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REC FOR: OGDEN SOUTH RIVER TOWNHOMES LL

**COMMUNITY DECLARATION**  
**FOR**  
**THE MEADOWS AT RIVERBEND**  
**HOMEOWNERS' ASSOCIATION, INC.**

03-046-0001 TO 0016 ✓

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**COMMUNITY DECLARATION  
FOR  
THE MEADOWS AT RIVERBEND  
HOMEOWNERS' ASSOCIATION, INC.**

This Community Declaration (hereafter "**Community Declaration**") is made on the date evidenced below by Ogden South River Townhomes, LLC, a Utah Limited Liability Company (hereafter "**Declarant**").

**ARTICLE I: GENERAL**

**SECTION 1.1 BACKGROUND.**

Declarant is the owner of a certain parcel of land (hereafter the "Phase I Property") located in the City of Ogden, Utah, upon which the Declarant intends to develop and construct approximately 15 residential lots. The Declarant intends in the future to acquire other adjacent parcels (hereafter sometimes referred to collectively as the "Annexable Property") on which the Declarant intends to develop up to an additional 57 residential lots. The foregoing development project (hereinafter defined as the "Project") as completed shall be known as "The Meadows at Riverbend." The "Project Area" for purposes of this Community Declaration shall be comprised of the Phase I Property and the Annexable Property collectively and is located entirely within Weber County, Utah. The Project does not contain and is not intended to contain any condominiums governed by the Utah Condominium Ownership Act.

On or about May 9, 2011, the City of Ogden approved the Project Area for the phased development of a community of townhomes under Title 15, Chapter 39 of the Ogden City Municipal Code (the "Mixed Use Zone MU Ordinance"). Initial approval of the development of the Project Area by Ogden City included the City and the Declarant entering into that certain MU Zone Development Agreement dated the 7<sup>th</sup> day of June, 2012 by and between the Declarant, Ogden City, and the Ogden City Redevelopment Agency (hereafter the "Development Agreement").

**SECTION 1.2 PURPOSES OF DECLARATION.**

This Community Declaration is executed:

- (a) In furtherance of a common and general plan for those portions of the Project Area which may become part of the Association Area;
- (b) To protect and enhance the quality, value, desirability and attractiveness of all property which becomes part of the Association Area;
- (c) To provide for an Association as a vehicle to hold, maintain, care for and manage the Association Area and other commonly maintained improvements within the Project Area;
- (d) To define the duties, powers and rights of Owners of Units within the Association Area.

(e) To establish certain easements necessary for the use and enjoyment of the Units and Common Areas.

**SECTION 1.3 ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS.**

Declarant, for itself, its successors and assigns, hereby declares that the Phase I Property and all other property which hereafter becomes subject to this Community Declaration in the manner hereinafter provided, and each part thereof, shall, from the date, the same becomes subject to this Community Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, for the duration thereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Project Area.

**SECTION 1.4 COMMUNITY DECLARATION TO RUN WITH THE LAND.**

The provisions of the Community Declaration are intended to and shall run with the land and shall bind, be a charge upon and inure to the mutual benefit of: (a) all of the property which becomes part of the Association Area and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all Persons having or acquiring any right, title or interest in any property which becomes part of the Association Area or any part or parcel thereof or any improvement thereon and their heirs, personal representatives, successors and assigns.

**ARTICLE II: DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Community Declaration shall have the meaning hereinafter specified.

**SECTION 2.1 ANNEXABLE AREA.**

"Annexable Area" shall mean all of the real property described on Exhibit "B" attached hereto, all or any portion of which may from time to time be made subject to this Community Declaration pursuant to the provisions of Article III of this Community declaration. Further, the Annexable Area may be expanded or contracted as provided in Article III.

**SECTION 2.2 ARTICLES OF INCORPORATION.**

"Articles of Incorporation" shall mean the Articles of Incorporation of The Meadows at Riverbend Homeowners' Association, Inc., which have been or will be filed in the office of the Division of Corporations and Commercial Code of the State of Utah, as the same may be amended from time to time.

**SECTION 2.3 ASSESSMENT.**

"Assessment" shall mean any levy or charge against a Unit payable by such Unit's Owner which is approved by the Association to fund Association functions and responsibilities as provided in this Community Declaration, including, but not limited to General Operating Assessments, General Reserve Assessments, Supplemental Common Assessments, Special Assessments, Capital Replacement Reserve Assessments, and Reimbursement Assessments.

**SECTION 2.4 ASSOCIATION.**

"Association" shall mean The Meadows at Riverbend Homeowners' Association, Inc., a Utah Corporation, its successors and assigns. The Association is not, and shall not be deemed a "cooperative" for purposes of U.C.A. §57-8a-212 (2011).



**SECTION 2.5 ASSOCIATION AREA.**

"Association Area" shall mean any real property which is subject to this Community Declaration or which hereafter becomes subject to this Community Declaration by the execution and recording of a Supplemental Declaration as provided in Article III of this Community Declaration.

**SECTION 2.6 BOARD OF TRUSTEES.**

"Board of Trustees" or "Board" shall mean the Board of Trustees of the Association.

**SECTION 2.7 BUDGET.**

"Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Community Declaration and prepared pursuant to Section 8.11 of this Community Declaration.

**SECTION 2.8 BYLAWS.**

"Bylaws" shall mean the Bylaws of the Association which have been or will be adopted by the Board of the Association, a copy of which is attached hereto as Exhibit "C", as the same may be amended from time to time.

**SECTION 2.9 CAPITAL REPLACEMENT RESERVE ASSESSMENT.**

"Capital Replacement Reserve Assessment" shall mean an amount levied or assessed by the Association against a Unit and payable by such Unit's Owner to cover the cost of repairing, replacing, and restoring Common Areas and other Improvements maintained by the Association that have a useful life of three years or more, but excluding any costs that can reasonably be funded through the Common Assessment Fund as per Section 8.18 below.

**SECTION 2.10 COMMON AREA OR COMMON AREAS.**

"Common Area" shall mean any item of real and personal property, including Improvements, now or hereafter; (i) owned by the Association; (ii) as to which the Association has a duty to maintain, repair or administer as provided in this Community Declaration. For purposes hereof, the Dwelling Common Components defined below shall also be included as items of Common Area. References herein to "Common Areas" shall be deemed to refer to all Common Area items collectively.

**SECTION 2.11 COMMON ASSESSMENT.**

"Common Assessment" is used to refer to the General Operating Assessment and General Reserve Assessment, collectively. The Common Assessment refers to the collective annual levy or charge against a Unit and payable by a Unit Owner to fund administration of the Association; pay for the expense of common utilities; and to fund the Association in performing its duties to manage, operate, care for, maintain and repair Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

**SECTION 2.12 COMMON ASSESSMENT FUND.**

"Common Assessment Fund" shall mean the Association's fund account which consists of both the General Operating Assessment Fund and the General Reserve Assessment Fund.

**SECTION 2.13 COMMUNITY ASSOCIATION ACT.**

"Community Association Act" shall mean Utah Code Annotated §57-8a-101, et seq. (2012), as such statute may hereafter be amended or revised. In the event that such chapter is revoked and/or replaced by a successor statute then the term Community Association Act shall be deemed to refer to such successor or replacement statute, if any.

**SECTION 2.14 COMMUNITY DECLARATION.**

"Community Declaration" or "Declaration" shall mean this instrument as it may be amended from time to time.

**SECTION 2.15 COMMUNITY DESIGN GUIDELINES.**

Not applicable.

**SECTION 2.16 DECLARANT.**

"Declarant" shall mean Ogden South River Townhomes, LLC, a Utah Limited Liability Company, its successors and assigns. A Person shall be deemed a "successor and assign" of Ogden South River Townhomes, LLC as Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Community Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Community Declaration which are specifically designated in the written instrument. However, a successor to Ogden South River Townhomes, LLC by consolidation or merger shall automatically be deemed a successor or assign of Ogden South River Townhomes, LLC as Declarant under this Community Declaration.

**SECTION 2.17 DEED OF TRUST.**

"Deed of Trust" shall mean a Mortgage as hereinafter defined.

**SECTION 2.18 DESIGN REVIEW COMMITTEE.**

Not applicable.

**SECTION 2.19 DEVELOPMENT PERIOD.**

"Development Period" shall begin on the date of this Declaration and end on the date when all of the Units within the Project Area have been sold by the Declarant or such other earlier date as the Declarant may determine by recording a notice declaring that the Development Period has ended.

**SECTION 2.20 DWELLING.**

"Dwelling" shall mean an enclosed structure suitable for occupancy as a single-family residence constructed on a Residential Lot. Dwelling shall also be interpreted as including any enclosed garage area attached to the primary residence which is also located on the Residential Lot.

**SECTION 2.21 DWELLING COMMON COMPONENTS.**

"Dwelling Common Components" shall mean the exterior surfaces and roofs of a Dwelling, including porches and stairs and excluding only mechanical systems and glass surfaces. Dwelling Common Components are to be maintained and administered by the Association as if they were part of the Common Areas as provided hereafter.

**SECTION 2.22 GENERAL OPERATING ASSESSMENT.**

The "General Operating Assessment" refers to the annual amount which is levied by the Association against the Owners and the Units collectively to cover all general and common operating expenses of the Association as are necessary and proper as provided in this Community Declaration, which expenses include, without limitation, ongoing and recurring costs related to: management and administration of the Association; premiums for insurance policies obtained by the Association, costs of maintaining and repairing the Common Areas, utility charges applicable to Common Areas, providing design review services under Article X hereof, payment of reasonable attorneys' fees and accountants' fees; obtaining errors and omissions

insurance for officers, trustees and agents of the Association, obtaining fidelity bonds for any Person handling funds of the Association, paying taxes levied against the Common Areas owned by the Association, filing fees, recording costs and bookkeeping fees, obtaining and maintaining offices, office furniture and equipment and performing other such reasonable and ordinary administrative tasks associated with operating the Association or fulfilling the Associations duties as provided herein.

**SECTION 2.23 IMPROVEMENTS.**

"Improvements" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to the following general types of items; buildings, outbuildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, porches, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water fixtures.

**SECTION 2.24 IMPROVEMENT TO PROPERTY.**

Not applicable.

**SECTION 2.25 LIMITED COMMON AREA.**

"Limited Common Area" means that portion of any Common Area shown on the Plat as dedicated to the exclusive use and enjoyment of the Owner of the Residential Lot to which such Limited Common Area is adjacent and/or appurtenant and as further provided for in Section 11.1.

**SECTION 2.26 MANAGER.**

"Manager" shall mean any one or more Persons employed by the Association as hereinafter provided in this Community Declaration who is engaged to perform any of the duties, powers or functions of the Association.

**SECTION 2.27 MEMBER.**

"Member" shall mean the Person, or if more than one, all Persons collectively, who constitute the Owner of a Unit.

**SECTION 2.28 MORTGAGE.**

"Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Unit, encumbering the Unit to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

**SECTION 2.29 MORTGAGEE.**

"Mortgagee" shall mean a mortgagee (i.e. lender) under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee.

**SECTION 2.30 MORTGAGOR.**

"Mortgagor" shall mean the Person who mortgages his or its property to another (i.e. the maker or grantor of a Mortgage). The term "Mortgagor" shall include a trustor under a Deed of Trust.

**SECTION 2.31 NOTICE AND HEARING.**

"Notice and Hearing" shall mean a written notice and a public hearing before the Board or a tribunal appointed by the Board, in the manner provided in the Bylaws.

**SECTION 2.32 NOTICE OF COMPLETION.**

Not applicable.

**SECTION 2.33 OWNER.**

"Owner" shall mean the Person, including Declarant, or if more than one, all Persons collectively, who hold fee simple title of record to a Unit, including sellers and buyers under an executory contract of sale. The Owner of a Unit shall be the Owner for purposes of this Community Declaration, and not the lessees or tenants thereof, if any.

**SECTION 2.34 PERSON.**

"Person" shall mean a natural person, a corporation, a partnership or any other entity.

**SECTION 2.35 PROJECT AREA.**

"Project Area" shall mean the aggregate of the Association Area, which is subject to this Community Declaration at any point in time, and the Annexable Area, which may at any time thereafter be annexed to the Association Area and thereby be made subject to this Community Declaration.

**SECTION 2.36 RECORD OR RECORDED.**

"Record" or "Recorded" shall mean the filing for record of any document in the office of the Recorder of Weber County, Utah.

**SECTION 2.37 REIMBURSEMENT ASSESSMENT.**

"Reimbursement Assessment" shall mean a charge against a particular Owner and such Owner's Unit for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner or an occupant of such Owner's Unit, of the Community Declaration or the Rules and Regulations, pursuant to Article VIII hereof, together with late charges and interest as provided for herein.

**SECTION 2.38 RESIDENTIAL LOT.**

"Residential Lot" shall mean any approved building lot within the Association Area which is designated and approved on a recorded plat which is designated for the construction of a Dwelling whether or not the Dwelling and other necessary Improvements have been constructed thereon.

**SECTION 2.39 RULES AND REGULATIONS.**

"Rules and Regulations" shall mean rules and regulations adopted by the Board as provided in Article V of this Community Declaration.

**SECTION 2.40 SPECIAL ASSESSMENT.**

"Special Assessment" shall mean a levy and charge against each Owner and each Unit representing a portion of the costs to the Association for the purpose of funding major capital repairs, maintenance, replacements and improvements, pursuant to Article VIII hereof.

**SECTION 2.41 SUPPLEMENTAL DECLARATION.**

"Supplemental Declaration" shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which

may be recorded on any portion of the Annexable Area in accordance with Article III of this Community Declaration.

**SECTION 2.42 UNIT.**

"Unit" shall mean a Residential Lot with the Dwelling and other Improvements existing thereon from time to time.

**ARTICLE III: ANNEXATION OF PROPERTY TO ASSOCIATION AREA**

**SECTION 3.1 PROPERTY WHICH MAY BE ANNEXED.**

The Declarant and Board acting together may, but shall in no way be required to, from time to time, unilaterally without Member consent, add to the Association Area, all or any portion of the Annexable Area. Delays in development or sale of the Units, resulting from causes beyond the reasonable control of Declarant, shall not affect the right of Declarant to annex further property to the Association Area.

**SECTION 3.2 MANNER OF ANNEXATION.**

As provided above, real property within the Annexable Area (hereafter "Annexed Property"), as defined above, may, from time to time, become part of the Association Area and subject to this Community Declaration effective upon the Recordation in the office of the Recorder of Weber County, Utah, of a Supplemental Declaration meeting the requirements hereinafter set forth.

(a) A Supplemental Declaration:

i. Shall be executed and acknowledged by the owner of the Annexed Property described therein;

ii. Shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of the Board, and the Declarant for so long as the Declarant owns any property in the Project Area and has the power to annex additional property to the Association Area;

iii. Shall contain an adequate legal description of the Annexed Property;

iv. Shall contain a reference to this Community Declaration which shall state its date, its date of Recordation and the book and page of the Records of the Recorder of Weber County, Utah, where this Community Declaration is recorded;

v. Shall state the land classification (residential, or otherwise) of the Annexed Property;

vi. Shall contain a statement that the Annexed Property is declared to be part of the Association Area under this Community Declaration and that the Annexed Property shall be subject to this Community Declaration;

vii. Shall indicate the voting rights of the annexed property;

(b) A Supplemental Declaration may provide for phased annexation so that real property may be made subject to the Supplemental Declaration and this Community Declaration

at different times. A deed by which Declarant conveys a parcel of property to another Person may constitute a Supplemental Declaration if it meets the foregoing requirements.

(c) A Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions than those set forth in this Community Declaration, taking into account the unique and particular aspects of the proposed development of the Annexed Property covered thereby.

(d) Upon Recordation of a Supplemental Declaration, the Annexed Property shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration.

(e) No annexation of Annexed Property by Declarant through a Supplemental Declaration shall have the direct effect of increasing the then current budgeted expenses for the Association by more than twenty percent (20%) or substantially overburdening the Common Areas. If any such annexation would have such effect, Declarant may nevertheless annex such Annexed Property so long as Declarant agrees to subsidize directly to the Association no less than the amount of any excess expenses for such calendar year over one-hundred-twenty percent (120%) of the then current budgeted expenses of the Association for such year in which the applicable annexation occurs.

**SECTION 3.3 FHA/VA APPROVAL OF ANNEXATIONS.**

Not applicable.

**SECTION 3.4 WITHDRAWAL OF ANNEXED PROPERTY BY DECLARANT.**

Annexed Property for which a Supplemental Declaration has been Recorded may be withdrawn from the Association Area and from this Community Declaration by Declarant to correct a surveyor error or other technical or clerical error or otherwise. Such withdrawal may be accomplished by the execution, acknowledgment and Recordation of a Notice of Withdrawal; provided that, (i) no vote has then been exercised with respect to the Annexed Property to be withdrawn and (ii) no Assessments to the Association have then commenced with respect to the Annexed Property to be withdrawn. The Notice of Withdrawal (a) shall be executed and acknowledged by the Owner of the Annexed Property; (b) shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has the power to Annex additional property to the Association Area; (c) shall contain an adequate legal description of the Annexed Property (d) shall contain a reference to the Supplemental Declaration for the Annexed Property which reference shall state the date thereof, the date of Recordation thereof and the book and page of the Records in the office of the Recorder of Weber County, Utah, where the Supplemental Declaration was Recorded; and (e) shall contain a statement and Declaration that the Annexed Property is withdrawn from the Association Area and shall not be thereafter subject to this Community Declaration or the Supplemental Declaration for the annexed Property. The withdrawal shall be effective upon Recording of the Notice of Withdrawal; and upon Recording of the Notice of Withdrawal the Annexed Property described therein shall no longer be part of the Association Area or subject to this Community Declaration or to the Supplemental Declaration for the Annexed Property.

**SECTION 3.5 EXPANSION OR CONTRACTION OF ANNEXABLE AREA.**

The Annexable Area may be expanded or contracted to add or delete real property effective upon the Recordation of a written instrument, executed by Declarant, describing such real

property and declaring that such real property shall thereafter be added to or deleted from the Annexable Area. No real property shall be added to the Annexable Area without a majority vote of the Board voting at a meeting duly called.

#### **ARTICLE IV: GENERAL OPERATION OF THE ASSOCIATION**

##### **SECTION 4.1 FORMATION OF ASSOCIATION.**

Declarant has caused or will cause the Association to be organized and Articles of Incorporation to be filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

##### **SECTION 4.2 ASSOCIATION BOARD OF TRUSTEES.**

The affairs of the Association shall be managed by a Board of Trustees. The number, term and qualifications of the Board shall be fixed in the Articles of Incorporation and Bylaws. The Board may, by resolution, delegate portions of its authority to an executive committee or to other committees or to officers of the Association. Such delegation of authority, however, shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association. No action by or on behalf of the Association may be taken by the Board or any duly authorized executive committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Community Declaration.

##### **SECTION 4.3 MEMBERSHIP IN ASSOCIATION.**

Each Owner of a Unit within the Association Area shall be a Member of the Association. There shall be one Membership in the Association for each Unit within the Association Area. The Person or Persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and the Membership appurtenant thereto shall pass with fee simple title to the Unit. Declarant shall hold a Membership in the Association for each Unit owned by Declarant. Membership in the Association shall not be assignable separate and apart from the fee simple title to a Unit except that an Owner may assign some or all of his rights as an Owner and as a Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Community Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Community Declaration.

##### **SECTION 4.4 VOTING RIGHTS OF MEMBERS.**

Each Member shall have the right to cast votes within the Association, with one vote for each Unit owned by such Member. The Members shall elect the Board. The Bylaws of the Association shall provide for the manner, time, place, conduct, and voting procedures for Member meetings for the purpose of transacting business of the Association. Notwithstanding anything to the contrary in this Declaration or the Bylaws, a Member must be in good standing with the Association to be eligible to vote. For purposes of this provision, "good standing" shall mean that the Member has no violation(s) pending on their Unit and is not more than thirty (30) days past due on payment of any Assessment, fines, and any late charges and/or interest on any of the Assessments or fines. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding on all Members, and their successors and assigns.

**SECTION 4.5 INVOLUNTARY DISSOLUTION OF ASSOCIATION; RE-INCORPORATION.**

In the event that the Association is involuntarily dissolved due to a failure to renew or similar circumstances, the Board by its own majority vote, may re-incorporate the Association as provided in U.C.A §57-8a-221, as such statute may be amended or revised.

**SECTION 4.6 TERMINATION OF ASSOCIATION.**

The Association and the common interest community created by this Declaration shall be terminated upon the affirmative vote of Members owning 75% or more of the Units in the Association Area and the prior written approval of Ogden City. Upon a voluntary termination of the Association, the Common Areas shall be sold upon terms established by the Board at the time the termination agreement is accepted and the dissolution and disposal of the Common Areas shall be accomplished as provided by applicable state law.

**ARTICLE V: DUTIES AND POWERS OF ASSOCIATION****SECTION 5.1 GENERAL DUTIES AND POWERS OF ASSOCIATION.**

The Association has been formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Common Areas and to improve and enhance the attractiveness, desirability and safety of the Association Area. The Association shall also be responsible to maintain landscaping on property owned by the City of Ogden but located adjacent to the Association Area as required by City of Ogden under the Development Agreement or otherwise legally imposed requirement.

**SECTION 5.2 DUTY TO ACCEPT PROPERTY AND FACILITIES TRANSFERRED BY DECLARANT.**

The Association shall accept title to any property, including any Improvements thereon and personal property transferred to the Association by Declarant. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Trustee, be transferred to the Association free and clear of all liens and encumbrances (other than the lien of property taxes and assessments not then due and payable).

**SECTION 5.3 DUTY TO MANAGE AND CARE FOR PROPERTIES; GRANT OF ACCESS AND MAINTENANCE EASEMENT.**

The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The Association also shall maintain any landscaping plantings located within public right-of-ways located adjacent to the Association Area as required by Ogden City in the Development Agreement or otherwise legally imposed requirement, and include the costs of such maintenance as part of the Common Assessments. The Association shall also maintain (and replace as necessary) the Dwelling Common Components as Common Areas and shall include the costs of such maintenance (and any necessary replacements from time to time) in the appropriate Assessments. The obligation of the Association to maintain the Dwelling Common Components is a requirement of Ogden City as provided in the Development Agreement.

An access and maintenance easement is hereby granted to the Association, its agents or employees, as to each Residential Lot to allow the Association to perform its repair,



maintenance and replacement obligations hereunder in regards to the Dwelling Common Components and Common Areas. Each Owner shall be required to cooperate with the Association to allow reasonable access at reasonable times to and through the Owner's Unit where necessary upon reasonable notice from the Association to allow the Association to perform its obligations in regards to the Dwelling Common Components and Common Areas. To the extent that any Owner fails to reasonably cooperate with providing access, then any additional costs reasonably incurred by the Association caused by such Owner's failure to cooperate or the Association's efforts to enforce its rights to access shall be charged to such Owner and such Unit as a Reimbursement Assessment

**SECTION 5.4 DUTY TO PAY TAXES.**

The Association shall pay all taxes and assessments levied upon the Common Areas owned by the Association and all taxes and assessments properly imposed against the Association.

**SECTION 5.5 DUTY TO MAINTAIN CASUALTY & LIABILITY INSURANCE.**

The Association shall maintain at least such minimum insurance as is required by the Community Association Act, as such may be amended from time to time. In the event that the Community Association Act is hereafter revoked, or the provisions regarding required insurance no longer become applicable to the Association, then the Association shall be obligated to maintain such casualty and liability insurance as the Board reasonably determines is necessary to reasonably protect the interests of the Association and the Owners from common insurable risks related to liabilities associated with the use, ownership and maintenance of the Common Areas and casualty to property relating to attached Dwellings, Limited Common Areas, and Common Areas. Beginning not later than the day on which the first Unit is conveyed to a person other than Declarant, the Association shall consistently maintain, to the extent reasonably available:

(a) **Property Insurance.** Property insurance on the physical structure of all attached Dwellings, Limited Common Areas appurtenant to a Dwelling on a Residential Lot, and other Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Property insurance obtained by the Association shall further be subject to the mandatory provisions of U.C.A. §57-8a-405, as such may be amended hereafter. Casualty, fire and extended coverage insurance with respect to insurable Improvements shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost.

The property insurance shall include, as required by the Community Association Act, coverage for any fixture, improvement, or betterment installed by an Owner to an attached Dwelling or to a Limited Common Area appurtenant to a Dwelling, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached Dwelling or to a Limited Common Area.

As required by the Community Association Act, the Association shall set aside and maintain in the General Reserve Assessment Fund or such other separate fund as the Board may establish an amount equal to the amount of the Association's property insurance policy deductible or \$10,000 whichever is less.

(b) **Public Liability Insurance.** Public liability insurance, including medical payments insurance covering all occurrences common insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. Liability insurance obtained by the Association shall further be subject to the

provisions of U.C.A. §57-8a-406, as such may be amended. If the Association owns or operates motor vehicles, the Association shall obtain public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. All liability insurance policies shall, to the extent reasonably obtainable, have limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, except that the limit for motor vehicle liability may be as low as Three Hundred Thousand Dollars (\$300,000). Each liability policy shall also provide that all Owners be collectively included as "additional insureds" in respect to any liability arising from such Owner's interest in the Common Areas or from such Owner's membership in the Association.

(c) Flood Insurance. If the Association Area is located in an area identified by the Department of Housing and Urban Development as an area having special flood hazards, then a blanket policy of flood insurance on the Association Area shall be maintained in the amount of the aggregate of not less than the outstanding principal balances of the mortgage loans on all Dwellings or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

If the Association becomes aware that the insurance listed in either subsection (a) or (b) above is not reasonably available, the Association shall, within seven (7) calendar days after becoming aware give each Owner written notice that the required insurance is not reasonably available.

The Association shall be authorized to obtain such additional insurance coverage as the law may specifically require from time to time or that the Board may deem necessary or appropriate from time to time, including but not limited to coverage against earth movement (earthquake) pertaining to the Common Areas or the Units. However, in no event shall the Board or the Association be required to obtain any such optional coverage and the failure to obtain such insurance coverage shall not be deemed a breach of any obligation of the Board or Association, nor shall the failure to obtain any other such insurance coverage create liability for the Board or the Association in the event of a loss which would only have been covered by an insurance policy not required to be maintained as provided above.

#### **SECTION 5.6 GENERAL PROVISIONS RESPECTING ASSOCIATION INSURANCE.**

Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate and as allowed by applicable law, but shall generally not exceed \$10,000 per occurrence whenever possible. Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, cover each Member without each Member necessarily being specifically named. Insurance obtained by the Association shall, to the extent reasonably possible and as required by applicable law without undue cost, contain a waiver of rights of subrogation as against the Association, each Member and any Person claiming by, through or under such Member and as against any officer, trustee, agent or employee of any of the foregoing.

Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Board to ascertain whether coverage under the policies is sufficient in the light of the current value of the Common Areas and in the light of the possible or potential liabilities of the Association.

Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Common Areas and property of Declarant.

**SECTION 5.7 FIDELITY BONDS REQUIRED.**

The Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Association including, but not limited to, employees of the Manager. Each such bond shall name the Association as obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate Assessments on all Units plus all applicable reserve funds maintained by the Association.

**SECTION 5.8 OTHER INSURANCE AND BONDS.**

The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

**SECTION 5.9 INSURANCE AND BONDS REQUIRED BY GOVERNMENT MORTGAGE AGENCIES.**

The Association shall obtain and keep in full force and effect such insurance and bonds as may be required by Government Mortgage Agencies to the extent that any such Government Mortgage Agency (i.e., FHA, Fannie Mae, Freddie Mac, etc.) holds, or has agreed to insure or to guarantee, any Mortgage on any Unit within the Association Area, except to the extent such insurance or bond is not available or has been waived in writing by such Government Mortgage Agency.

**SECTION 5.10 DUTY TO PREPARE BUDGETS.**

The Association shall prepare annual Budgets for the Association as elsewhere provided in this Community Declaration.

**SECTION 5.11 DUTY TO LEVY AND COLLECT ASSESSMENTS.**

The Association shall levy and collect Assessments as is more specifically provided in other Sections in this Community Declaration.

**SECTION 5.12 DUTY TO PROVIDE AUDIT.**

The Association shall provide for an annual independent audit of the accounts of the Association upon a majority vote of the Board. Copies of the report of the audit shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same. Members may request and obtain, at their own cost, an audit of the Association's accounts upon reasonable notice to the Board.

**SECTION 5.13 DUTIES WITH RESPECT TO DESIGN REVIEW APPROVALS.**

Not applicable.

**SECTION 5.14 POWER TO ACQUIRE PROPERTY AND CONSTRUCT IMPROVEMENTS.**

The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property by a majority vote of the Board. The Association may construct Improvements on property and may demolish existing Improvements.

**SECTION 5.15 POWER TO ADOPT RULES AND REGULATIONS.**

The Association may adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Community Declaration, the operation of the Association, the use and enjoyment of Common Areas and the use of any other property within the Association Area, including Residential Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board. Notice of the adoption, amendment or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to such Members as elsewhere provided in this Community Declaration or the Bylaws, and copies of the Currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Community Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Community Declaration, the provisions of this Community Declaration shall prevail.

**SECTION 5.16 POWER TO ENFORCE DECLARATION AND RULES AND REGULATIONS.**

The Association shall have the power to enforce the provisions of this Community Declaration and of Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Person claiming by, through or under such Member, such as tenants, guests and invitees. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Community Declaration and of Rules and Regulations of the Community by any one or more of the following means:

- (a) By entry upon any property within the Association Area without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Community Declaration or Rules and Regulations;
- (b) By commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Community Declaration or the Rules and Regulations, by mandatory injunction or otherwise;
- (c) By commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Community Declaration or the Rules and Regulations;
- (d) By the exclusion of any Member (their tenants, guests and invitees) from use of any recreational facilities on the Common Areas during and for up to sixty (60) days following a breach or violation by such Member of this Community Declaration or such Rules and Regulations, unless the breach or violation is a continuing breach in which case such exclusion shall continue for so long as such breach or violation continues;
- (e) By suspension of the voting rights of a Member during and for up to sixty (60) days following a breach or violation by such Member (their tenants, guests and invitees) of this Community Declaration or the Rules and Regulations, unless the breach or violation is a continuing breach in which case such suspension shall continue for so long as such breach or violation continues;

(f) By levying and collecting a Reimbursement Assessment against any Member (their tenants, guests and invitees) for breach of this Community Declaration or the Rules and Regulations; and

(g) By levying and collecting reasonable fines and penalties, established in advance in the Rules and Regulations of the Association, from any Owner for breach of this Community Declaration or the Rules and Regulations by such Member or tenants, guests and invitees of such Member. The Association has a lien against each Unit in regards to unpaid fines and penalties imposed by the Association.

**SECTION 5.17 POWER TO PROVIDE PUBLIC FUNCTIONS.**

The Association shall have the power to acquire, construct, operate, manage, maintain, repair and replace public facilities and to provide public functions.

**SECTION 5.18 POWER TO PROVIDE SPECIAL SERVICES FOR MEMBERS.**

The Association shall have the power to provide services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations, which shall provide for payment to the Association by such Member or group of Members of the reasonable estimated costs and expenses of the Association of providing such services, including a fair share of the overhead expenses of the Association and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Member or group of Members and that the payment for such services shall be secured by a lien on the property of the Member or group of Members.

**SECTION 5.19 POWER TO CHARGE FOR FACILITIES AND SERVICES.**

The Association shall have the power to establish reasonable and uniformly applied charges for the use of facilities and services. The charges may include reasonable admission or other fees for any special or extraordinary use of property or facilities or services of the Association such as special parking privileges, special recreation facilities, conference rooms, instruction, day-care or child-care services or similar uses beyond the ordinary use of Common Areas, facilities and services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Board.

**SECTION 5.20 POWER TO GRANT EASEMENTS.**

The Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under Common Areas.

**SECTION 5.21 POWER TO CONVEY AND DEDICATE PROPERTY TO GOVERNMENT AGENCIES.**

The Association, with the approval of a majority vote of the Board voting at a meeting duly called, shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, subject to the provisions elsewhere contained in this Community Declaration for approval of the same by Government Mortgage Agencies, by Declarant with respect to property transferred to the Association by Declarant.

**SECTION 5.22 POWER TO BORROW MONEY AND MORTGAGE PROPERTY.**

The Association shall have the power to borrow money and, with the approval of two-thirds (2/3) of the votes represented by the Members as described in this Community Declaration and the Bylaws, voting at a meeting duly called, to encumber Common Areas as security for such

borrowing, subject to provisions elsewhere in this Community Declaration with respect to required approvals and consents to such action.

**SECTION 5.23 POWER TO EMPLOY MANAGERS.**

The Association shall have the power to retain and pay for the services of a Manager or Managers to undertake any of the management functions for which the Association has responsibility under this Community Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such Manager. Any contract or agreement with any such Manager shall be terminable by the Association for cause with no less than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee with no less than ninety (90) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year, but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. Any agreement or contract with a Manager shall contain any other provisions which are required to be contained therein by any Government Mortgage Agency.

**SECTION 5.24 POWER TO ENGAGE EMPLOYEES, AGENTS AND CONSULTANTS.**

The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Community Declaration.

**SECTION 5.25 GENERAL CORPORATE POWERS.**

The Association shall have all of the ordinary powers and rights of a Utah corporation formed under the Utah Revised Nonprofit Corporation Act, including without limitation entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Community Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Community Declaration or the Articles of Incorporation and Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Community Declaration and the Articles of Incorporation and Bylaws.

**ARTICLE VI: COMMON AREAS**

**SECTION 6.1 MEMBER'S RIGHTS OF USE AND ENJOYMENT GENERALLY.**

All Members may generally use and enjoy the Common Areas, subject to the right of the Association to regulate the use thereof, and except as is otherwise expressly provided herein.

**SECTION 6.2 RIGHT OF ASSOCIATION TO REGULATE USE.**

The Association, acting through the Board, shall have the power to regulate use of Common Areas by Members to further and enhance the overall rights of use and enjoyment of all Members, including imposing reasonable limits on the times of use and numbers of guests permitted to use Common Areas.

**SECTION 6.3 RIGHT OF ASSOCIATION TO ALLOW PUBLIC USE.**

The Association, acting through the Board, shall have the right to allow members of the general public to use Common Areas, subject to reasonable limitations, and provided that use by the general public does not unreasonably interfere with or impair the rights of use and enjoyment of Owners. The Association shall not unreasonably prevent access to those areas shown on the subdivision plats for the Association Area as "Publicly Accessible Open Space," however, the Association shall have the right to place reasonable restrictions on such areas. The Association shall have the reasonable right to close the "Publicly Accessible Open Space" as necessary to prevent such property from being publicly dedicated through public use.

**SECTION 6.4 NO PARTITION OF COMMON AREAS.**

No Owner shall have the right to partition or seek partition of the Common Areas or any part thereof.

**SECTION 6.5 LIABILITY OF OWNERS FOR DAMAGE BY MEMBER.**

Each Member shall be liable to the Association for any damage to Common Areas or for any expense or liability incurred by the Association, to the extent not covered by insurance maintained by the Association, which may be sustained by reason of the negligence or willful misconduct of such Member or any Person using the Common Areas through such Member and for any violation by such Member or any such Person of this Community Declaration or any Rule or Regulation adopted by the Association.

The Association shall have the power, as elsewhere provided in this Community Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Community Declaration or of such Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or any such violation.

**SECTION 6.6 DAMAGE, DESTRUCTION OF REQUIRED IMPROVEMENTS; ASSOCIATION DUTIES.**

In the event of damage to Common Areas by fire or other casualty, or in the event any governmental authority shall require any repair, reconstruction or replacement of any Common Areas, the Association shall have the duty to repair, reconstruct or replace the same.

Any insurance proceeds payable by reason of damage or destruction of Common Areas by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the cost of repair, reconstruction or replacement.

If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement, levy a Special Assessment in accordance with Article VIII, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the Member or group of Members responsible therefore, to provide the additional funds necessary as elsewhere provided in this Community Declaration.

Repair, reconstruction or replacement of Common Areas and Dwelling Common Components shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction and replacement, the Association may use

the same for future maintenance, repair Improvement and operation of other Common Areas or Dwelling Common Components.

**SECTION 6.7 ASSOCIATION POWERS IN THE EVENT OF CONDEMNATION.**

If any Community Common Areas or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property including any Mortgagee of such property.

The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interest of all Owners therein. Any award or funds received by the Association shall be held by the Association in the appropriate Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of Common Areas or may be used for Improvements or additions to, or operation of, Common Areas.

**SECTION 6.8 TITLE TO COMMON AREAS ON DISSOLUTION OF ASSOCIATION.**

In the event of dissolution of the Association, the Common Areas shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies or to a nonprofit corporation, association, trust or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Common Area was held by the Association.

To the extent the foregoing is not possible, the Common Areas, subject to the prior written consent of Ogden City, shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members as provided in the Community Association Act, or if no provision for such is made in the Community Association Act, in proportion to the manner in which Common Assessments are calculated.

**SECTION 6.9 GRANT OF EASEMENTS FOR MINOR ENCROACHMENTS.**

An easement is hereby granted to each Owner for any bay or box window constructed on a Dwelling that extends into any of the Common Areas to the extent that such was constructed in the initial construction of the Dwelling by Declarant or to the extent that such a future Improvement encroaching on a Common Area is hereafter approved by all appropriate governmental entities.

**ARTICLE VII: DECLARANT'S RIGHTS AND RESERVATIONS**

**SECTION 7.1 PERIOD OF DECLARANT'S RIGHTS AND RESERVATIONS.**

Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Common Areas from the date hereof through the end of the Development Period. The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Association Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of this Community Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Community Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.



**SECTION 7.2 RIGHT TO CONSTRUCT ADDITIONAL IMPROVEMENTS ON COMMON AREAS.**

Declarant shall have and hereby reserves the right, but shall not be obligated to, construct additional Improvements on Common Areas at any time and from time to time in accordance with the Development Agreement and this Community Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in an increase in the then current and applicable Common Assessments by more than twenty-percent (20%). Declarant shall convey or transfer such Improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Community Declaration. If any such Improvements are not completed when transferred to the Association, Declarant shall provide a bond or letter of credit (or other assurance as the Association and the government Mortgage Agencies may reasonably require) to assure that the cost thereof will be paid by Declarant and the Improvements completed free of liens and encumbrances relating to the construction of the Improvements.

**SECTION 7.3 DECLARANT'S RIGHT TO USE COMMON AREAS AND SERVICES.**

Declarant shall have and hereby reserves the right to reasonable use of Common Areas and of services offered by the Association in connection with the promotion and marketing of Units within the boundaries of the Project Area. Without limiting the generality of the foregoing, Declarant may erect and maintain Improvements on any part of the Common Areas for promotional purposes; and may permit prospective purchasers of Units within the boundaries of the Project Area, who are not Owners or Members of the Association, to use Common Areas at reasonable times and in reasonable numbers; and may refer to the Association and to the Common Areas and services offered by the Association in connection with the development, promotion and marketing of Units within the boundaries of the Project Area.

**SECTION 7.4 DECLARANT'S RIGHTS TO COMPLETE DEVELOPMENT OF PROJECT AREA.**

No provision of this Community Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Project Area; to construct or alter Improvements on any property owned by Declarant within the Project Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Project Area. Nothing contained in this Community Declaration shall limit the right of Declarant or require Declarant to obtain approvals (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or (b) to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Project Area. Nothing in this Community Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Community Declaration.

**SECTION 7.5 DECLARANT'S APPROVAL OF CONVEYANCES OR CHANGES IN USE OF COMMON AREAS.**

During the Development Period, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Common Areas, mortgage the Common Areas or use Common Areas other than solely for the benefit of Members.

**SECTION 7.6 DECLARANT'S RIGHTS TO GRANT AND CREATE EASEMENTS.**

During the Development Period, Declarant shall have and hereby reserves the right to grant or create temporary or permanent easement, for access, utilities, drainage, water and other purposes incident to development and sale of the Project Area, located in, on, under, over and

across (a) Residential Lots owned by Declarant and (b) Common Areas, provided that such easements do not create a permanent, unreasonable interference with the rights of the Owners. Declarant's right to grant or create easements in, on, under, over or across Common Areas shall be subject to the other applicable provisions of this Community Declaration.

**SECTION 7.7 DECLARANT'S RIGHTS TO CONVEY ADDITIONAL PROPERTY TO ASSOCIATION.**

Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Association at any time and from time to time in accordance with the Developmental Guide and this Community Declaration, so long as any conveyance does not directly result in an increase in the then current and applicable Common Assessments by more than twenty percent (20%).

**SECTION 7.8 LIMITATIONS IMPOSED BY GOVERNMENT MORTGAGE AGENCIES.**

The exercise of the rights of Declarant reserved herein shall be subject to such reasonable requirements and limitations as may be imposed by Government Mortgage Agencies or other governmental authorities having jurisdiction including any requirements for consent or approval by such Government Mortgage Agencies or Governmental authorities.

**ARTICLE VIII: ASSESSMENTS, BUDGETS AND FUNDS**

**SECTION 8.1 ASSESSMENT FUNDS TO BE ESTABLISHED AND MAINTAINED.**

The Community Association shall establish and maintain at least the following separate types of general accounts/funds:

- (a) Common Assessment Fund – consisting of:
  - i. General Operations Assessment Fund; and
  - ii. General Reserve Assessment Fund.
- (b) Capital Replacement Reserve Fund

**SECTION 8.2 ESTABLISHMENT OF OTHER FUNDS.**

The Association may establish other funds as determined necessary by the Board. Nothing herein shall limit, preclude or impair the authority of the Association to establish other funds for specified purposes authorized by this Community Declaration or by any Supplemental Declaration, or by applicable law. If the Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

**SECTION 8.3 DEPOSIT OF COMMON ASSESSMENTS TO COMMON ASSESSMENT FUNDS.**

Monies received by the Association as payment of Common Assessments shall be deposited in the Common Assessment Fund in accordance with the following provisions:

- (a) There shall be first deposited to the General Operations Fund the amount which was included in the Association's Budget for the year for general operating costs and expenses of the Association;

(b) The balance of the Common Assessment funds received shall be deposited to the General Reserve Assessment Fund.

**SECTION 8.4 DISBURSEMENTS FROM THE COMMON ASSESSMENT FUND.**

All amounts deposited in the Common Assessment Fund shall be used solely for the common benefit of all the Members for purposes authorized by this Community Declaration.

**SECTION 8.5 NO COMMINGLING OF MAINTENANCE FUNDS.**

The Association shall not commingle any amounts deposited into the Common Assessment Fund with other Assessment funds created by the Association.

**SECTION 8.6 AUTHORITY FOR DISBURSEMENTS.**

The Board shall have the authority to make or to authorize an agent to make disbursements of monies in the Common Assessment Fund and other Assessment funds, subject only to the express limitations contained herein.

**SECTION 8.7 FUNDING THE COMMON ASSESSMENT FUNDS.**

For each calendar year, the Association shall levy a General Operations Assessment and a General Reserve Assessment against the Units which shall be calculated based upon the Budget prepared and approved by the Board for the applicable calendar year. Each Owner shall be personally obligated to pay the Common Assessment levied against, and allocated to, such Owner's Unit as hereinafter more particularly set forth.

Anything herein to the contrary notwithstanding, and subject to provisions elsewhere contained in this Community Declaration requiring the consent of Declarant or others, this Section 8.7 may only be amended or repealed upon approval of the Members of the Association representing at least SEVENTY FIVE PERCENT (75%) of the total votes of the Association.

Written notice of any change in the amount of any annual Common Assessment amount or other applicable Assessment amount shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

**SECTION 8.8 APPORTIONMENT OF COMMON ASSESSMENT FUNDS.**

For purposes of the Common Assessment Fund, each Unit shall constitute one (1) unit for assessment purposes regardless of the size, value, location or use of such Unit. The amount of the Common Assessment shall be based upon estimated expenses of the Association (including reserve estimates) divided by the number of Units subject to assessment under this Article VIII.

**SECTION 8.9 PREFERENCE FOR REGULARLY SCHEDULED ASSESSMENTS.**

The Board, in budgeting and levying Assessments, shall endeavor, whenever possible, to fund the anticipated expenses of the Association by regularly scheduled payments, included as part of the Common Assessments and Capital Replacement Reserve Assessments, rather than by large Special Assessments. Unless the Board finds and determines that it is not necessary, as to a particular reserve fund in a given year, the Common Assessment Fund shall include a reasonable component for funding of the General Reserve Fund.

**SECTION 8.10 SUPPLEMENTAL COMMON ASSESSMENT.**

If the estimated sums collected by the Association from Common Assessments prove inadequate for any reason, including shortfalls from nonpayment by Owners of previously assessed Common Assessments, the Board may, from time to time, levy a Supplemental

Common Assessment to fund any projected or current deficiency in the Common Assessment Fund. Such Supplemental Common Assessment shall be assessed in the same manner Common Assessments are originally assessed each year by the Board.

**SECTION 8.11 ANNUAL BUDGETS.**

The Board shall cause to be prepared, at least thirty (30) days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies.

The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Assessment fund, and shall reflect any expected income of the Association for the coming calendar year and any expected surplus from the prior year and any existing surplus in any reserve fund.

The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish or add to the proper Reserve Fund for major capital repairs, replacements and improvements for Common Areas, and other Improvements maintained by the Association.

The Board shall cause a copy of the Budget to be distributed to each Owner promptly after the Budget is prepared and approved by the Board and shall make a copy of the Budget available for inspection at the principal office of the Association.

In the event the Association does not have an address for any Member, posting of a notice on the Unit shall be deemed delivery of notice to any such Owner.

At such time as the Association publishes a newsletter for Owners, the Budget shall be published in such newsletter or via the Community's website. Copies of the Budget shall be made available by the Association to any Owner requesting a copy of the same upon payment of the reasonable expense of copying the same.

**SECTION 8.12 NO DISBURSEMENTS TO ABATE ADJOINING NUISANCES.**

Nothing in this Community Declaration shall be construed so as to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Association Area.

**SECTION 8.13 ASSESSMENTS FOR UNSOLD UNITS.**

Notwithstanding anything to the contrary contained herein, Declarant, for so long as Declarant retains title to a Unit, whether improved or unimproved, and provided that no portion of such Unit has been used or occupied for residential purposes, such Unit shall be exempt from Assessments and the payment of any Assessment of the Association during the period of Declarant's ownership. However, given the foregoing, Declarant or its assigns shall have the obligation to reasonably subsidize the Association during the Development Period. Such subsidy shall be limited to the payment of the reasonable monthly cash needs of the Association during the Development Period for ordinary and necessary maintenance expenses related to the Common Areas (not including reserves or capital replacement) to the extent such needs exceed amounts assessed by the Association on Units during and pertaining to the Development Period, but not otherwise. The determination of the reasonable monthly subsidy amount shall be within the sole discretion of the Board in place during the Development Period. Declarant shall have no future liability to the Association if subsequent Boards shall disagree with the determination of the Board (or Boards) which made such determination. This obligation

may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these contributions.

**SECTION 8.14 APPROVAL OF INCREASE IN COMMON ASSESSMENTS.**

If the Board of Trustees, by majority vote, determines that the important and essential functions of the Association will not be properly funded during a fiscal year by the total amount of the Common Assessments, it may increase the total Common Assessment each year by not more than fifteen percent (15%) above the Common Assessment for the previous year without a vote of the Members. The Common Assessment may be increased above the foregoing fifteen percent (15%) annual cap only by the affirmative vote of two-thirds of the votes represented by the Members voting at a meeting duly called for this purpose. Written notice of any change in the amount of any annual Common Assessment amount or other applicable Assessment amount shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

**SECTION 8.15 COMMENCEMENT OF COMMON ASSESSMENTS.**

Subject to the provisions of this Community Declaration, Common Assessments shall commence as to each Unit on the first day following the date of Recordation of the deed conveying a Unit from the Declarant. The Common Assessment for the then current calendar year shall be prorated on the basis of the number of days in such calendar year remaining from the date of commencement of such Unit's Common Assessment to the end of such calendar year.

**SECTION 8.16 ASSESSMENT DATE; PAYMENT OF ASSESSMENT.**

Common Assessments shall be levied on an annual basis for a given year and shall be due and payable in advance to the Association on January 1 of such calendar year, however, as a convenience to the Owners, the Association may allow Common Assessments to be paid in twelve (12) equal monthly installments on the first day of each month during the calendar year. The Board shall have authority to change the terms of installment payments of Common Assessments in the Board's discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to January 1 of each year. Special Assessments shall be due and payable within thirty (30) days of the date on which such Special Assessment is levied by the Board, but the Board may allow Special Assessment to be paid in installments in the Board's discretion.

**SECTION 8.17 FAILURE TO FIX ASSESSMENT.**

The failure by the Board to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Community Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. In the event of such failure, the amount of the Common Assessment for that year shall be the amount of the previous year unless increased pursuant Section 8.14.

**SECTION 8.18 CAPITAL RESERVE ANALYSIS – CAPITAL REPLACEMENT RESERVE FUND.**

The following provisions are intended to comply with the requirements of U.C.A. §57-8a-211 (2012) (the "Association Capital Reserve Statute") which requires the Association to be proactive in determining future capital replacement needs in regards to the Common Areas and establishing a reasonable capital reserve fund to pay for such projected needs. In the event of any subsequent modification to the Association Capital Reserve Statute, the provisions of this Section 8.18 shall be modified so as to comply with any mandatory requirements contained in such modifications. In the event of any conflict between the provisions hereof and the

Association Capital Reserve Statute, the express terms of the Association Capital Reserve Statute shall govern.

(a) Definition. "Capital Reserve Analysis" for purposes hereof, shall mean an analysis conducted by the Board to determine: (a) the need for a capital reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Area items that have a useful life of three years or more, but excluding any cost that can reasonably be funded through the Common Assessment Fund, and (b) the appropriate amount of the Capital Replacement Reserve Fund.

(b) Requirement that Board Conduct Capital Reserve Analysis. The Board shall cause a Capital Reserve Analysis to be conducted no less frequently than every six (6) years and also shall review, and if necessary, update any previously conducted Capital Reserve Analysis no less frequently than every three (3) years. The Board may conduct the Capital Reserve Analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the Capital Reserve Analysis.

(c) Presentation and Approval of Analysis.

i) The Board shall present the Capital Reserve Analysis at either an annual meeting of the Members or at a special meeting of Members duly called.

ii) Members shall have a reasonable opportunity to discuss the Capital Reserve Analysis and to vote on whether to fund the Capital Replacement Reserve Fund and, if so, how to fund it and in what amount.

iii) The Association shall keep minutes of each such meeting and indicate in the minutes any decision relating to funding the Capital Replacement Reserve.

iv) Upon the approval of two-thirds (2/3) of the votes represented by the Members voting at a meeting duly called, the Board shall be authorized to levy a Capital Replacement Reserve Assessment for purposes of funding the Capital Replacement Reserve Fund as authorized by the Members according to the vote.

v) If the Members do not authorize the Board to levy a Capital Replacement Reserve Assessment such decision shall be noted in the minutes and the Board shall not be obligated to fund the Capital Replacement Reserve Fund at such time.

(d) Restrictions on Capital Replacement Reserve Fund. The Board may not use money in the Capital Replacement Reserve Fund: (i) for daily maintenance expenses or for any other purpose than the purpose for which a Capital Replacement Reserve Fund was established, unless a majority of the Members vote to approve the use of reserve fund money for a specific alternative purpose. The Board shall maintain the Capital Replacement Reserve Fund separate from other funds of the Association, but shall not be prohibited from prudently investing money in the Capital Reserve Fund, subject to any investment constraints imposed by the Community Declaration or applicable laws.

(e) How Capital Replacement Reserve Assessments are to be Assessed. Capital Replacement Reserve Assessments shall be levied solely on the basis of, and in proportion to, the total number of Units in the Association Area.

#### **SECTION 8.19 SPECIAL ASSESSMENT FOR ADDITIONAL CAPITAL EXPENDITURES.**

In addition to Common Assessments, the Board may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds, not otherwise provided under the

Budget from common Assessments, to construct or reconstruct, repair or replace capital improvements upon Common Areas, including necessary personal property related thereto; to add to the Common Areas; to provide for necessary facilities and equipment to offer the services authorized in this Community Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Community Declaration.

(a) The Board shall not levy Special Assessments without the approval of two-thirds (2/3) of the votes represented by the Members voting at a meeting duly called.

(b) Special Assessments for capital improvements which may be used by all Members of the Association shall be levied solely on the basis of, and in proportion to, the total number of Units in the Association Area.

(c) The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable (at least thirty (30) days after the date of the notice) and the Members shall pay any such Special Assessment in the manner so specified. In the event that the Board shall levy a Special Assessment, the Board shall specify for what purposes the Special Assessment has been levied.

**SECTION 8.20 REIMBURSEMENT ASSESSMENTS.**

The Board may, subject to the provisions hereof, levy a "Reimbursement Assessment" against any Member if the willful or negligent failure of the Member or a Person claiming through the Member to comply with this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations has resulted in the expenditure of the funds by the Association to cause such compliance. The amount of the Reimbursement Assessment shall be due and payable to the Association within thirty (30) days after notice to the Member of the decision of the Board that the Assessment is owed.

**SECTION 8.21 LATE CHARGES AND INTEREST.**

If any Assessment, or any installment thereof, is not paid within thirty (30) days after it is due, the Association may assess a late fee equal to the 5% of the delinquent amount. In addition, if any Assessment or installment of an Assessment is not paid within thirty (30) days after the date of mailing of the Notice of Default, such delinquent amount shall bear interest from the date of delinquency at the highest rate then established by statute in Utah for interest on damages for personal injury or on judgments in other actions, whichever is higher, but in no event less than EIGHT PERCENT (8%) per annum simple interest.

**SECTION 8.22 CONTRIBUTION OF PAYMENTS.**

If any Common Assessment payment received by the Association is less than the total Common Assessment on a Unit, such payment shall be credited as to such Owner and Unit by the Association in the following order of priority:

(a) To the respective General Operations Assessment Fund until that portion of the fund has been satisfied;

(b) To the General Reserve Assessment Fund until that portion of the fund has been satisfied.

In each of the foregoing cases, receipts shall be credited first to the satisfaction of unpaid interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying

the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

**SECTION 8.23 NOTICE OF DEFAULT AND ACCELERATION OF ASSESSMENTS.**

If an Assessment or any installment thereof, or any fine is not paid within thirty (30) days after its due date, the Board may thereafter mail a notice ("Notice of Default") to the Owner evidencing such default and shall also deliver a copy of such Notice of Default to each first Mortgagee of the Unit who has requested copy of the notice.

The Notice of Default shall specify (a) the fact that the installment or fine is delinquent; (b) the action required to cure the default; (c) a date by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year and the possible foreclosure of the lien for the fine or Assessment against the Unit of the Member.

The Notice of Default shall further inform the Member of any right to cure the default after acceleration and of any right to bring a court action to assert the nonexistence of a default or any other defense of the Member.

**SECTION 8.24 ACCELERATION.**

If the delinquent fine, Assessment and any late charges, interest, or attorneys' fees are not paid in full on or before the date specified in the Notice of Default, the Board, at its option, may declare the fine or all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the fine or full Assessment and all charges, interest, and attorney fees thereon in any manner authorized by law, subject to the protection afforded to Mortgagees under this Community Declaration. Unpaid fines issued by the Association shall be treated hereunder as an "Assessment" for purposes of collection and lien rights of the Association granted herein.

**SECTION 8.25 REMEDIES TO ENFORCE ASSESSMENTS.**

Each Assessment levied hereunder and each fine validly issued by the Association shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed as well as a lien against the Owner's Unit. In the event of a default in payment of any Assessment or fine or installment thereof, the Board may, in addition to any other remedies provided under this Community Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing for a foreclosure of a lien as provided in the Community Association Act or otherwise provided under applicable law.

In addition to the foregoing remedies and pursuant to §57-8a-310 of the Community Association Act, in the event that any Unit is leased to a non-Owner occupant, the Association may require a tenant under such lease to pay all future lease payments due to the Owner to the Association until the amount owing to the Association by the Owner has been paid in full.

**SECTION 8.26 LAWSUIT TO ENFORCE ASSESSMENTS.**

The Board may bring a suit at law to enforce any Assessment obligation either directly against the Owner owing such Assessment or may bring a judicial foreclosure to collect the unpaid Assessment as a lien against such Owner's Unit. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement, including reasonable attorney fees, against the defaulting Owner.



**SECTION 8.27 STATUTORY LIEN TO ENFORCE ASSESSMENTS.**

Pursuant to U.C.A. §57-81-301 (2011) (the "Association Lien Statute"), the Association shall have a statutory lien against each Unit for the collection of Assessments, court costs and attorneys' fees, late charges, interest, fines imposed by the Association against the Owner, and any other amounts which the Association is entitled to recover pursuant to this Community Declaration. Pursuant to the Association Lien Statute, the recording of this Community Declaration constitutes record notice and perfection of the Association's statutory lien right.

(a) Appointment of Trustee. Declarant hereby appoints Gregory J. Schmidt of the law firm Walker, Steiner & Schmidt, P.C. to serve as Trustee for purposes of any "trust deed lien" granted in this Community Declaration to the Association or for purposes of enforcement of Association lien rights pursuant to the Association Lien Statute. Mr. Schmidt is an active member of the Utah State Bar as of the date hereof with and currently maintains an office in the state of Utah at 4567 South Holladay Blvd., Salt Lake City, Utah 84117.

(b) Grant of Trust Deed Lien with Power of Sale. As required by U.C.A. §57-8a-212, Declarant hereby conveys and warrants pursuant to U.C.A. Section 57-1-20 and 57-8a-402 to Gregory J. Schmidt, as Trustee, with power of sale each Residential Lot and all Improvements to each such Residential Lot for the purpose of securing payment of Assessments under the terms of this Community Declaration.

**SECTION 8.28 PAYOFF STATEMENTS; ESTOPPEL CERTIFICATES.**

(a) Generally. Upon the payment of such reasonable fee as may be determined from time to time by the Board (not to exceed \$50 or such other greater amount as may be allowed by the Community Association Act from time to time), and upon the written request of any Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Unit and the Owner thereof and setting forth the amount of any Assessment levied against such Unit which is not yet due and payable (hereafter a "Payoff Statement"). The Payoff Statement shall, with respect to any party relying on such statement, be treated as an estoppel certificate and shall be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid as to such Unit and/or Owner and that no other Assessments have been levied.

(b) In Connection with Financing, Refinancing or Closing of Sale of a Unit. Upon the receipt of an appropriate written request of a closing agent as provided in U.C.A. §57-8a-106 (2011), in regards to the financing, refinancing or closing of a sale of Unit, the Association shall furnish to such closing agent a Payoff Statement within five (5) business days of the Association's receipt of such a proper request. The Association may charge a fee for providing such statement as referenced in subsection (a) above; however, the Association may not require that the Payoff Statement fee be paid prior to the closing. Failure of the Association to provide the Payoff Statement in a timely manner may prevent the Association from enforcing its lien rights against that Unit for money due to the Association at the time of such closing as provided in the Community Association Act.

**SECTION 8.29 NO OFFSETS.**

All Assessments shall be payable in the amounts specified in the levy thereof, and, unless expressly authorized by the Board, no offsets or reductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board has failed to properly exercise its duties and powers under this Community Declaration. Furthermore, no

Owner shall be entitled to claim an abatement of any Assessment for inconvenience or discomfort arising from the making of repairs or Improvements to Common Areas or from any action taken to cause an Owner or Unit to comply with any law or any permitted determination of the Board or for any other reason.

## **ARTICLE IX: GENERAL RESTRICTIONS APPLICABLE TO PROPERTY WITHIN ASSOCIATION AREA**

All real property within the Association Area shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the limited exemptions permitted to Declarant as set forth in this Community Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

### **SECTION 9.1 MAINTENANCE OF PROPERTY.**

No property within the Association Area shall be permitted to fall into disrepair, and all property within the Association Area, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and aesthetically pleasing condition and in good repair by the owner thereof. Maintenance, repair and upkeep of each Unit shall generally be the responsibility of the Owner of the Unit. Maintenance, repair and upkeep of the Common Areas shall be the responsibility of the Association. Violation of this provision by an Owner shall permit the Association, after Notice and Hearing as provided in the Bylaws, to enter on the Unit of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of a Dwelling without the consent of the Owner thereof unless a clear emergency exists.

### **SECTION 9.2 NO NOXIOUS OR OFFENSIVE ACTIVITY.**

No noxious or offensive activity shall be carried on upon any property within the Association Area nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance or annoyance to others.

### **SECTION 9.3 ANNOYING SOUNDS OR ODORS.**

No sound or odor shall be emitted from any property within the Association Area which is noxious or unreasonably offensive to others as determined by the Board. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Board.

### **SECTION 9.4 NO HAZARDOUS ACTIVITIES.**

No Activity shall be conducted on and no Improvement shall be constructed on any property within the Association Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

**SECTION 9.5 NO UNSIGHTLINESS.**

No unsightly article or items shall be permitted to remain on any Unit or on streets and drives within the Association Area, but must be stored inside the residence structure in compliance with all applicable Ogden City ordinances. Only clean neat patio furniture and an appropriately sized barbeque unit which is kept clean and covered may be kept on any patio on a Residential Lot.

Refuse, garbage and trash shall be kept at all times inside the Dwelling until disposed of in refuse containers provided by the Association. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No materials or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or if appropriately screened from view. Liquid propane gas, oil and other exterior tanks shall be kept within an enclosed structure or permanently screened from view.

**SECTION 9.6 RESTRICTIONS ON GARBAGE AND TRASH.**

No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Residential Lot. The Association shall provide dumpsters or other trash disposal containers for the collection and disposal of residential trash. No Owner shall be allowed to place any construction materials or debris in any dumpster or trash disposal container provided by the Association and shall arrange for private disposal of the same at such Owner's expense.

**SECTION 9.7 NO TEMPORARY STRUCTURES.**

No tent, shack, temporary structure or temporary building shall be placed upon any property within the Association Area except with the prior written consent of the Board obtained in each instance.

**SECTION 9.8 RESTRICTION OF ANTENNAE, PIPES AND UTILITY LINES.**

Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antennae of any type shall be erected or maintained in the Association Area. With the approval of the Board, a master antenna or cable television antenna or antennae may, but need not, be provided for use of all Owners or a group of Owners, and Declarant may grant easements for such purposes subject to the provisions of Article IX of this Community Declaration.

**SECTION 9.9 RESTRICTIONS ON SIGNS AND ADVERTISING DEVICES.**

No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Association Area so as to be evident to public view except signs as may be approved in writing by the Board. A sign advertising a Unit for sale or for lease may be placed on such Unit; provided, however, that standards relating to dimensions, color, style and location of such sign may be determined from time to time by the Board.

**SECTION 9.10 MAINTENANCE OF DRAINAGE.**

There shall be no interference with the established drainage pattern over any property within the Association Area except as approved in writing by the Board and all applicable governmental entities. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the

overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by all appropriate governmental entities.

**SECTION 9.11 COMPLIANCE WITH INSURANCE REQUIREMENTS.**

Except as may be approved in writing by the Board nothing shall be done or kept on property within the Association Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

**SECTION 9.12 COMPLIANCE WITH LAWS.**

Nothing shall be done or kept on any property within the Association Area in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

**SECTION 9.13 RESTRICTIONS ON SEWAGE DISPOSAL SYSTEMS.**

No cesspool, septic tank or other sewage disposal system shall be installed within the Association Area except a central sewage disposal system installed and maintained by a water and sanitation district or other sanitation agency providing sewage disposal services to a significant portion of the Association Area. Any sewage disposal system installed for property within the Association Area shall be subject to applicable laws, rules and regulations of any governmental authority having jurisdiction.

**SECTION 9.14 RESTORATION IN THE EVENT OF DAMAGE OR DESTRUCTION.**

In the event of damage or destruction of any Improvement on any Residential Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Residential Lot to be suitably landscaped so as to present a pleasing and attractive appearance.

**SECTION 9.15 PARKING AND VEHICULAR RESTRICTIONS.**

(a) Parking Restrictions:

(i) Generally. Vehicles belonging to, or utilized by, Owners or occupants of a Dwelling may only be parked within such Dwelling's garage or on the driveway serving such Dwelling. Driveways serving a given Dwelling shall be deemed Limited Common Areas for purposes of this Community Declaration.

(ii) Garages. Each Owner shall maintain such Owner's garage in a manner which ensures that it is capable of accommodating at least one (1) car. All garage doors must remain closed, except when necessary for ingress or egress.

(iii) Driveways. Any vehicle parked in the driveway of a Residential Lot must be kept licensed, insured, in good repair and must be driven regularly. No parked vehicle may obstruct any street or drive within the Association Area at any time. No vehicle shall be stored in the driveway of a Residential Lot.

(iv) Guest Parking Areas. The guest parking areas, if any, within the Association Area shall be used only for temporary parking (not to exceed 24 hours without prior written permission from the Board which permission the Board may withhold in its sole discretion). The Board may further regulate the parking of vehicles within the Association Area, including without limitation, limiting use of guest parking areas and designating guest parking areas.

(v) Restrictions on Other Vehicles. Trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups used solely for the private and non-business use of the residents of a Dwelling), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow plows, maintenance equipment, and all commercial, farming and business vehicles shall not be kept or stored within the Association Area, except for such items as are fully stored within such Unit Owner's garage and further provided that the storage of such an item does not prevent such Owner from being able to park at least one additional vehicle in such Unit Owner's garage as provided above.

(vi) Enforcement of Parking Restrictions. The Association, through its Board, is also hereby empowered to include in the Rules and Regulations, the ability to enforce the parking restrictions imposed herein by all means lawful for such enforcement, including but not limited to the removal of any violating Vehicles at the expense of the owner of the vehicle, booting vehicles which are not in compliance, and/or imposing a reasonable fine structure.

(b) Vehicle Maintenance. No Person shall conduct maintenance, repairs or restorations or washing of the exteriors of any Vehicle or Recreational Vehicle upon any portion of the Association Area, except as follows herein. Minor repair and restoration of vehicles shall be permitted, but only to the extent such activities: (i) are conducted wholly within an Owner's garage with the garage door closed (ii) such activities are conducted only at reasonable times; and (iii) do not create any offensive noises, odors, or pollution. The Board may prohibit any specific type of maintenance, repair or restoration activity if the Board determines in its sole discretion that any such activity constitutes a nuisance.

#### SECTION 9.16 RESTRICTIONS ON ANIMALS.

(a) General Restriction. No animals, livestock, or poultry of any kind shall be raised, bred or kept in any Dwelling or on any of the Residential Lots, except as expressly permitted in this Section 9.16. Except as prohibited by applicable laws and regulations, the restrictions on the keeping of animals provided within this Section 9.16 may be made more restrictive (or where appropriate, more permissive) by the Rules and Regulations of the Association.

(b) Certain Animals Permitted, Subject to Certain Restrictions. Subject to compliance with all applicable laws and ordinances, the following animals shall be allowed to be kept within a Dwelling provided such animals do not cause an unreasonable disturbance to other Owners or occupants and are otherwise maintained and cared for appropriately. The permissions contained in this Subsection 9.16(b) which allow certain domestic animals to be kept shall be considered as privileges and not rights, and to the extent the requirements provided herein are violated by a party, these privileges may be appropriately suspended by the Board as to any Owner or occupant as provided in the Bylaws.

(i) Dogs and Cats: Up to a combined total of two (2) animals, subject to the following additional restrictions: (1) All dogs and cats must be housed and maintained within the living area within the Dwelling; (2) No dog or cat shall be allowed on the Common Areas unless directly accompanied by a responsible person and must be kept on a leash at all times; (3) Any fecal waste deposited on the Common Areas must be immediately removed and properly disposed of by the person accompanying the animal; and (4) generally, dogs in excess of 30 pounds in weight shall not be permitted, as dogs larger than this size tend to be more difficult to house and maintain exclusively within a Dwelling, however, the Board, on application of an Owner, may allow a larger dog on a case by case basis within the Board's sole discretion.

(ii) Birds and Reptiles: up to two (2) ornamental birds or domestic reptiles may be kept in a cage or cages within the Dwelling,

(iii) Fish and Aquatic Animals: Ornamental fish and other appropriate domestic aquatic animals may be kept in a tank within the Dwelling, but no such tank shall exceed 100 gallons in size. No Dwelling may contain more than two (2) such tanks, unless otherwise approved by the Board on a case by case basis within the Boards sole discretion.

(c) Service Animals Permitted. To the extent required by all applicable laws and ordinances existing from time to time, any restriction on the keeping of animals provided in this Section 9.16 or provided in the Rules and Regulations of the Association as such may exist from time to time, shall not apply to the extent necessary to allow necessary service animals which are specially trained for the impaired as certified by a physician to be reasonably kept by an impaired Owner or occupant for whom such a service animal is required.

**SECTION 9.17 NO FURTHER SUBDIVISION; LEASE RESTRICTIONS.**

No Owner shall further partition or subdivide a Residential Lot or individually rent rooms within a Dwelling, including without limitation any division of a Unit into time-share estates, time-share uses, or creation of more than one separate living quarter within a Unit. An Owner may not lease a Unit to another party unless such Unit is leased expressly for single family occupancy by means of a written lease or rental agreement for a term of not less than six (6) months. The terms of any permitted lease or rental agreement shall be made expressly subject to this Community Declaration and the Bylaws of the Association. No Unit may be leased for transient occupancy or hotel purposes. This restriction shall not be deemed a restriction on a Unit Owner's right to sell a Unit; or 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 some other form of joint ownership. Any failure by the lessee of such Unit to comply with the terms of this Community Declaration, the Bylaws of the Association or the Rules and Regulations shall constitute a material default under the applicable lease or rental agreement.

Section 57-8a-209(3) of the Community Association Act may provide certain exemptions to rental restrictions contained in community association declarations, as such the foregoing rental restrictions shall be interpreted and applied on a case by case basis in such a manner as to continue to give effect to the rental restrictions as provided above while still reasonably giving effect to the specific statutory exemptions.

**SECTION 9.18 EXTERNAL APPARATUS.**

No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Board.

**SECTION 9.19 EXTERIOR ANTENNAS.**

No exterior radio, satellite dish or other antennas may be placed on the exterior of any building, except as may be permitted by the Board.

**ARTICLE X: COMMUNITY DESIGN GUIDELINES AND DESIGN REVIEW COMMITTEE**

**SECTION 10.1 COMMUNITY DESIGN GUIDELINES AND MASTER DESIGN GUIDELINES.**

Not applicable.

**SECTION 10.2 APPROVAL OF IMPROVEMENTS REQUIRED.**

Not applicable.

**SECTION 10.3 IMPROVEMENT TO PROPERTY DEFINED.**

Not applicable.

**SECTION 10.4 MEMBERSHIP OF COMMITTEE.**

Not applicable.

**SECTION 10.5 ADDRESS OF COMMITTEE.**

Not applicable.

**SECTION 10.6 SUBMISSION OF PLANS.**

Not applicable.

**SECTION 10.7 CRITERIA FOR APPROVAL.**

Not applicable.

**SECTION 10.8 COMMITTEE GUIDELINES OR RULES.**

Not applicable.

**SECTION 10.9 DESIGN REVIEW FEE.**

Not applicable.

**SECTION 10.10 DECISION OF COMMITTEE.**

Not applicable.

**SECTION 10.11 APPEAL TO ASSOCIATION BOARD.**

Not applicable.

**Section 10.12 Failure of Committee to Act on Plans.**

Not applicable.

**SECTION 10.13 PROSECUTION OF WORK AFTER APPROVAL.**

Not applicable.

**SECTION 10.14 NOTICE OF COMPLETION.**

Not applicable.

**SECTION 10.15 INSPECTION OF WORK.**

Not applicable.

**SECTION 10.16 NOTICE OF NON-COMPLIANCE.**

Not applicable.

**SECTION 10.17 FAILURE OF COMMITTEE TO ACT AFTER COMPLETION.**

Not applicable.

**SECTION 10.18 APPEAL TO ASSOCIATION BOARD OF FINDING OF NON-COMPLIANCE.**

Not applicable.

**SECTION 10.19 CORRECTION OF NON-COMPLIANCE.**

Not applicable.

**SECTION 10.20 NO IMPLIED WAIVER OR ESTOPPEL.**

Not applicable.

**SECTION 10.21 POWER TO GRANT VARIANCES.**

Not applicable.

**SECTION 10.22 COMPENSATION OF DESIGN REVIEW COMMITTEE MEMBERS.**

Not applicable.

**SECTION 10.23 MEETINGS OF DESIGN REVIEW COMMITTEE.**

Not applicable.

**SECTION 10.24 RECORDS OF ACTIONS.**

Not applicable.

**SECTION 10.25 ESTOPPEL CERTIFICATES.**

Not applicable.

**SECTION 10.26 NON-LIABILITY FOR COMMITTEE ACTION.**

Not applicable.

**SECTION 10.27 CONSTRUCTION PERIOD EXCEPTION.**

Not applicable.

**ARTICLE XI: TOWNHOMES (ATTACHED DWELLING UNITS)****SECTION 11.1 LIMITED COMMON AREAS.**

Limited Common Areas shall generally include those portions of the Common Areas which are shown on a subdivision plat as serving only one Unit, such as a driveway or sidewalk leading to the entrance to a Dwelling or a patio area immediately outside of a Dwelling Unit. In addition, while each Residential Lot shall be owned in fee simple by the Owner it is possible that there may be areas within the surveyed boundaries of the Residential Lot which are located outside of the walls of the Dwelling. Such unenclosed areas within a Residential Lot shall be treated as Limited Common Area for use purposes and as Common Area for maintenance purposes. After the initial construction of a Dwelling, subsequent construction, if any, may occupy any remaining portion of the Residential Lot, subject to all other applicable provisions of this Community Declaration. An Owner may construct appurtenant structures that do not contain a roof or footings and personal landscaping outside the boundaries of the Dwelling Unit and within the boundaries of the Lot, subject to the prior approval of all applicable governmental entities. The Board may adopt additional rules and regulations concerning the use of Limited Common Areas.



**SECTION 11.2 OWNER'S OBLIGATIONS IN REGARDS TO DWELLING EXTERIORS.**

An Owner shall not commit any act which detracts from the exterior appearance of the Dwelling or other Improvements located on such Owner's Residential Lot. Each Owner shall be responsible for the repair and maintenance of such Owner's Unit except such Owner's responsibility shall be secondary as to the Dwelling Common Components which are to be maintained by the Association as provided herein. Each Owner shall also be principally responsible to maintain in a neat, clean and safe condition any Limited Common Areas appurtenant to such Owner's Unit, including snow and ice removal.

**SECTION 11.3 OWNER'S INSURANCE.**

(a) **Owner's Should Obtain Insurance Policies.** Each Owner should obtain in regards to such Owner's Unit an insurance policy ("HO6" or its equivalent). Each Owner should consult an insurance agent to determine the proper coverage each Owner should obtain to protect such Owner's personal and property interests. Each Owner shall be obligated to maintain such policies of casualty insurance and liability insurance as such Owner may determine are necessary to protect such Owner from casualty damage to such Owner's Unit (including but not limited to the deductible amount on the Association's property casualty policy) and for loss of the contents within the Unit and shall also maintain such public liability insurance as such Owner deems necessary to protect such Owner from liability claims related to acts or events related to the Owner's Unit and the occupants thereof.

(b) **Certain Losses Not Covered by Association Insurance Policies.** While it is the obligation of the Association pursuant to this Community Declaration to maintain property insurance on the physical structures of all attached Dwellings as provided in Section 5.5 above, the Association's insurance policies will not cover damage or loss to the Owner's personal property or contents of a Unit in the event of a loss (such as by fire or theft) and not all potential losses are covered by the Association's basic property insurance as certain non-standard losses, including without limitation, losses due to floods and earth movement (earthquake) are not generally covered by basic policies. Also, while the Association will maintain public liability insurance in regards to events occurring on the Common Areas and certain insurable liabilities of the Association in regards to the fulfillment of the Association's responsibilities, the Association will not maintain any public liability insurance applicable to the Units or events creating liability which may occur within any Unit.

(c) **Owner's Responsibility to Pay Deductibles.** In the event of an event of loss (fire, etc.) which involves a Unit and provided such loss is a loss covered by an insurance policy maintained by the Association, the Owners of Units involved in such loss shall be responsible to collectively pay to the Association 100% of the applicable deductible on the Association's insurance. Each Owner shall pay such Owner's pro-rata share of such deductible based on the percentage of the total damages attributable to such Owner's Unit as provided in U.C.A. §57-8a-405 (2011) as such statute may hereafter be amended. If a covered loss occurs, any applicable deductible amount chargeable to a Unit which is not paid by the Unit Owner or the Unit Owner's insurance company within Thirty (30) days after substantial completion of the repairs to such Unit may be levied by the Board as a Reimbursement Assessment against such Owner and such Owner's Unit. Insurance policies maintained by Owners shall be considered the primary coverage to the amount of the Association's policy deductible.

(d) **Flood and Earth Movement Insurance.** Except in limited circumstances, set forth in Article V above, the Association will not obtain specialized insurance policies covering potential losses due to floods (flood insurance) or earth movement (earthquake). Such policies

may be able to be obtained by each Owner in their discretion and at their sole cost and expense.

(e) **Association Not Liable.** In no event shall the Association be liable to any Unit Owner for any property loss or liability suffered by a Unit Owner, except as expressly provided in this Declaration. Except as may be required by applicable law, in no event shall the Association be responsible to reimburse any Owner for any loss of contents or personal property within a Unit in the event of a loss, regardless of the cause or origin of such loss.

**SECTION 11.4 OWNER'S OBLIGATION TO MAINTAIN DWELLINGS IN GOOD CONDITION.**

As the Dwellings within the Association Areas are to be "attached dwellings" as such term is commonly understood, each Owner shall keep the interior of such Owner's Unit, including, without limitation, interior walls and utility lines therein, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in good state of repair.

**SECTION 11.5 RIGHT OF ASSOCIATION TO CORRECT MAINTENANCE DEFICIENCIES.**

In the event that any Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair (as reasonably determined by the Board or by any applicable governmental authority), and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair within fifteen (15) days from delivery of written notice from the Association ("Notice of Deficient Condition"), the Association shall have the right, at the expense of the offending Unit Owner and without liability to such Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligations to correct or eliminate any such condition or state of disrepair. All costs incurred by the Association in bringing such Unit into reasonable compliance shall be collected by the Association as a Reimbursement Assessment if not otherwise promptly paid by the Owner.

**SECTION 11.6 OWNER'S DUTY TO NOT DAMAGE OTHER UNITS.**

Each Owner shall have the general obligation to conduct their activities within their own Units and to maintain such Owner's Unit in a clean, sanitary and safe condition so as to not cause physical damage to any other Unit. Subject to the insurance provisions contained in this Declaration and to the applicable provisions of the Community Association Act, repair of damage to a Unit that is caused by the grossly negligent or intentional act or omission of an adjoining Owner, shall be the responsibility of the offending Owner. In the event such damage occurs and the Association makes necessary repairs, the costs of repairing such damage which are not reimbursed by applicable insurance policies, including any unpaid applicable deductible amounts, shall be levied as a Reimbursement Assessment against the offending Owner and such Owner's Unit.

**SECTION 11.7 MAINTENANCE OF SHARED UTILITY LINES.**

In the case of common utility lines shared by two Units, such obligations for maintenance and repair shall be shared equally by the two Unit Owners, unless, it is established that the damage or disrepair was the result of an intentional or negligent act of only one Owner, in which case such Owner shall be entirely responsible for the repairs.

**SECTION 11.8 ASSOCIATION'S EMERGENCY RIGHT TO ENTER A UNIT.**

The Association and its duly authorized agents shall have the right to enter any and all of the Units in case of an emergency originating in or threatening such Unit or any other Unit or part of the Association Area, whether the owner or occupant thereof is present at the time or not.

**SECTION 11.9 PARTY WALLS BETWEEN DWELLINGS.**

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Dwelling and placed on the dividing line between two Residential Lots shall constitute a "Party Wall" for purposes of this Community Declaration, including common walls between Dwellings and patio fences, and, to the extent not inconsistent with the provisions of this Section 11.9, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Actions by an Owner in regards to any Party Wall may also be subject to compliance with applicable provisions and restrictions contained in the Community Association Act from time to time and no action which violates any such provision shall be permitted.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use. However, any utility service lines (including without limitation water, power and sewer) within the Party Wall and principally serving one Dwelling shall be the responsibility of that Dwelling's Owner, including without limitation all costs of maintenance, repair, and replacement. Any damage resulting from or associated with the utility service lines principally serving a particular Dwelling shall be the responsibility of the Owner thereof. The Association, through the Board, has the right, but not the obligation, to make repairs associated with or caused by such utility services, and the Association may levy a Reimbursement Assessment for the cost of the repairs against the Unit of the responsible Owner. Further, if the Association's insurance provides any coverage for the damage, the responsible Owner shall pay the deductible and, if such Owner fails to pay the deductible, the Association may also levy a Reimbursement Assessment against the Owner's Dwelling for the amount of the deductible.

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

(d) Weatherproofing. Notwithstanding any other provision of this Section 11.9, an Owner who by his negligent or willful act causes a Party Wall (or some portion thereof) to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section 11.9 shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section 11.9, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board shall select an arbitrator for the refusing party.

**ARTICLE XII: MISCELLANEOUS****SECTION 12.1 AMENDMENT OF COMMUNITY DECLARATION BY MEMBERS.**

Except as otherwise provided in this Community Declaration, and subject to provisions elsewhere contained in this Community Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration may be amended or repealed at any time and from time to time upon approval of the Members of the Association representing at least two-thirds (2/3) of the votes represented by the Members present in person at a duly constituted meeting of the Members.

The approval of any such amendment or repeal shall be evidenced by the certification by the Board. An amendment or repeal shall be effective upon the recordation in the office of the Recorder of Weber County, Utah, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved and certified by the appropriate number of Member votes as set forth above.

**SECTION 12.2 AMENDMENT REQUIRED BY GOVERNMENT MORTGAGE AGENCIES.**

Notwithstanding the provisions of this Article XII, any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration which any Government Mortgage Agency requires to be amended or repealed may be amended or repealed with the approval of two-third (2/3) of the votes represented by the Members voting in a meeting duly called. Any such amendment or repeal shall be effective upon the Recordation in the office of the Recorder of Weber County Utah, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the vote of Members as herein provided.

**SECTION 12.3 REQUIRED CONSENT OF DECLARANT TO AMEND.**

Notwithstanding any other provision in this Community Declaration to the contrary, any proposed amendment or repeal of any provision of this Community Declaration shall not be effective unless the Declarant has given its written consent to such amendment or repeal, which consent shall be evidenced by the execution by the Declarant of the amendment or by a certificate of amendment or repeal. The foregoing requirement for consent of the Declarant to any amendment or repeal shall terminate at the end of the Development Period.

**SECTION 12.4 AMENDMENT OF ARTICLES AND BYLAWS.**

The Articles of Incorporation and Bylaws of the Association may be amended in accordance with the provision set forth in such instruments or, in the absence of such provisions, in accordance with the applicable provisions of the Utah Revised Nonprofit Corporation Act.

**SECTION 12.5 SPECIAL RIGHTS OF FIRST MORTGAGEES.**

Any First Mortgagee ("First Mortgage" for purposes hereof meaning a Mortgage with first priority over other Mortgages) of a Mortgage encumbering any Unit in the Association Area, upon filing a written request therefore with the Association, shall be entitled to:

- (a) Written notice from the Association of any default by the Mortgagor, of such Unit in the performance of the Mortgagor's obligations under this Community Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default;

(b) Examine the books and records of the Association during normal business hours;

(c) Receive a copy of financial statements of the Association including any annual audited financial statement within ninety (90) days following the end of any fiscal year of the Association;

(d) To receive written notice of all meetings of Members;

(e) Designate a representative to attend any meeting of Members;

(f) Receive written notice of abandonment or termination of the Association or of the plan contemplated under this Community Declaration;

(g) Receive sixty (60) days written notice prior to the effective date of any proposed, material amendment to this Community Declaration, the Articles of Incorporation or the Bylaws;

(h) Receive thirty (30) days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Areas following a decision of the Association to assume self-management of the Common Areas; and

(i) Immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Areas if the cost of reconstruction exceeds Ten Thousand dollars (\$10,000) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Areas.

**SECTION 12.6 FIRST MORTGAGE EXEMPTION FROM RIGHTS OF FIRST REFUSAL.**

Any such First Mortgagee who obtains title to any Unit pursuant to the remedies provided in the Mortgage held by such First Mortgagee or pursuant to any foreclosure of the Mortgage or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Community Declaration or any Supplemental Declaration.

**SECTION 12.7 PRIORITY OF FIRST MORTGAGE OVER ASSESSMENTS.**

Each First Mortgagee of a Mortgage encumbering a Unit who obtains title to such Unit pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued prior to the time such holder acquires title to such Unit, other than allocation of any deficiency prorated among all Members of the Association.

**SECTION 12.8 FIRST MORTGAGEE RIGHT TO PAY TAXES AND INSURANCE PREMIUMS.**

Any such First Mortgagee or any such First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a charge against any of the Common Areas and may pay any overdue premiums on hazard insurance policies for any Common Areas, and the First Mortgagees making such payments shall be entitled to immediate reimbursement therefore from the Association.

**SECTION 12.9 AGREEMENTS WITH GOVERNMENT MORTGAGE AGENCIES.**

The Association may enter into such contracts or agreements on behalf of the Association as may be required in order to satisfy the requirements or guidelines of any Government Mortgage Agency so as to allow for the purchase, guarantee or insurance, as the case may be, by a

Government Mortgage Agency of First Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the Members thereof, as a class of potential mortgage borrowers and potential sellers of Units, if Government Mortgage Agencies approve the Association Area or parts thereof as a qualifying subdivision under their respective policies, rules and regulations as adopted from time to time.

**SECTION 12.10 ASSOCIATION RIGHT TO MORTGAGE INFORMATION.**

Each Owner hereby authorizes any First Mortgagee holding a Mortgage on a Unit to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

**SECTION 12.11 SPECIAL APPROVALS BY FIRST MORTGAGEES.**

Subject to the provisions of U.C.A. §57-8a-210 (2011) governing lender approvals of amendments to the Community Declaration or certain other Association actions, of those First Mortgagees who have requested written notice, at least seventy-five percent: (75%) of such First Mortgagees (based upon one vote for each Mortgage owned) of Units in the Association Area must approve the following:

(a) An act or omission seek to abandon, partition, subdivide, encumber sell or transfer the Common Areas (except that the granting of Access Easements, Utilities Easements, Drainage Easements and Water Facilities Easements or easements for other public purposes consistent with the intended use of such property by the Association shall not be deemed within the meaning of this provision);

(b) Change the method of determining the obligations. Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards;

(c) By act or omission change, waive or abandon any scheme of regulation, or enforcement thereof, pertaining to architectural approval of Improvement of property including the architectural design of the exterior appearance of Dwellings, the exterior maintenance of Dwellings or the upkeep of lawns and plantings on the Common Areas;

(d) Fail to maintain the required casualty, fire and extended coverage insurance on insurable Common Areas and Dwelling structures as required in Article V of this Community Declaration:

(e) Use casualty insurance proceeds for losses to any Common Areas or Dwelling structures for other than the repair replacement or reconstruction of the Improvements which were damaged or destroyed; and

(f) Amend any material provision of this Community Declaration, the Articles of Incorporation or Bylaws.

**SECTION 12.12 FHA/VA APPROVAL.**

Not applicable.

**SECTION 12.13 NOTICES.**

Any notice permitted or required to be given under this Community Declaration shall be in writing and may be given personally, by mail, or by other appropriate electronic means, including, facsimile, text message, email or through the website of the Association and by any

other means permitted from time to time by the Utah Revised Nonprofit Corporation Act, except that electronic means of delivery shall not be permitted as to any party who has previously provided a written demand to the Association requiring the Association to provide all such notices by mail. If served by mail, each notice shall be sent 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 Unit address of such Person if no address has been given to the Association or if any previous notice sent to the address given by the Person has been returned as undeliverable, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after such notice is deposited in a regular depository of the United States Postal Service. Any such notice address may be changed from time to time by the appropriate party providing notice in writing to the Association of such a change.

**SECTION 12.14 PERSONS ENTITLED TO ENFORCE COMMUNITY DECLARATION.**

The Association, acting by authority of the Board and any Member of the Association shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Community Declaration against any property within the Association Area and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Community Declaration.

**SECTION 12.15 VIOLATIONS CONSTITUTE A NUISANCE.**

Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Community Declaration.

**SECTION 12.16 ENFORCEMENT BY SELF HELP.**

Declarant or the Association, or any authorized agent of either of them, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions or equitable servitudes contained in this Community Declaration, provided such self-help is preceded by Notice and Hearing as set forth in the Bylaws.

**SECTION 12.17 VIOLATIONS OF LAW.**

Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Association Area is hereby declared to be a violation of this Community Declaration and shall be subject to any and all of the enforcement procedures set forth in this Community Declaration.

**SECTION 12.18 REMEDIES CUMULATIVE.**

Each Remedy provided under this Community Declaration is cumulative and not exclusive.

**SECTION 12.19 COSTS AND ATTORNEYS' FEES.**

In any action or proceeding under this Community Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorney's fees.

**SECTION 12.20 LIMITATION OF LIABILITY.**

The Association, the Board, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

**SECTION 12.21 NO REPRESENTATIONS OR WARRANTIES.**

No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project Area, or any Improvement thereon, the physical condition thereof, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

**SECTION 12.22 LIBERAL INTERPRETATION.**

The provisions of this Community Declaration shall be liberally construed as a whole to effectuate the purpose of this Community Declaration.

**SECTION 12.23 GOVERNING LAW.**

This Community Declaration shall be construed and governed under the laws of the State of Utah.

**SECTION 12.24 SEVERABILITY.**

Each of the provisions of this Community Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**SECTION 12.25 NUMBER AND GENDER.**

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

**SECTION 12.26 CAPTIONS FOR CONVENIENCE.**

Titles, headings and captions used in this Community Declaration are intended solely for convenience of reference and shall not be construed as affecting any of the provisions of this Community Declaration.

**SECTION 12.27 MERGERS OR CONSOLIDATIONS.**

Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association, as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Community Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5 day of JUNE, 2012.

DECLARANT:

Ogden South River Townhomes, LLC, a Utah limited liability company



By: H. Blaine Walker  
Its: Manager



STATE OF UTAH }  
 }ss.  
COUNTY OF SALT LAKE }

I hereby certify that on this 5<sup>th</sup> day of June, 2012, before the subscriber, a Notary Public of the State of Utah, and for the County of Salt Lake, personally appeared H. Blaine Walker, known to me (or satisfactorily proven) to be the person(s) described in the foregoing instrument, who did acknowledge that (he)(she)(they), executed the same in the capacity therein stated and for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my hand and official seal.

Barbara Bale  
Notary Public

My Commission Expires: 1-19-13



**CERTIFICATION OF ASSOCIATION**

This Community Declaration for The Meadows at Riverbend Homeowners' Association has been approved by the Members of the Community holding at least 75% of the voting power of the Association in Accordance with Section 12.3 of the Community Declaration.

H. Blaine Walker  
By: H. BLAINE WALKER  
Its: President

Scott Alan Gauric  
By: SCOTT ALAN GAURIC  
Its: Secretary

**EXHIBIT A: COMMUNITY DELARATION LEGAL DESCRIPTION****(PHASE I DESCRIPTION)**

A portion of Lot 5, Ogden River Drive Subdivision, as recorded with the Weber County, Utah Recorder's Office on December 19, 2006, at Book 65, Page 6 of Plats, more particularly described as follows:

BEGINNING AT A POINT WHICH IS NORTH 01°17'55" EAST 219.03 FEET, AND SOUTH 88°37'58" EAST 40.00 FEET FROM THE OGDEN CITY MONUMENT AT THE INTERSECTION OF 20TH STREET AND GRANT AVE. THENCE, N 01°17'55"E 233.27 FEET TO THE SOUTHERLY RIGHT OF WAY OF PARK BLVD. THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING THREE (3) COURSES: N 86°17'55" E 38.86 FEET; THENCE 113.46 FEET ALONG THE ARC OF A 430.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 78°44'22" EAST 113.13 FEET); THENCE N 71°10'50"E 26.46 FEET THENCE SOUTH 18°44'43" EAST 80.60 FEET; THENCE 66.55 FEET ALONG THE ARC OF A 250.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 11°07'08" EAST 66.36 FEET); THENCE SOUTH 00°58'17" WEST 130.09 FEET; THENCE NORTH 88°37'58" WEST 216.62 FEET TO THE POINT OF BEGINNING.

Land Serial No. 03-041-0010

CONTAINS 51,822 SQ. FT. OR 1.19 ACRES MORE OR LESS.

**EXHIBIT B: DESCRIPTION OF ANNEXABLE AREA**  
(PHASE II, PHASE III AND PHASE IV DESCRIPTIONS)

All of Lot 5, Ogden River Drive Subdivision, as recorded with the Weber County, Utah Recorder's Office on December 19, 2006, at Book 65, Page 6 of Plats, less and excepting therefrom the following described tract of property:

(Exception Parcel)

A portion of Lot 5, Ogden River Drive Subdivision, as recorded with the Weber County, Utah Recorder's Office on December 19, 2006, at Book 65, Page 6 of Plats, more particularly described as follows:

BEGINNING AT A POINT WHICH IS NORTH 01°17'55" EAST 219.03 FEET, AND SOUTH 88°37'58" EAST 40.00 FEET FROM THE OGDEN CITY MONUMENT AT THE INTERSECTION OF 20TH STREET AND GRANT AVE. THENCE, N 01°17'55"E 233.27 FEET TO THE SOUTHERLY RIGHT OF WAY OF PARK BLVD. THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING THREE (3) COURSES: N 86°17'55" E 38.86 FEET; THENCE 113.46 FEET ALONG THE ARC OF A 430.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 78°44'22" EAST 113.13 FEET); THENCE N 71°10'50"E 26.46 FEET THENCE SOUTH 18°44'43" EAST 80.60 FEET; THENCE 66.55 FEET ALONG THE ARC OF A 250.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 11°07'08" EAST 66.36 FEET); THENCE SOUTH 00°58'17" WEST 130.09 FEET; THENCE NORTH 88°37'58" WEST 216.62 FEET TO THE POINT OF BEGINNING.

**EXHIBIT C: BYLAWS**

*BYLAWS  
OF  
THE MEADOWS AT RIVERBEND HOMEOWNERS' ASSOCIATION, INC.*

**I. GENERAL**

**Article 1.1 Purpose of Bylaws.** These Bylaws are adopted for the regulation and management of the affairs of THE MEADOWS AT RIVERBEND HOMEOWNERS' ASSOCIATION, INC. ("Association"). The Association has been organized as a Utah Corporation under the Utah Revised Nonprofit Corporation Act (U.C.A. §14-6a-101, et seq.) to be and constitute the Association under the Community Declaration for The Meadows at Riverbend Homeowners Association (the "Community Declaration"). The Community Declaration relates to real property in Ogden, Utah, which may become annexed and subject to the Community Declaration the ("Association Area").

**Article 1.2 Terms Defined in Community Declaration.** Terms used in these Bylaws which are defined in the Community Declaration shall have the same meaning and definition as in the Community Declaration.

**Article 1.3 Controlling Laws and Instruments.** These Bylaws are controlled by and shall always be consistent with the provisions of the Utah Nonprofit Corporation Act, the Community Declaration and the Articles of Incorporation of the Association filed with the Division of Corporations and Commercial Code, State of Utah, as any of the foregoing may be amended from time to time.

**II. OFFICES**

**Article 2.1 Principal Office.** The Board, in its discretion, may fix and may change, from time to time, the location of the principal office of the Association provided that, at such time as suitable quarters can reasonably be obtained within the Association Area in Ogden, Utah, the principal office of the corporation shall be located within the Association Area.

**Article 2.2 Registered Office and Agent.** The Utah Nonprofit Corporation Act requires that the Association have and continuously maintain in the State of Utah a registered office and a registered agent whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Association. The initial registered office and the initial registered agent are specified in the Articles of Incorporation of the Association, but may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the Office of the Secretary of State of Utah.

### III. MEMBERS

**Article 3.1 Members.** A "Member", as defined in the Community Declaration, is the Person, or if more than one, all Persons collectively, who constitute the Owner of a Unit within the Association Area with Improvements on it.

**Article 3.2 Memberships Appurtenant to Unit.** Each Membership shall be appurtenant to the fee simple title to a Unit. The Person or Persons who constitute the Owner of fee simple title to a Unit shall automatically be the holder of the Membership appurtenant to that Unit and the Membership shall automatically pass with fee simple title to the Unit.

**Article 3.3 General Voting Rights of Members.** Each Member in good standing shall have the right to cast votes within the Association Area.

Each Member shall be entitled to one (1) vote for each Unit which he or it owns within the Association Area.

The Bylaws of the Association shall provide for the manner, time, place, conduct, and voting procedures for Member meetings for the purpose of the exercise of voting rights.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, a Member must be in good standing with the Association to be eligible to vote. For purposes of this provision, good standing shall mean that the Member has no violation(s) pending on their Unit and is not more than thirty (30) days past due on payment of all Assessments including without limitation, Common Assessments, Supplemental Common Assessments, Special Assessments, Capital Replacement Reserve Assessments, Reimbursement Assessments, fines, and any late charges and/or interest on any of the Assessments or fines, and is in no other way in violation of the Association's governing provisions.

**Article 3.5 Voting by Joint Owners.** If there is more than one person who constitutes the Owner of a Unit, each such Person shall be entitled to attend any meeting of Members but the voting power attributable to the Unit shall not be increased.

In all cases in which more than one person constitutes the Owner of a Unit, including instances in which a Unit is owned by a husband and wife, then unless written notice to the contrary, signed by any one of such Persons, is given to the Board of the Association prior to the meeting, any one such Person shall be entitled to cast, in person or by proxy, the vote attributable to the Unit.

If, however, more than one Person constituting such Owner attends a meeting in person or by proxy, and seeks to cast the vote attributable to the Site, then the act of those Persons owning a majority in interest in such a Unit shall be entitled to cast the vote attributable to such Unit.

**Article 3.6 Resolution of Voting Disputes.** In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting of the Association, the Board of the Association shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon, provided however, that the

Board shall have no authority or jurisdiction to determine matters relating to the manner of exercise by Declarant of its voting rights.

**Article 3.7 Suspension of Voting Rights.** The Board, by majority vote, may suspend, after Notice and Hearing, the voting rights of a Member during and for up to 60 days following any breach by such Member or a Related User of such Member of any provision of the Community Declaration or of any Rule or Regulation adopted by the Association.

**Article 3.8 Transfer of Memberships on Association Books.** Transfers of Memberships shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Unit to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the membership as the owner of the Membership entitled to all rights in connection therewith, including the rights to vote and to receive notice.

#### IV. ASSOCIATION MEMBERS' MEETINGS

**Article 4.1 Place of Association Member's Meetings.** Association Member's Meeting shall be held at the principal office of the Association or at such other place, within or convenient to the Association Area, as may be fixed by the Board and specified in the notice of the meeting.

**Article 4.2 Annual Association Members' Meeting.** Annual meeting of the Association Members shall be held each year on such day and at such time of day as is fixed by the Board and specified in the notice of meeting. The annual Association meetings shall be held to elect Trustees for the Association or for such other business as authorized by the Declaration or these Bylaws.

**Article 4.3 Special Meeting of Association Members.** Special Meetings of Association Members may be called by a majority of Trustees or by Members holding not less than five percent (5%) of the total votes of all members in the Association, including votes of Declarant. No business shall be transacted at a Special Meeting of Association Members except as indicated in the notice thereof.

**Article 4.4 Record Date.** For the purpose of determining Members entitled to notice of, or to vote at any Association Member's Meeting or in order to make a determination of such Members for any other proper purpose, the Board may fix, in advance, a date as the record date for any such determination of Members. The record date shall not be more than fifty (50) days prior to the Association Member's Meeting or the event requiring a determination of Members.

**Article 4.5 Notice of Association Member's Meetings.** Written notice stating the place, day and hour of any Master Association meeting shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President or Secretary of the Association or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. The notice of an annual meeting shall include the names of any known candidates for Trustee and shall identify any other matter which will be voted on at the meeting. The notice of a

Special Meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid. Such notice may be posted in a conspicuous place within the Association Area, such as on a notice board outside the principal office of the Association, and such notice will be deemed to be delivered to any Member who has not furnished a mailing address for notice to the Association.

**Article 4.6 Proxies.** A Member entitled to vote in the Association may vote in person or by Proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the Association prior to the time the proxy is exercised. Any proxy may be revocable by attendance of a Member in person at a meeting or by a revocation in writing filed with the Secretary of the Association prior to the time the proxy is exercised. A proxy shall automatically cease upon the conveyance by a Member of the Unit of the Member and a transfer of the Membership on the books of the Association. No proxy shall be valid for more than eleven (11) months from the date of its execution unless otherwise provided in the proxy and no proxy shall be valid, in any event, for more than three (3) years after its date of execution. Any form of proxy furnished or solicited by the Association and any form of written ballot furnished by the Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related matters which is known at the time the form of proxy or written ballot is prepared may come before the meeting, and shall provide that if a Member makes a choice the vote shall be cast in accordance therewith.

**Article 4.7 Quorum at Association Member's Meeting.** At any Association Member's Meeting a quorum shall constitute a majority of the Members entitled to cast votes present in person or by proxy. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

**Article 4.8 Adjournments of Association Member's Meetings.** Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum is present without notice other than announcement at the meeting, for a total period not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting the quorum requirement shall remain the same, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

**Article 4.9 Vote Required at Association Member's Meetings.** At any Association Member's Meeting where a quorum is present, called for the purpose of electing Trustees, a majority of the votes present in person or by proxy and entitled to be cast shall be necessary for the election of a Trustee.

**Article 4.10 Order of Business.** The order of business at any Association Member's Meeting shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) report of the Trustees; (e) election of inspectors; (f) election of Trustees; (g) transaction of other business.

**Article 4.11 Officers of Meetings.** The President of the Association shall preside over all Association Member's Meetings. The Secretary of the Association shall be the secretary of all Association Member's Meetings.

**Article 4.12 Certification of Election after Meeting.** Promptly after each Association Member's Meeting to elect Trustees, the President shall certify in writing to the Association the name and addresses of the Trustees elected and the time and place of the meeting at which the Trustees were elected.

**Article 4.13 Waiver of Notice.** A waiver of notice of any Association Member's Meeting, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice to such Member. Attendance of a Member at a meeting, either in person or by proxy, shall constitute a waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**Article 4.14 Action by Members without an Association Member's Meeting.** Any action required to be taken or which may be taken at an Association Member's Meeting may be taken without a meeting in any manner prescribed in the Utah Revised Nonprofit Corporation Act.

## V. BOARD OF TRUSTEES

**Article 5.1 General Powers and Duties of Board.** The Board shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board shall have the power to exercise or cause to be exercised for the Association, all of the powers, rights and authority of the Association not reserved to Members in the Community Declaration, the Articles of Incorporation, these Bylaws or the Utah Revised Non-Profit Corporation Act.

**Article 5.2 Special Powers and Duties of Board.** Without limiting the foregoing statement of general powers and duties of the Board or the powers and duties of the Board as set forth in the Community Declaration, the Board of the Association shall be vested with and responsible for the following specific powers and duties.

(a) **Assessments.** The duty to fix and levy from time to time Common Assessments, Special Assessments, and Reimbursement Assessments upon the Members of the Association as provided in the Community Declaration; to determine and fix the due date for the payment of such Assessments and the date upon which the same shall become delinquent; and to enforce the payment of such delinquent Assessments as provided in the Community Declaration.

(b) **Insurance.** The duty to contract and pay premiums for fire and casualty and liability and other required insurance policies in accordance with the provisions of the Community Declaration.



(c) **Common Area and Dwelling Common Components.** The duty to contract for and pay bills for maintenance, legal service, accounting service, gardening, common utilities and other materials, supplies and services relating to the Common Areas and maintenance of Dwelling Common Components, and to employ personnel necessary for the care and operation of the Common Areas, and to contract and pay for necessary improvements on the Common Areas. The Board shall also have the duty to contract for common utilities which serve multiple units and are not separately metered (i.e. water, storm sewer and sanitary sewer).

(d) **Agents and Employees.** The power to select, appoint, and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Community Declaration and these bylaws; and to fix their compensation and to require from them security for faithful service as deemed advisable by the Board.

(e) **Borrowing.** The power to borrow money as provided in the Community Declaration.

(f) **Enforcement.** The power to enforce the provisions of the Community Declaration, the Rules and Regulations, these Bylaws or other agreements of the Association.

(g) **Delegation of Powers.** The power to delegate its powers according to law.

(h) **Easements.** The power to grant easements where necessary for utilities and other facilities over the Common Areas to serve the Association Area.

(i) **Rules and Regulations.** The power to adopt such additional rules and regulations as the Board may deem necessary for the management of the Association Area. Such Rules and Regulations may concern, without limitation, use of the Common Areas, signs, parking restrictions; animal restrictions; common collection and disposal of refuse; minimum standards of property maintenance consistent with the Community Declaration; and any other matters within the jurisdiction of the Association as provided in the Community Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Community Declaration, the Articles and these Bylaws.

**Article 5.3 Qualifications of Trustees.** A Trustee must be an Owner of a Unit within the Association Area or, if the Owner of any such Unit is a partnership or corporation, must be an authorized agent of such partnership or corporation. If a Trustee conveys or transfers title to his Unit, or if a Trustee who is an authorized agent of a partnership or corporation ceases to be such authorized agent, or if the partnership or corporation of which a Trustee is an agent transfers title to its Unit, such Trustee's term as Trustee shall immediately terminate and a new Trustee shall be selected as promptly as possible to take such Trustee's place. A Trustee may be re-elected and there shall be no limit on the number of terms a Trustee may serve.

**Article 5.4 Number of Trustees.** The number of Trustees shall be THREE (3) until such time as at least fifteen Units have been sold by the Declarant at which time the number of

Trustees shall be increased to FIVE (5). The number of Trustees may be increased or decreased from time to time by amendment to these bylaws provided that the number of Trustees shall not be less than three and no decrease in number shall have the effect of shortening the term of any incumbent trustee. Declarant shall have the following power to appoint Trustees: Declarant shall appoint three (3) Trustees until such time as fifty percent (50%) of all Units within the Project Area have Improvements constructed thereon. During this time, if possible, one (1) of the three (3) Trustees appointed by Declarant shall be a non-employee of the Declarant or its subsidiaries and shall be a Member of the Association. Thereafter, Declarant shall appoint two (2) Trustees until such time as seventy-five percent (75%) of all Units within the Project Area have Improvements constructed thereon and have been sold by the Declarant. Thereafter, Declarant shall appoint one (1) Trustee until such time as all Units within the Project Area have Improvements constructed thereon and have been sold by Declarant.

**Article 5.5 Term of Office of Trustees.** The initial Trustees named in the Articles of Incorporation shall hold office until the first annual meeting of Members, new Trustees shall be elected and at each annual meeting thereafter, up to four new Trustees shall be elected. Trustees shall continue in office for two consecutive years until their second annual meeting of Members or until their successors have been elected, whichever is later, unless a Trustee resigns, is removed, or his term of office terminates because he is no longer qualified to be a Trustee.

**Article 5.6 Removal of Trustees.** At any meeting of the Members, the notice of which indicates such purposes, any Trustee may be removed, with or without cause, by vote of two-thirds (2/3) of the Members and a successor may then and there be elected by two-thirds (2/3) of the votes represented by the Members to fill the vacancy. If any Trustee misses three (3) consecutive meetings they may be removed by a vote of a majority of the Trustees. Notwithstanding the above, Declarant shall control the removal of its appointed Trustees.

**Article 5.7 Resignation of Trustees.** Any Trustee may resign at any time by giving written notice to the President, to the Secretary or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

**Article 5.8 Vacancies in Trustees.** Any vacancy occurring in the Board shall, unless filled in accordance with **Article 7.6** or by election at a special meeting of Members, be filled by the affirmative vote of a majority of the remaining Trustees, though less than a quorum of the Board. A Trustee elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A Trusteeship to be filled by reason of an increase in the number of Trustees shall be filled only upon the approval of two-thirds (2/3) of the votes represented by the Members. Declarant shall fill any vacancy caused by a Trustee originally appointed by Declarant pursuant to **Article 7.4**.

**Article 5.9 Executive Committee.** The Board, by resolution adopted by a majority of the Trustees in office, may designate and appoint an Executive Committee, which shall consist of three or more Trustees and which, unless otherwise provided in such resolution, shall have and exercise all the authority of the Board except authority with respect to those

matters specified in Utah Revised Nonprofit Corporation Act as matters which such committee may not have and exercise the authority of the Board.

**Article 5.10 Other Committees of Association.** The Board, by resolution adopted by a majority of the Trustees in office, may designate and appoint one or more other committees, which may consist of or include Members who are not Trustees. Any such committee shall have and exercise such authority as shall be specified in the resolution creating such committee except such authority as can only be exercised by the Board.

**Article 5.11 General Provisions Applicable to Committee.** The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Trustee, of any responsibility imposed upon it or him by law. The provisions of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of Trustees shall be applicable to meetings of committees of the Board.

**Article 5.12 Manager or Managing Agent.** The Board, by resolution adopted by a majority of the Trustees in office, shall, at or as reasonably possible after the first annual meeting of the Board, designate and appoint a manager or a managing agent, or both, which manager or managing agent shall have and exercise those powers and shall fulfill those duties of the Board as shall be specified in any such resolution. Any such resolution may delegate all or substantially all of the powers and duties of the Board to any such manager or managing agent, however, the Board shall not be relieved of its responsibilities under the Declaration in case of such delegation.

## VI. MEETING OF TRUSTEES

**Article 6.1 Place of Trustees Meetings.** Meetings of the Board shall be held at the principal office of the Association or at such other place, within or convenient to the Association Area, as may be fixed by the Board and specified in the notice of the meeting.

**Article 6.2 Annual Meeting of Trustees.** Annual meetings of the Board shall be held on the same date as, or within 10 days following, the annual meeting of Members. The business to be conducted at the annual meeting of Trustees shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board is elected or if the time and place of the annual meeting of the Board is elected or if the time and place of the annual meeting of the Board is announced at the annual meeting of Members.

**Article 6.3 Other Regular Meetings of Trustees.** The Board shall hold regular meetings at least quarterly and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meetings need be given after establishment of the times and places thereof by such resolution.

**Article 6.4 Special Meetings of Trustees.** Special meetings of the Board may be called by the President or any two members of the Board.

**Article 6.5 Notice of Trustees Meetings.** In the case of all meetings of Trustees for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than three nor more than 50 days before the date of the meeting, by mail, telegraph, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board.

If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail addressed to the Trustee at his home or business address as either appears on the records of the Association, with postage thereon prepaid.

If by telephone, such notice shall be deemed to be delivered when given by telephone to the Trustee or to any person answering the phone who sounds competent and mature at his home or business phone number as either appears on the records of the Association.

If given personally, such options shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Trustee or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of such meeting.

**Article 6.6 Proxies.** A Trustee shall not be entitled to vote by proxy at any meeting of Trustees.

**Article 6.7 Quorum of Trustees.** A majority of the number of Trustees fixed in these Bylaws at such date shall constitute a quorum for the transaction of business.

**Article 6.8 Adjournment of Trustee's Meetings.** Trustees present at any meeting of Trustees may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting.

At any adjourned meeting which is held without notice other than announcement at the meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meeting as originally called.

**Article 6.9 Vote Required at Trustee's Meeting.** At any meeting of Trustees, if a quorum is present, a majority of the votes present in person and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Community Declaration, the Articles of Incorporation or these Bylaws.

**Article 6.10 Order of Business.** The order of business at all meetings of Trustees shall be as follows: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of Committees; (f) unfinished business; and (g) new business.

**Article 6.11 Officers at Meetings.** The Officers of the Association shall be elected amongst the Board, as they determine. The President shall act as Chairman and the Board and shall elect a Trustee to act as Secretary at all meetings of Trustees.

**Article 6.12 Waiver of Notice.** A waiver of notice of any meeting of the Board, signed by a Trustee, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Trustees. Attendance of a Trustee at a meeting in person shall constitute waiver of notice of such meeting except when the Trustee attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

**Article 6.13 Action of Trustees without a Meeting.** Any action required to be taken or which may be taken at a meeting of Trustees, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

## VII. OFFICERS

**Article 7.1 Officers, Employees, and Agents.** The officers of the Association shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, assistant officers, employees and agents as may be deemed necessary by the Board. Officers other than the president need not be Trustees. No person shall simultaneously hold more than one office except the offices of Secretary and Treasurer.

**Article 7.2 Appointment and Terms of Office of Officers.** The officers shall be appointed by the Board at the annual meeting of the Board and shall hold office, subject to the pleasure of the Board until the annual meeting of the Board or until their successors are appointed, whichever is later, unless the officer resigns, or is removed earlier.

**Article 7.3 Removal of Officers.** Any officer, employee or agent may be removed by the Board, with or without cause, whenever in the Board's judgment the best interests of the Association will be served thereby. The removal of an officer, employee, employee or agent shall be without prejudice to the contract rights, if any, of the officer, employee or agent so removed. Election or appointment of an officer, employee or agent shall not of itself create contract rights.

**Article 7.4 Resignation of Officers.** Any officer may resign at any time by giving written notice to the President, to the Secretary or to the Board of the Association stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

**Article 7.5 Vacancies in Officers.** Any vacancy occurring in any position as an Officer may be filled by the Board. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

**Article 7.6 President.** The President shall be a member of the Board and shall be the principal executive officer of the Association and, subject to the control of the Board, shall

direct, supervise, coordinate and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board and of Members of the Association.

**Article 7.7 Vice President.** The Vice President may act in place of the President in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board or by the President.

**Article 7.8 Secretary.** The Secretary shall be the custodian of the records and the seal of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board or by the President. The Board may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his death, absence or inability to act.

**Article 7.9 Treasurer.** The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board may, from time to time, require; shall arrange for the annual audited report required pursuant to these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his death, absence or inability to act.

**Article 7.10 Bonds.** The Association shall require fidelity bonds covering officers or other persons handling funds of the Association as required in the Community Declaration. The Association shall pay the premiums for such bonds.

#### VIII. INDEMNIFICATION OF OFFICIALS AND AGENTS

**Article 8.1 Certain Definitions.** A "Corporate Official" shall mean any, Trustee or Officer and any former Trustee or officer of the Association. A "Corporate Employee" shall mean any employee and any former employee of the Association. "Corporate Official" and "Corporate Employee" shall not include any officer, trustee, agent or employee of Declarant or of any managing agent employed by the Association and no such persons shall have rights of indemnification hereunder. "Expenses" shall mean all costs and expenses including attorneys' fees, liabilities, obligations, judgments and any amounts paid in reasonable settlement of a Proceeding. "Proceeding" shall mean any claim, action, suit or proceeding, whether threatened, pending or completed, and shall include appeals.

**Article 8.2 Right of Indemnification.** The Association shall indemnify any Corporate Official and may, at the discretion of the Board, indemnify any Corporate Employee against any and all Expenses actually and necessarily incurred by or imposed upon him in connection with, arising out of, or resulting from, any Proceeding in which he may be involved or to which he is or may be made a party by reason of: (a) Actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty while acting in his official capacity as a Corporate Office or Corporate employee, or (b) Any matter claimed against him solely by reason of his being a Corporate Official or Corporate Employee.

The right of indemnification shall extend to all matters as to which a majority of disinterested trustees of the Association by resolution, or independent legal counsel in a written opinion, shall determine that the Corporate Official or Employee acted in good faith and had no reasonable cause to believe that his conduct was improper or unlawful.

The right of indemnification shall not extend to matters as to which the Corporate Official or Employee is finally adjudged in an action, suit or proceeding to have been liable for gross negligence or willful misconduct in the performance of his duty except to the extent that a court may determine, upon application, that despite such adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity.

The right of indemnification shall not extend to any matter as to which said indemnification would not be lawful under the laws of the State of Utah.

**Article 8.3 Advances of Expenses and Defense.** The Association may advance expenses to, or where appropriate, may undertake the defense of, any Corporate Official or employee in a Proceeding provided that the Corporate Official or Employee shall undertake, in writing, to reimburse the Association for the expenses advanced or for the costs and expenses of such defense if it should ultimately be determined that the Corporate Official or Employee is not entitled to indemnification under this **Article VIII**.

**Article 8.4 Rights Not Exclusive.** The right of indemnification herein provided shall not be exclusive of other rights to which such Corporate Official or Employee may be entitled as a matter of law.

**Article 8.5 Authority to Insure.** The Association may purchase and maintain liability insurance on behalf of any Corporate Official or Employee against any liability asserted against him and incurred by him as a Corporate Official or Employee or arising out of his status as such, including liabilities for which a Corporate Official or Employee might not be entitled to indemnification hereunder.

## IX. MISCELLANEOUS

**Article 9.1 Amendment of Bylaws.** The Board shall not have the power to alter, amend or repeal these Bylaws or to adopt new Bylaws. Subject to the approval of any

Mortgagees required under the Community Declaration, the Members, at a meeting called for that purpose, shall have the sole power to alter, amend or repeal the Bylaws and to adopt new Bylaws with the approval of two-thirds (2/3) of the votes represented by the Members present at the meeting, if a quorum, is present. The Bylaws may contain any provision for the regulation or management of the affairs of the Association not inconsistent with law, the Community Declaration or the Articles of Incorporation.

**Article 9.2 Compensation of Officers and Trustees.** No Trustee shall have the right to receive any compensation from the Association for serving as such Trustee except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board. Officers, agents and employees shall receive such reasonable compensation as may be approved by the Board except that no officer, trustee or employee of Declarant or of any affiliate of Declarant may receive compensation as an officer, agent, employee, Trustee. Appointment of a person as an officer, agent or employee shall not, of itself, create any right to compensation.

**Article 9.3 Books and Records.** The Association shall keep correct and complete books and records of account and shall keep, at its principal office in Utah, a record of the names and addresses of its Members, and copies of the Community Declaration, the Articles of Incorporation and these Bylaws which may be purchased by any Member at reasonable cost.

All books and records of the Association including the Articles of Incorporation; Bylaws as amended; and minutes of meetings of Members and Trustees may be inspected by any Member, or his agent or attorney, and any First Mortgagee of a Member for any proper purpose.

The right of inspection shall be subject to any reasonable rules adopted by the Board requiring advance notice of inspection, specifying hours and days of the week when inspection will be permitted, and establishing reasonable fees for any copies to be made or furnished.

**Article 9.4 Annual Report.** The Board shall cause to be prepared and distributed to each Member and to each First Mortgagee who has filed a written request therefore, not later than ninety (90) days after the close of each fiscal year of the Association an annual report of the Association containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found. The financial statements of the Association may be audited by an independent public accountant and a report based upon such audit shall be included in the annual Report.

**Article 9.5 Statement of Account.** Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Unit or any person with any right, title or interest in a Unit or intending to acquire any right, title or interest in a Unit, the Association shall furnish a written statement of account setting forth the amount of any unpaid Assessments, or other amounts, if any, due or accrued and then



unpaid with respect to the Unit, the Owner of the Unit, and Related Users of such Owner, and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Unit. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have then been levied.

**Article 9.6 Biennial Corporate Reports.** The Association shall file with the Secretary of State of Utah within the time prescribed by law, biennial corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law and shall pay the fee for such filing as prescribed by law.

**Article 9.7 Fiscal Year.** The fiscal year of the Association shall begin on January 1 and end the succeeding December 31 except that the first fiscal year shall begin on the date of incorporation. The fiscal year may be changed by the Board without amending these Bylaws.

**Article 9.8 Seal.** The Board may adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and Ogden, Utah.

**Article 9.9 Shares of Stock and Dividends Prohibited.** The Association shall not have or issue shares of stock and no dividend shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Trustees or Officers.

Notwithstanding the foregoing paragraph, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

**Article 9.10 Loans to Trustees and Officers Prohibited.** No loan shall be made by the Association to its Trustees or officers and any Trustee, or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until; the repayment thereof.

**Article 9.11 Limited Liability.** As provided in the Community Declaration, the Association, the Board, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action taken or failure to act was in good faith and without malice.

**Article 9.12 Special Rights of First Mortgagees.** Any First Mortgagee of a Mortgage encumbering any Unit in the Association Area, upon filing a written request therefore with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Mortgagor of such Unit in the performance of the Mortgagor's obligations under this Community Declaration, the Articles of Incorporation, the Bylaws or Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual audited financial statement within 90 days following the end of any fiscal year of the

Association; (d) receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members, (f) receive written notice of abandonment or termination of the Community Declaration; (g) receive 60 days written notice prior to the effective date of any proposed, material amendment to the Community Declaration, the Articles of Incorporation or the Bylaws; (h) receive 30 days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Areas following a decision of the Association to assume self-management of the Common Areas; and (i) receive immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Areas if the cost of reconstruction exceeds \$10,000 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Areas.

**Article 9.13 Minutes and Presumptions.** Minutes or any similar record of the meetings of Members or of the Board, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

**Article 9.14 Record of Mortgagees.** Under the Community Declaration, First Mortgagees have rights, under certain circumstances to approve amendments to the Community Declaration. Therefore, any such First Mortgagee or, upon the failure of such First Mortgagee, any Member who has created or granted a First Mortgage, shall give written notice to the Association, through its Manager, or through the Secretary in the event there is no Manager, which notice shall give the name and address of the first Mortgagee and describe the Unit encumbered by the First Mortgage. The Association shall maintain such information in a book entitled "Record of First Mortgages on Units." Any such first Mortgagee or such Member shall likewise give written notice to the Association at the time of release or discharge of any such First Mortgage.

**Article 9.15 Checks, Drafts, and Documents.** All checks drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board.

**Article 9.16 Execution of Documents.** The Board, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

## X. NOTICE AND HEARING PROCEDURE

**Article 10.1 Association's Enforcement Rights.** In the event of an alleged violation by a Member ("Respondent") of the Community Declaration, these Bylaws or the Rules and Regulations, the Board shall have the right, after notice and hearing as hereinafter

provided, and upon an affirmative vote of a majority of all Trustees on the Board, to take any one or more of the following actions:

- (a) Levy a Reimbursement Assessment as provided in the Community Declaration;
- (b) Suspend or condition the right of said Member and anyone claiming through such Member to the use and enjoyment of any recreational facilities operated or maintained by the Association (to the extent any such Person is otherwise entitled to such use);
- (c) Suspend said Member's voting privileges as a Member, as provided in the Community Declaration; or
- (d) Record a Notice of Noncompliance against the Unit of the Respondent.
- (e) Subject to all applicable laws and ordinances, reasonably suspend or condition the privilege of said Member and anyone claiming through such Member to the privilege to keep maintain certain domestic animals within a Unit as otherwise permitted by the Community Declaration and/or Rules and Regulations of the Association. A suspension of the privilege to maintain animals as provided herein shall generally be limited where possible to apply only to the animal(s) which are the subject of the infraction and shall not generally exceed a period of 90 days. However, in the event of that any party incurs more than three (3) such infractions where a suspension is imposed; any subsequent suspension shall be permitted to become permanent as to such party.

Except as otherwise expressly provided herein, any such suspension provided above shall be for a period of not more than 30 days for any non-continuing infraction, but in the case of a continuing infraction (such as nonpayment of any Assessment after the same becomes delinquent) such suspension may be imposed for so long as the violation continues.

The failure of the Board to enforce the Rules and Regulations, these Bylaws, or the Community Declaration shall not constitute a waiver of the right to enforce the same thereafter.

The remedies set forth above and otherwise provided in the Community Declaration or these Bylaws shall be cumulative and none shall be exclusive.

However, any individual Member must exhaust all available internal remedies of the Association prescribed by these Bylaws and the Rules and Regulations, before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Community Declaration, these Bylaws or the Rules and Regulations, provided that the foregoing limitations pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of Assessments.

**Article 10.2 Written Complaint.** A hearing to determine whether enforcement action under the Community Declaration or these Bylaws should be taken shall be initiated by the filing of a written complaint by any Member or by any officer or member of the Board with the President of the Association or other presiding member of the Board.

The Complaint shall contain a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged and a reference to the specific provisions of the Community Declaration, these Bylaws or the Rules and Regulations which the Respondent is alleged to have violated.

**Article 10.3 Notice of Complaint and Notice of Defense.** A copy of the complaint shall be delivered to the Respondent in accordance with the notice provisions set forth in the Community Declaration, together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying Complaint is delivered or mailed to the Board within 15 days after the Complaint was served upon you, the Board may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled 'Notice of Defense' to the Board at the following address:

Address of The Meadows at Riverbend Association.

\_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board, you may contact the property manager, or if directed to do so, the Association's legal counsel."

The respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board. The Respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

**Article 10.4 Tribunal.** The President shall appoint a Hearing Committee ("Tribunal") of three natural Persons upon receipt of a written Complaint as provided in this **Article XII** of these Bylaws. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing next-door neighbors of the Respondent, any person who is known to have a biased opinion for or against the Respondent, or any Members of the Association who are essential witnesses to the alleged violation giving rise to the Complaint.

The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to taking of evidence at the hearing.

In the event of such a challenge, the Board shall meet to determine the sufficiency of the challenge, without the President voting. If such a challenge is sustained, the President shall appoint another member to replace the challenged member of the Tribunal. All decisions of

the Board in this regard shall be final. The Tribunal shall elect a Chairman and appoint a hearing officer who shall take evidence and ensure that a proper record of all proceedings is maintained.

**Article 10.5 Notice of Hearing.** The Tribunal shall serve a Notice of Hearing, as provided herein, on all parties at least 14 days prior to the hearing, if such hearing is requested by the Respondent. The hearing shall be held no sooner than 30 days after the Complaint is mailed or delivered to the Respondent as provided in these Bylaws. The Notice of Hearing to the Respondent shall be substantially in the following form (but may include other information):

"You are hereby notified that a hearing will be held before a Tribunal appointed by the President of The Meadows at Riverbend Homeowners' Association, Inc., at \_\_\_\_\_ . On the \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ at the hour of \_\_\_\_\_ a.m./p.m., upon the charges made in the Complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of the Association."

**Article 10.6 Hearing.**

(a) Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues; to impeach any witness; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible Persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitive evidence shall be excluded.

(d) Neither the accusing Member nor the Respondent must be in attendance at the hearing. The hearing shall be open to attendance by all Members of the Association to the extent of the Permissible capacity of the hearing room.

(e) In rendering a decision, official notice may be taken at any time of any generally accepted matter within the Community Declaration, these Bylaws, the Rules and

Regulations, or the working of the Association. Persons present at the hearing shall be informed of the matters to be noticed by the Tribunal, and these matters shall be made a part of the record of proceedings.

(f) The Tribunal may grant continuances on a showing of good cause.

(g) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear the case and the hearing officer shall replace the withdrawing member.

**Article 10.7 Decision.** If the Respondent fails to file a Notice of Defense, or fails to appear at a hearing, the Tribunal may take action based upon the evidence presented to it without notice to the Respondent. However, the Respondent may make any showing by way of mitigation.

The Tribunal will prepare written findings of fact and recommendations for consideration by the Board. The Tribunal shall make its determination only in accordance with these Bylaws. After all testimony and documentary evidence has been presented by the Tribunal, the Tribunal shall vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling.

A copy of the findings and recommendation of the Tribunal shall be posted by the Board at a conspicuous place in the Association Area, and a copy shall be served by the President on each Person involved in the matter and his attorney, if any. Disciplinary action and levy of a Reimbursement Assessment under the Community Declaration, these Bylaws or Rules and the Regulations shall be imposed only by the Board and in accordance with the findings and recommendations of the Tribunal.

The Board may adopt the recommendations of the Tribunal in their entirety or the Board may reduce the proposed penalty and adopt the balance of the recommendations.

In no event shall the Board impose more stringent enforcement action than recommended by the Tribunal.

The decision of the Board shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board shall become effective 10 days after it is served upon the Respondent, unless otherwise ordered in writing by the Board.

The Board may order reconsideration at any time within 15 days following service of its decision on the involved persons, on its own motion or on petition by any party. However, no action against the Member arising from the alleged violation shall take effect prior to the expiration of the later of (a) 15 days after the Member's receipt of the Notice of Hearing; or (b) five days after the hearing required herein.

**CERTIFICATE OF SECRETARY**

I, the undersigned, do hereby certify that;

(1) I am the duly elected and acting Secretary of THE MEADOWS AT RIVERBEND HOMEOWNERS' ASSOCIATION, INC., a Utah Non-profit Corporation ("Association"); and

(2) The foregoing Bylaws constitute the Bylaws of the Association duly adopted at the meeting of the Board of the Association duly held on June 5<sup>th</sup>, 2012

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 5 day of June, 2012.

Scott Jan  
Secretary