judgment under Article 4 shall not constitute a Claim.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute Claims and shall not be subject to the provisions of Section 18.4:

Article 8; (a) any suit by the Association against any Bound Party to enforce the provisions of

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other 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 Article 3 and Article 4;

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which 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 180 days of giving the Notice required by Section 18.4(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 18.4.

Section 18.4 Mandatory Procedures.

(a) *Notice.* Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (1) the nature of the Claim, including the Persons involved and Respondent's
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) Claimant's proposed remedy; and
- (4) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) *Negotiation and Mediation.* The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency or mediator providing dispute resolution services in the Washington County area.

If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.



Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

**Section 18.5 Declarant's Right to Repair.** Notwithstanding any other provision in this Declaration, and whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which Declarant is or may be responsible, and (b) following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant Improvement, and to take reasonable steps, if necessary or appropriate, to undertake and to perform corrective or repair work, and (c) to reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Common Element or other portion of the Properties (as applicable) from time to time in connection therewith and/or to undertake and to perform such inspection and such work; and (d) that Declarant shall unequivocally be entitled (i) to specific prior written notice of any such corrective or repair work requested (and shall not be held responsible for any corrective or repair work in the absence of such written notice), (ii) to inspect the relevant Improvement, and (iii) to take reasonable steps, in Declarant's reasonable judgment, to undertake and to perform any and all necessary or appropriate corrective or repair work. The foregoing portion of this Section shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

**Section 18.6 Arbitration.** Subject to the procedural requirements set forth in the foregoing provisions of Article 18, any dispute that may arise between: (a) the Association and/or Owner of a Unit, and (b) Declarant or any person or entity who was involved in the construction of any Common Element or any Unit, shall be resolved by submitting such dispute to arbitration before a mutually acceptable arbitrator who will render a decision binding on the parties which can be entered as a judgment in court pursuant to applicable Utah law. The arbitration shall be conducted according to the provisions of the Construction Industry Arbitration Rules of the American Arbitration Association. If the parties to the dispute fail to agree upon an arbitrator within forty-five (45) days after an arbitrator is first proposed by the party initiating arbitration, either party may petition the American Arbitration Association for the appointment of an arbitrator. Declarant has the right to assert claims against any contractor, subcontractor, person or entity, which may be responsible for any matter raised in the arbitration and to name said contractor, subcontractor, person, or entity as an additional party to the arbitration. Upon selection or appointment of the arbitrator, the parties shall confer with the arbitrator who shall establish a discovery schedule which shall not extend beyond ninety (90) days from the date the arbitrator is selected or appointed unless for good cause shown such period is extended by the arbitrator or such period is extended by the consent of the parties. If Declarant asserts a claim against a contractor, subcontractor, person, or entity, the discovery period may be extended, at the discretion of the arbitrator, for a period not to exceed one hundred twenty (120) days. The arbitration of a dispute between the Declarant, the

Association, or any Owner of a Unit shall not be consolidated with any other proceeding unless Declarant chooses to consolidate the same with another similar proceeding brought by the Association or any Owner of a Unit. The arbitrator shall convene the arbitration hearing within one hundred twenty days (120) from the time the arbitrator is selected or appointed. Upon completion of the arbitration hearing, the arbitrator shall render a decision within ten (10) days. The date for convening the hearing may be adjusted by the arbitrator to accommodate extensions of discovery and the addition of parties or by consent of the parties. However, unless extraordinary circumstances exist, the hearing shall be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. To the extent practicable, any hearing convened pursuant to this provision shall continue, until completed, on a daily basis. The prevailing party shall be entitled to recover its attorney's fees and costs. The costs of the arbitration shall be borne equally by the parties thereto.

Section 18.7 Allocation of Costs of Resolving Claims. Subject to Section 18.4(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) ("Post Mediation Costs").

Section 18.8 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 18.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys' fees and court costs.

Section 18.9 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Unit(s) involved in the action.

## **ARTICLE 19**

### **MORTGAGE PROVISIONS**

*The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties. The provisions of this Article 19 apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.*

Section 19.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Unit or the Owner or

Resident which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

Section 19.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

Section 19.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 19.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### ***PART SEVEN: CHANGES IN THE COMMUNITY***

*Communities, such as this Community, are dynamic and constantly evolving as circumstances, technology, needs, desires, and laws change over time. The Community and its governing documents must be able to adapt to these changes while protecting the things that make the Community unique.*

#### **ARTICLE 20 CHANGES IN OWNERSHIP OF UNITS**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board or Manager/Agent at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, or until the date on which a copy of the Recorded instrument of transfer or conveyance is received by the Board, notwithstanding the transfer of title.

#### **ARTICLE 21 CHANGES IN COMMON ELEMENTS**

Section 21.1 Condemnation. If a Unit or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Elements shall be allocated as provided in applicable Utah law. If any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of the Requisite Membership Percentage or of Declarant (during the Declarant Rights Period), by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to 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:

If the taking or conveyance involves a portion of the Common Elements on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Elements to the extent available, unless within sixty (60) days after such taking, Declarant (during the Declarant Rights Period) or the Requisite Membership Percentage shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Elements, 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 disbursed to the Association and used for such purposes as the Board shall determine.

Section 21.2 Partition. Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action partition of any portion of the Common Elements without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to the Act and other applicable Utah law.

Section 21.3 Transfer or Dedication of Common Elements. The Association may dedicate portions of the Common Elements to the City of St. George, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 19.5 and 21.4.

Section 21.4 Actions Requiring Member Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following actions shall require the prior approval of Members representing not less than sixty-seven percent (67%) of the total votes in the Association, and the consent of Declarant: merger, consolidation, or dissolution of the Association; annexation of additional property other than as set forth in this Declaration; and dedication, conveyance, or mortgaging by the Association of Common Elements. Notwithstanding anything to the contrary in Section 18.1 or this Section, the Association, acting through the Board, may grant easements over the Common Elements for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Elements without the approval of the Membership.

## **ARTICLE 22** **AMENDMENTS**

Section 22.1 Amendment By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, during the Declarant Rights Period, Declarant may unilaterally amend this Declaration for any lawful purpose.

Declarant, or the Board with consent of Declarant, may amend this Declaration unilaterally if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal

governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner thereof consents in writing.

Section 22.2 Amendment of Plat. By acceptance of a deed conveying a Unit encumbered by this Declaration, whether or not so expressed in such deed, the grantee Home Owner thereof covenants that Declarant (or Builder of the Unit, as applicable, subject to obligations of Builder to Declarant) shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant (or said Builder, as applicable) as attorney in fact, of such grantee and his successors and assigns, to unilaterally execute and Record from time to time amendment(s) of or to the Plat, provided that any such amendment shall relate only to such property which at such time has not yet been annexed to the Properties by Recorded Annexation Amendment.

Section 22.3 Amendment by Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of: (a) the Requisite Membership Percentage, and the consent of Declarant (during Declarant Rights Period); and (b) a majority of the voting power of the Board. Notwithstanding the above, 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.

Section 22.4 Approval of Eligible Mortgagees. Anything to the contrary herein notwithstanding, but without limiting Article 20 above, any of the following amendments, to be effective, must be approved by sixty-seven percent (67%) of all Eligible Mortgagees and Eligible Insurers at the time of such amendment, based upon one (1) vote for each first Mortgage owned or insured:

- (a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to holders, insurers, and guarantors, of first Mortgages as provided herein.
- (b) Any amendment which would necessitate an encumbrancer after it has acquired a Unit through foreclosure to pay more than its proportionate share of any unpaid assessment or assessment accruing after such foreclosure.
- (c) Any amendment which would or could result in an encumbrance being canceled by forfeiture, or in the individual Unit not being separately assessed for tax purposes.
- (d) Any amendment relating to the insurance provisions or to the application of insurance proceeds as set out in Section 7.3 hereof, or to the disposition of any money received in any taking under condemnation proceedings.
- (e) Any amendment which would or could result in termination or abandonment of the Properties or partition or subdivision of a Unit, in any manner inconsistent with the provision of this Declaration.
- (f) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) assessments, assessment liens, or the subordination of such liens.

Any approval by an Eligible Holder required under this Section 22.4, or required pursuant to any other provisions of this Declaration, shall be given in writing; provided that prior to any such proposed action, the Association or Declarant, as applicable, may give written notice of such proposed action to any or all Eligible Holders, and for thirty (30) days following the receipt of such notice, such Eligible Holders shall have the power to disapprove such action by giving written notice to the Association or Declarant, as applicable. If no written notice of disapproval is received by the Association or Declarant, as applicable, within such thirty (30) day period, then the approval of such Eligible Holder shall be deemed given to the proposed action, and the Association or Declarant, as applicable, may proceed as if such approval was obtained with respect to the request contained in such notice.

A certificate or instrument, signed and sworn to by an Association Officer, that Members representing sixty-seven percent (67%) of the voting power of the Association have voted for any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The certificate reflecting any termination or amendment which requires a written consent of Declarant or approval of Eligible Holders shall include a certification that the requisite approval of Declarant or Eligible Holders (as applicable) has been obtained or waived. The Association shall maintain in its files, for a period of at least four (4) years, the record of all such votes and Eligible Holder consent solicitations and disapprovals.

Section 22.5 Notice of Change. If any change is made to the Governing Documents, the Association Secretary (or other designated Officer) shall, within thirty (30) days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the change made.

Section 22.6 Validity and Effective Date of Amendments. No amendment may remove, revoke, or modify any right or privilege of Declarant without the prior written consent of Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be presumed conclusively that such Owner has the authority 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.

Any amendment validly adopted by the Association shall be certified by the President or Secretary of the Association, and shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within twelve (12) months of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Nothing in this Article shall be construed to permit termination of any easement created in this Declaration or Supplemental Declaration without the consent of the holder of such easement.

## ***PART EIGHT: ADDITIONAL PROVISIONS***

### **ARTICLE 23 ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES**

Section 23.1 Additional Disclosures, Disclaimers, and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acquiring title to a Unit, or by possession of a Unit, each Owner (for purposes of this Article, and all of the Sections thereof, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), and by residing within the Properties, each

Resident (for purposes of this Article, the term "Resident" shall include each Resident, and their guests) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) that there is and/or will be electrical power substation(s) located on or nearby the Community (which term, as used throughout this Article, shall include all Units and Common Elements), and there are presently and may be further major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) from time to time located within or nearby the Community, which generate certain electric and magnetic fields ("EMF") around them; that, without limiting any other provision in this Declaration, Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF; and that Owner hereby releases Declarant from any and all claims arising from or relating to said EMF, including, but not necessarily limited to, any claims for nuisance or health hazards; and

(b) that the Unit and other portions of the Properties from time to time are or may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to airplane flight patterns, and/or airplane noise; and that Owner hereby releases Declarant from any and all claims arising from or relating to airplane flight patterns or airplane noise; and

(c) that the Unit and other portions of the Properties are or may be located adjacent to or nearby major roads, all of which may, but need not necessarily, be constructed, reconstructed, or expanded in the future (all collectively, "roadways"), and subject to high levels of traffic, noise, construction, maintenance, repair, dust, and other nuisance from such roadways; and vehicles; that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to roadways and/or noise, dust, and other nuisance therefrom; and that Owner hereby releases Declarant from any and all claims arising therefrom or relating thereto; and

(d) that the Unit and other portions of the Properties are or may be located adjacent to or nearby major water and drainage channels, major washes and major water detention and/or reservoir facilities (all, collectively, "Water Facilities"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not within Declarant's control, and over which Declarant has no jurisdiction or authority, and, in connection therewith: (1) the Water Facilities may be an attractive nuisance to children; (2) maintenance and use of the Water Facilities may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Water Facilities maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; and (3) the possibility of damage to Improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Water Facilities, as the result of nonfunctional, malfunction, or overtaxing of the Water Facilities or any other reason; and (4) any or all of the foregoing may cause inconvenience and disturbance to Owner and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property; and that Owner hereby releases Declarant from any and all claims arising therefrom or relating thereto; and

(e) that construction or installation of improvements by Declarant, Builders, other Owners, or third parties, or installation or growth of trees and other plants, may impair or eliminate the view, if any, of or from any Unit and/or Common Elements; and that each Owner hereby releases Declarant from any and all claims arising from or relating to said impairment or elimination of view; and

(f) that residential subdivision and home construction is an industry inherently

subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects; and

(g) that: (i) the finished construction of the Unit and the Common Elements, while within the standards of the industry in Washington County, and while in substantial compliance with the plans and specifications, will be subject to expected minor flaws; and (ii) issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards; and

(h) that indoor air quality of the Unit and/or Common Elements may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on; and

(i) that installation and maintenance of a gated community, and/or any security or traffic control device, operation, or method, shall not create any presumption, or duty whatsoever of Declarant or the Association (or their respective officers, directors, managers, employees, agents, and/or contractors), with regard to security or protection of person or property within or adjacent to the Community; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Properties had been located within public areas and not gated; and that gated entrances may restrict or delay entry into the Properties by law enforcement, fire protection, and/or emergency medical care personnel and vehicles; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry; and

(j) that the Washington County area contains a number of earthquake faults, and that the Properties or portions thereof may be located on or nearby an identified or yet to be identified seismic fault line; and further, that expansive or collapsible soils exist in and around the area of the Properties; and that Declarant specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to earthquakes or seismic activities, or to the condition of soils and the presence or absence of expansive or collapsible soils; and that each Owner releases Declarant from any and all claims arising from or relating to earthquakes, seismic activities, or other earth movement resulting from soil conditions or otherwise; and

(k) that the Unit and other portions of the Properties are or may be nearby major regional underground water, natural gas or other petroleum products transmission pipelines; and that malfunction of or damage to such underground pipelines may result in leakage, spillage, and/or migration of hazardous materials and pollution and/or other potentially dangerous conditions; and that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to such lines; and

(l) that the Unit and other portions of the Properties from time to time may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, roaches, rats, pigeons, snakes, or other insect or pest problems (collectively, "pests"); and that Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Unit or other portions of the Properties; and



(m) that there is a high degree of alkalinity in soils and/or water in the area of the Properties; that such alkalinity tends to produce, by natural chemical reaction, discoloration, leaching and erosion or deterioration of concrete walls and other Improvements ("alkaline effect"); that the Unit and other portions of the Properties may be subject to such alkaline effect, which may cause inconvenience, nuisance, and/or damage to property; and that the Governing Documents require Home Owners to not change the established grading and/or drainage, and to not permit any sprinkler or irrigation water to strike upon any wall or similar Improvement; and

(n) that the Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard; and

(o) that the Properties, or portions thereof, are or may be located adjacent to or within the vicinity of certain other property zoned to permit the owners of such other property to keep and maintain thereon horses or other "farm" animals, which may give rise to matters such as resultant noise, odors, insects, and other "nuisance"; additionally, certain other property located or nearby the Properties may be zoned to permit commercial uses, and/or may be developed for commercial uses; and Declarant makes no other representation or warranty, express or implied, with regard or pertaining to the future development or present or future use of property adjacent to or within the vicinity of the Properties; and

(p) that portions of Common Elements, and/or other property and landscaping which the Association must maintain, may be irrigated with reclaimed water or treated effluent water ("reclaimed water"); that pipes supplying reclaimed water may pass underground along portions of the Community; that there also may (but need not necessarily) be a pond, located in or near the general vicinity of the Community, supplied all or in part with reclaimed water; and that such reclaimed water may be malodorous and/or a potential hazard to health if ingested, and from time to time may be wind-blown across and upon the Community; and

(q) that Purchaser acknowledges having received from Declarant or a Builder information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to applicable State and local law, for the parcels of land adjoining the Properties to the north, south, east, and west.. Each Home Owner is hereby advised that the master plan and zoning ordinances, are subject to change from time to time, if additional or more current information concerning such matters is desired, the Home Owner should contact the appropriate governmental planning department. Each Home Owner acknowledges and agrees that its decision to purchase a Unit is based solely upon Home Owner's own investigation, and not upon any information provided by any sales agent; and

(r) that Declarant presently plans to develop only those Units which have already been released for construction and sale, and that Declarant has no obligation with respect to (i) future phases, any "custom lots," plans, zoning, or development of other real property contiguous to or nearby the Unit; (ii) proposed or contemplated residential and other developments may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or Purchaser may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same; (iii) a Home Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and (iv) no sales personnel or any other person in any way associated with Declarant has any authority to

make any statement contrary to the provisions set forth in the foregoing or any provision of the written purchase agreement.

(s) that model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant or a Builder to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded flooring, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a Purchaser unless an authorized officer of the seller has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement; and

(t) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "nuisances." Each Home Owner acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "nuisances" until the subdivision (and other neighboring portions of land being developed) have been completed and sold out, and thereafter, in connection with repairs or any new construction; and

(u) that Declarant (or Builder, with regard to Units owned or developed by such Builder) shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for homes and/or Units; and

(v) that Declarant (or Builder, with regard to Units owned or developed by such Builder) shall have the right, from time to time, to design and/or to build different or varying product types or designs for new homes on portions of the Annexable Area, and that the Annexable Area may, but need not necessarily, from time to time be annexed hereto; and

(w) that Declarant (or Builder, with regard to the residential subdivision owned or developed by such Builder) reserves the right, until the Close of Escrow of the last Unit in the Properties, in its sole discretion, to accommodate Declarant's (or Builder's, as applicable) construction activities, and sales and marketing activities; and

(x) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally enter upon, and/or to control, restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties; and

(y) that Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration; and

(z) that Declarant has reserved certain easements, rights and powers, as set forth in this Declaration; and

(aa) that each Owner understands, acknowledges, and agrees that Declarant has reserved certain rights in the Declaration, which may limit certain rights of Purchasers and Owners other than Declarant.

Section 23.2 Releases. By acquiring title to any portion of real property in the Properties, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have understood, acknowledged and agreed to all of the disclosures and disclaimers set forth herein, and to release and hold harmless Declarant and the Association and to release Declarant, the DRC, the Association, and to the extent applicable, any Builder, and each of their respective officers, managers, agents, employees, suppliers, and contractors from any and all claims, causes of action, loss, damage or liability (including, but not limited to, any claim for nuisance or health hazard, property damage, bodily injury, and/or death) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences, or other matters described in the foregoing Section 23.1.

**ARTICLE 24**  
**GENERAL PROVISIONS**

Section 24.1 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 24.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 24.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 24.4 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 24.5 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notice by personal delivery shall be deemed to have been given at time of delivery.

Section 24.6 Limited Liability. Except to the extent expressly prohibited by any applicable Utah law, neither Declarant nor Association, nor any Director or Officer, any committee representative, nor any agent or employee respectively thereof shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith. The Association shall indemnify every present and former Officer and Director and every present and former committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

**Section 24.7 Indemnity.** Each Owner shall, to the maximum extent permitted by law, indemnify and hold free and harmless each and every one of: Declarant, Association, any director, or any officer, agent, employee, or committee representative, respectively of Declarant, Association, and/or their respective partners, members, divisions, subsidiaries and affiliated companies (if any), and their and their respective employees, officers, directors, members, shareholders, agents, professional consultants and representatives, and all of their respective successors and assigns (collectively, "Indemnitees") from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any fault, act, or omission of the Owner, any contractor or subcontractor employed by the Owner, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with: (a) any work by or of the Owner within the Properties and/or the performance of the Owner's obligations with respect to any and all Improvements designed, installed, constructed, added, altered or remodeled by the Owner pursuant and subject to the Governing Documents, including, without limitation, any such loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) any use of the Unit, or any part thereof, (ii) any defect in the design, construction of, or material in, any structure or other Improvement upon the Unit, (iii) any defect in soils or in the preparation of soils or in the design and accomplishment of grading, including a spill of any contaminants or hazardous materials in or on the soil, (iv) any accident or casualty on the Unit or in the Properties, (v) any representations by Owner or any of its agents or employees, (vi) a violation or alleged violation by the Owner, its employees or agents, of any applicable law, (vii) any slope failure or subsurface geologic or groundwater condition, (viii) any work of design, construction, engineering or other work with respect to the Unit or Properties provided or performed by or for the Owner at any time whatsoever, or (ix) any other cause whatsoever in connection with Owner's use of the Unit or the Properties, or Owner's performance under this Declaration, or any other Governing Document; or (b) the negligence or willful misconduct of Owner or its agents, employees, licensees, invitees or contractors in the development, construction, grading or other work performed off the Properties by Owner pursuant to the Governing Documents, or any defect in any such work. Notwithstanding anything to the contrary contained in any of the documents referenced in the preceding sentence, Owner agrees and acknowledges that Indemnitees shall not be liable to Owner for any Liabilities caused by (i) any act or omission of Indemnitees with respect to the review of the Owner's Improvements and/or the drawings or specifications related to the Owner's Improvements, or (ii) any inspection or failure to inspect the construction activities of Owner by any of the Indemnitees, or (iii) any direction or suggestion given by any of the Indemnitees with respect to construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Owner's Improvements, or the failure to give any such direction or suggestion, or for any Liabilities which are covered by insurance or would be covered by insurance required to be maintained by the Owner, and Owner expressly waives any such Liabilities and releases Indemnitees therefrom. The covenants in this Section 24.7 and the obligations of each Owner, and shall be binding on the Owner until such date as any claim or action for which indemnification or exculpation may be claimed under this Section 24.7 is fully and finally barred (or, if applicable, fully and finally resolved, and any payment required thereby has been made in full).

**Section 24.8 Business of Declarant.** Except to the extent expressly provided herein or as required by applicable, during the Declarant Rights Period, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's improvement and/or development of the Properties.

**Section 24.9 Compliance with the Act.** It is the intent of Declarant that this Declaration and the Community shall be in all respects consistent with, and not in violation of, applicable provisions of



**EXHIBIT "A"**

**LEGAL DESCRIPTION  
OF THE  
DEVELOPMENT PROPERTY**

Beginning at the Section Corner common to Sections 27-28-33-34 Township 42 South, Range 16 West, Salt Lake Base and Meridian and running;

Thence North 88°32'37" West 2621.44 feet to the Quarter Corner common to said Sections 28-33;

thence North 1°50'37" East 3992.42 feet along the center section line to the North 1/16 Corner of said Section 28;

thence South 88°31'07" East 1690.18 feet along the 1/16 line to a point on the East boundary of Santa Maria at Sunbrook Phase 4 Amended as on file in the Office of the Recorder, Washington County, Utah (Inst. No. 20100028534);

thence South 9°52'28" West 7.97 feet along said East line to a point on a 750.00 foot radius non-tangent curve concave to the Southwest (Radius bears: South 9°47'50" West). Said point also being on the proposed centerline of Plantations Drive, a proposed 80.00 foot wide public street and continuing along said proposed centerline the following eleven (11) courses;

thence Southeasterly 342.54 feet along said 750.00 foot radius curve through a central angle of 26°10'06" to a point of tangency;

thence South 54°02'04" East 56.91 feet to a point of curvature;

thence 616.76 feet along a 740.00 foot radius curve to the right through a central angle of 47°45'13", to a point of tangency;

thence South 6°16'51" East 123.72 feet to a point of curvature;

thence 849.03 feet along an 1150.00 foot radius curve to the left through a central angle of 42°18'03" to a point of tangency;

thence South 48°34'55" East 1997.56 feet to a point of curvature;

thence 561.96 feet along a 1000.00 foot radius curve to the right through a central angle of 32°11'52" to a point of reverse curvature;

thence 1006.47 feet along a 1250.00 foot radius curve to the left through a central angle of 46°07'59" to a point of reverse curvature;

thence 222.33 feet along a 1000.00 foot radius curve to the right through a central angle of 12°44'20" to a point of tangency;

thence South 49°46'43" East 490.01 feet to a point of curvature;

thence 238.06 feet along a 1500.00 foot radius curve to the right through a central angle of 9°05'36" to a point that intersects a Southwesterly projection of the Alienta Drive centerline as established in The Highlands @ Green Valley Phase 1 (Inst. No. 20060002398);

thence North 24°49'47" East 651.13 along said extension and the Easterly line of Parcels 32 and 33 as described in Inst. No. 200900646536 to its intersection with the North Section line of said Section 34;

thence South 88°05'44" East 33.23 feet along the Section Line to a point that is North 88°05'44" West 1374.00 feet along the section line from the Section corner common to Sections 26-27-34-35, Township 42 South, Range 16 West, Salt Lake Base and Meridian;

thence South 24°48'29" West 100.95 feet to and along the West boundary of Cottages North

Phase 3 (Inst. No. 629336, Book:1293, Page:870)  
thence South 1°50'54" West 463.90 feet along said West line;  
thence South 23°40'49" East 97.91 feet along said West line to a point on the West line of Cottages North Phase II (Inst. No. 478939, Book:851, Page:221)  
thence South 9°35'49" East 648.35 feet to the Southwest corner of said subdivision. Said point also being on a Westerly extension of the North line of Canyon View Drive as established from existing ring and lid control monuments;  
thence North 88°08'36" West 1.07 along said extension line to a point on a 20.00 foot radius non tangent curve concave to the Northeast (Radius bears: North 29°56'22" East ). Said point also being on the East line of that parcel described in Deed of Dedication (Inst. No. 700320, Book:1384, Page:229) as established from said ring and lid control monuments in Canyon View Drive and continuing along the North and West line of said Deed of Dedication the following six (6) courses;  
thence 17.62 feet along said curve through a central angle of 50°28'30";  
thence South 80°24'52" West 80.00 feet along a radial bearing South 9°35'08" East 435.96 feet to a point of curvature;  
thence 34.58 feet along a 540.00 foot radius curve to the left through a central angle of 3°40'07" to a point of tangency  
thence South 13°15'15" East 458.48 feet to a point of curvature;  
thence 816.16 feet along a 620.00 foot radius curve to the left through a central angle of 75°25'24" to a point of tangency. Said point also being on the South line of that parcel described in Warranty Deed (Inst. No. 814829, Book:1539, Page:350) and continuing along the South line of said parcel the following Five (5) courses;  
thence South 88°40'40" East 417.51 feet to a point of curvature. Said point also being North 0°48'55" East 26.216 feet along the Section line and North 88°40'40" West 144.188 feet from the Quarter Corner common to said Sections 34 and 35;  
thence 705.17 feet along a 900.00 foot radius curve to the right through a central angle of 44°53'32";  
thence North 46°12'51" East 80.00 feet along a radial bearing to a point on a 25.00 foot radius curve concave to the East;  
thence Northeasterly 36.11 feet along said curve through a central angle of 82°45'31" to a point of reverse curvature;  
thence 53.39 feet along a 175.00 foot radius curve to the left through a central angle of 17°28'54" to a point on a Westerly extension of the South boundaries of Las Palmas Resort Condominiums II Phase VII, Amended & Extended (Inst. No. 943875, Book:1742, Page:670) and Las Palmas Resort Condominiums II Phase VIII, Corrected, Amended & Extended (Inst. No. 20070037723);  
thence South 88°42'10" East 774.66 feet along said extension to and along said South boundaries;  
thence South 1°30'19" East 421.72 feet along the East line of the Northwest ¼ of the Southwest ¼ of said Section 35 to the Southeast corner of that parcel described in Warranty Deed (Inst. No. 272765, Book: 370, Page:685);  
thence South 88°37'07" East 1323.94 along the South line of said parcel to a point on the Center Section line of said Section 35;  
thence South 0°14'30" West 807.72 feet along said line to the Southeast corner of the Northeast ¼ of the Southwest ¼ of said Section 35;  
thence North 88°36'09" West 2598.96 feet along the 1/16 line to the Southeast corner of

Sectional Lot 3, said Section 34. Said point also being South 3°16'05" East 1330.64 feet from said Quarter Corner common to Sections 34 and 35;

thence North 88°27'41" West 1296.03 feet along the 1/16 line to the Southeast corner of that parcel described in Warranty Deed (Inst. No. 20080023192) and continuing along said parcel the following four (4) courses;

thence Northerly 250.73 feet along a 667.00 foot radius non-tangent curve concave to the Southwest (Radius bears South 86°46'26" West) through a central angle of 21°32'18";

thence North 78°16'07" West 371.72 feet;

thence South 38°59'48" West 246.42 feet;

thence South 1°32'28" West 110.33 feet to a point on the 1/16 line;

thence North 88°27'41" West 658.26 feet to the South 1/16 corner of said Section 34;

thence North 88°26'12" West 1336.31 feet along the 1/16 line to the Southwest 1/16 corner of said Section 34;

thence North 1°17'01" East 1329.68 feet along the 1/16 line to the West 1/16 corner of said Section 34;

thence North 88°23'46" West 1333.98 feet along the Center Section line to the Quarter Corner common to said Sections 33 and 34;

thence North 1°17'37" East 2669.16 feet along the Section line to the Point of Beginning.

Containing Approximately 719.68 Acres

Tax Serial Numbers:

SG-6-2-27-428, SG-6-2-27-330, SG-6-2-27-331, SG-6-2-27-236, SG-6-2-28-2110,  
SG-6-2-34-411, SG-6-2-34-412, SG-6-2-34-1004, SG-6-2-34-1003, SG-6-2-34-1008,  
SG-6-2-34-1010, SG-6-2-34-241, SG-6-2-35-3002.